UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0226

September Term, 2015

ANTOINE ANTHONY NEWMAN

v.

STATE OF MARYLAND

Eyler, Deborah S.
Reed,
Salmon, James P.
(Retired, Specially Assigned),

JJ.

Opinion by Salmon, J.

Filed: Apri 26, 2016

On March 9, 2015, Antoine Anthony Newman ("Newman") was convicted by a jury in the Circuit Court for Baltimore County of: 1) possession with intent to distribute heroin; 2) possession of a firearm with a nexis to drug trafficking; and 3) illegal possession of a firearm after having been convicted of a crime of violence. After sentencing, Newman filed this timely appeal in which he raises two issues:

> 1. Whether the trial court erred in admitting into evidence the labels on prescription bottles and a medical assistance card that contained Antoine Newman's name and personal medicine dosing information as non-assertive crime scene evidence.
>
> 2. Assuming, *arguendo* the prescription bottle and medical assistance card were properly admitted as non-assertive circumstantial crime scene evidence, whether the trial judge erred in denying defense counsel's request for a limiting jury instruction.

I.

A. Evidence Presented at Trial[1]

In November 2013, Baltimore County police officers had reason to believe that a house located at 718 Luke Road ("the Luke Road address") was being used for the sale of narcotics. Based on facts learned by the police in their investigation, Baltimore County police officers obtained a search and seizure warrant for the Luke Road address. That warrant was executed on December 30, 2013. On the basement level of the Luke Street

[1]Because there is no issue raised in this appeal as to the sufficiency of the evidence to convict, our summary, as set forth in part I of this opinion, is restricted to evidence directly connected with the issues raised in this appeal together with a summary of evidence that puts that evidence in context.

address, the officers found a woman named Lisa Rexrod and three female juveniles. The basement was in deplorable condition with one to two inches of water covering the entire basement floor.

On the upper level, the officers encountered Tyrus Jetter, who was sleeping in the front bedroom. During the execution of the search warrant, the officers learned that the Luke Road address was leased by one of Mr. Jetter's female relatives.

Also on the upper level, the police heard dogs barking and heard Newman, saying three times: "I'm coming out." Newman then opened the door of the rear left bedroom and stepped into the hallway with his hands in the air. He told the officers that he could control the dogs, who were pit bulls. Appellant next offered to move the dogs out of the rear right bedroom so the officers could continue their search. While attempting to transfer the pit bulls to the bathroom, one of the dogs escaped and was fatally shot by a police officer.

In the bedroom from which Newman had emerged the police found woman's clothing in a closet along with a prescription bottle with a woman's name on the label. More importantly, in the same closet, the police also found a large blue bag. Inside the blue bag, officers found the following items: a .32 caliber revolver, a black digital scale, knotted baggies containing heroin, numerous unused ziplock baggies, a "camo" ski mask, numerous unused glass vials, a sifter, and a metal spoon with powder residue. Additionally, in the large blue bag, the police found three bottles of prescription drugs with appellant's name on

the labels. The labels on the prescription bottles also had dosing instructions. Also in the large blue bag, the police found what the parties referred to as a "medical card," which was, in fact, a letter size document from the State of Maryland that provided information concerning eligibility for enrollment with a managed care organization, how to go about finding a doctor or receiving medicine and other information. That letter was addressed to appellant and gave his address as 3719 Manchester Avenue, Baltimore, Maryland, 21215. Lastly, in the bag, the police found a prescription bottle with the name of someone other than appellant on the label.

The State introduced into evidence, over appellant's objection, as State's Exhibits 35A, 35B and 35C, the three prescription bottles with appellant's name on the labels[2] and also introduced, again over defense counsel's objection, the medical card.

In the right rear bedroom, police officers recovered a North Face jacket. In the pocket of that jacket, police found a vial of heroin together with a copy of a motion that appellant had filed in the District Court for Baltimore County. The caption of the motion was *State of Maryland v. Antoine Newman* and the case number was 03596. Directly below the caption, in handwriting, was the Luke Street address. The motion read as follows:

[2]As Exhibit 37, the State introduced a pill bottle that had a label on it indicating what the pills were prescribed for and the name of a person other than appellant.

> Hey, how are you? I am asking that you excuse my lateness on the payment of the case No. above involving Antoine Newman. I've paid $50 of the $250 and would be asking until June 1, 2013 to pay the remaining.

On the motion, above the signature line, is appellant's signature. The motion bore the date of April 25, 2013. The motion appellant signed was introduced into evidence by the State together with a true-test copy of that same document from case file number 03596, District Court of Maryland for Baltimore County.

At trial, the State called as a witness, Adam Heavner, a 16 year veteran of the Baltimore County Police Department. He testified that on November 25, 2013, he came in contact with appellant and had a discussion with him. In that discussion, appellant told Officer Heavner that he lived at the Luke Road address. Officer Heavner further testified that on December 26, 2013, which was four days before the search and seizure warrant was executed, he came in contact with appellant for a second time and appellant told him that he still lived at the Luke Road address.[3]

B. <u>Evidence Introduced by the Defendant</u>

Debbie Merryman told the jury that she owned two pit bulls, one of whom was shot by the police on December 30, 2013. She testified that after she was forced to move out of

[3]Although the jury was not given this information, it is apparent from what was said at a bench conference that the "contacts" Officer Heavner had with appellant came about when the officer arrested appellant for one or more violations of the law that were unconnected with this case.

her home, she temporarily moved in with a neighbor, which required her to find someone to board her dogs. She turned to her friend, appellant, who arranged for her to board the animals at the Luke Road address. Thereafter, she visited that address to deliver food for her dogs and to pay the people living in the home for helping to care for the animals. According to Ms. Merryman, appellant did not live at the Luke Road address. The defense also called Carmisha Williams, one of appellant's best friends. She testified that for the five and one-half years prior to trial, she and appellant had lived together at three different locations. Starting in 2007, appellant lived with her at 6019 Barstow Road in Baltimore City; the two then moved to 1228 South Marlyn Avenue in Essex, where appellant lived with her for about two years. Next, she and appellant moved to 26 Walden Maple Court where appellant lived until Thanksgiving 2013.

The last defense witness to be called was appellant's mother, Novelette Taylor-Hunter. She testified that in November and December 2013, she and appellant lived at 3921 Walbash Avenue in Baltimore City. According to appellant's mother, on the night that appellant was arrested, he was at her home until sometime after 3:00 a.m., at which time he received a phone call and left her home.

II.

A. First Question Presented

Appellant argues:

> Antoine Newman's convictions must be reversed because the trial court erred in admitting the labels on the prescription bottles and medical assistance card as non-assertive crime scene evidence because the State used the statements on the bottles and card for their truth.

To understand that argument, it is necessary to review what transpired when appellant's trial counsel made a motion *in limine* just prior to the selection of the jury. At the motions hearing, counsel for appellant argued that the information on the prescription bottles and on the medical card was inadmissible hearsay. Counsel stated:

> During the course of an executed search and seizure warrant on the premises in question, some items were found in a jacket in a - - in a - - - - in a second (inaudible) bedroom in the residence. In addition to that, there was a - - bag that was found in a closet and inside that bag, along with contraband and a weapon, was found prescription bottles with the [d]efendant's name on them, and I think there were also - - there were also items, paper items with his name . . . and address on [sic] found in that bag. I am moving to suppress all - - not to suppress, to eliminate all of those items, Your Honor, that were found either with his name on it or his name and address on it.

After the trial judge said "ok," defense counsel added: "[t]he address of the - - the - - the location of the execution of the search warrant on . . . Luke Road." Counsel said that he was relying on *Bernadyn v. State*, 390 Md. 1 (2005) to support his contention that the labels

on the prescription bottles with appellant's name on them, and appellant's name on the medical card constituted hearsay. Defense counsel argued that

> the State is offering these items to show the defendant lived at this address. And we don't have the foundation for where the person got the information, who told the person that information. There is no ability to cross-examine was that information correct and - - and any authenticating information is all absent.

In opposition to the motion, the prosecutor pointed out that the police found, in executing the search warrant, a written motion in a jacket that contained appellant's name and address. The prosecutor said that the *Bernadyn* case applied "in one sense" because it prohibited the prosecutor from offering the document found in the jacket into evidence in order to prove that the [d]efendant "lived at 718 Luke Road."[4] The prosecutor then segued into a discussion of *Fair v. State*, 198 Md. App. 1 (2011), arguing

> that the document with appellant's address on it was circumstantial, non-assertive hearsay, that the [d]efendant was at that location and knows the contents of the coat. So I have that argument[,] which I think *Fair* says I can make. But in this particular case, I also have a true-test copy of that same document from the District Court of Maryland, and I have the Baltimore City Police officer who's going to testify that he pulled the [d]efendant over and the [d]efendant provided that address to him.

The prosecutor went on to say that:

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[4]In fact, the holding in the *Bernadyn* case did not prevent the State from introducing into evidence the motion, signed by appellant, to prove that appellant lived at the Luke Street address. The document was admissible, as an exception to the hearsay rule, as a statement by a party opponent. *See* Md. Rule 5-803(a).

> The medical assistance card and the prescription bottles . . . supports an inference that the [d]efendant, who's name appears on both, recently accessed that bag and is aware of the contents, as that is how the State intends to argue. The . . . prescription bottle as well as the . . . medical assistance card. That is simply proof . . . [of the implied] assertion if you will, circumstantial evidence that he is accessing that bag and he's aware of the contents.

In reply, defense counsel made no comment relevant to the argument of the prosecutor based on *Fair*. The trial judge said:

> I'm going to deny your motion, sir. Having read the *Bernadyn* case as well as the *Fair* case, I think the State has made a stronger argument that relative to the printout from the court system, if they have a true-test copy, then that is a under the rulings a self-authenticating document, which comes in without the necessity of any other witness. It is an exception to the hearsay rule and that is admissible.
>
> With regard to the other items that do not contain an address by the [d]efendant, under the *Fair* case, the Court is persuaded that they are merely circumstantial non-assertive crime scene evidence. The jury's entitled to find out items that were recovered from the scene. They're not being offered to prove anything other than the fact that these are items that were recovered. The jury can draw whatever conclusions they want from those items.

After making some other comments, which are not here relevant, the trial judge concluded by saying:

> So I think that the . . . State has complied with all of the requirements set forth in *Bernadyn* that they later further clarified in *Fair*, so the motion *in limine* is denied.

Before addressing the merits of appellant's hearsay argument, it should be noted that in this appeal, appellant does not contend that the trial judge erred in admitting into evidence

a copy of the motion (found in a jacket pocket along with some heroin) that appellant filed in the District Court, in which he stated that his address was 718 Luke Road, Essex, Maryland, nor does the appellant voice any objection to the trial judge allowing Officer Heavner to testify that on November 25, 2013 and December 26, 2013, appellant told him that he lived at the Luke Road address. The only evidence that appellant claims was inadmissible hearsay is the prescription bottles and the medical assistance card, neither of which were introduced into evidence to prove that appellant lived at the Luke Road address. The prescription bottles had no address on the label and the medical card had an address, but it was not 714 Luke Road.

We turn now to appellant's contention that the prescription bottles and the medical card should have been excluded as hearsay. In Maryland "[h]earsay" is a "statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Md. Rule 5-801(c). As used in this rule exclusively, a "statement" is defined as: "(1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion." Md. Rule 5-801(a).

Given that definition, the question presented narrows, *viz*.: If someone writes the name of a person on a prescription label or on a medical card, does that writing constitute a "written assertion"? We shall answer that question in the negative.

To understand the rule against hearsay, it must be remembered that many times when a person on the witness stand quotes what an out-of-court declarant said, the witnesses testimony does not violate the hearsay rule. For instance, if a witness testifies that a policeman (an out-of-court declarant) said to a defendant "get out of the car with your hands up," the hearsay rule is not violated because the policeman's words, self-evidently, are not being introduced to prove the truth of any assertion. Similarly, if a witness testifies that an out-of-court declarant asked "what time is it?", that inquiry is not an assertion of a fact. *See Holland v. State*, 122 Md. App. 532, 544 (1998).

Turning to the issue in this case, appellant relies heavily on *Bernadyn v. State*, 390 Md. 1 (2005). The issue in *Bernadyn* was:

> Does a medical bill discovered at a crime scene and addressed to the defendant constitute inadmissible hearsay when introduced in evidence, without foundation or authentication under any exception to the hearsay rule, to prove that the defendant resided at the address on the bill?

390 Md. at 7.

The Court of Appeals answered that question in the affirmative. *Id*. at 23. In *Bernadyn*, Harford County police officers executed a search and seizure warrant at 2024 Morgan Street in Edgewood, Maryland on August 29, 2001. *Id*. at 3-4. When the warrant was executed, police officers found Michael Bernadyn, alone, in the living room of the Morgan Street address. *Id*. at 4. From the living room, officers seized a marijuana pipe,

marijuana stems and seeds, and a Johns Hopkins Bayview Physician's medical bill dated August 16, 2001, containing this language: "Responsible party: Michael Bernadyn, Jr., 2024 Morgan Street, Edgewood, Maryland 21040." *Id*. at 4. In other parts of the house, police officers also seized men's clothing, numerous bags of marijuana weighing a total of approximately 8 ounces, and some marijuana stems and seeds. *Id*. At Bernadyn's trial, the defendant took the position that he did not live at the Morgan Street address and that the medical bill containing his address was inadmissible hearsay. *Id*. The trial judge overruled that objection.

At trial, the prosecutor used the address written on the bill to prove that Bernadyn lived at that address. *Id*. at 4-5. The *Bernadyn* case explained its reason for holding that the address on the medical bill was hearsay as follows:

> In order to accept the words "Michael Bernadyn, Jr., 2024 Morgan Street, Edgewood, Maryland 21040" as proof that Bernadyn lived at that address, the jury needed to reach two conclusions. It needed to conclude, first, that Bayview Physicians wrote those words because it believed Bernadyn to live at that address, and second, that Bayview Physicians was accurate in that belief. As used, the probative value of the words depended on Bayview Physicians having communicated the proposition that Michael Bernadyn lived at 2024 Morgan Street. The words therefore constituted a "written assertion" –and hence, under Md. Rule 5-801(a), a "statement" – that Michael Bernadyn lived at 2024 Morgan Street. When used to prove the truth of that assertion, the bill was hearsay under Md. Rule 5-801(c), because it contained "a statement . . . offered in evidence to prove the truth of the matter asserted."

Id. at 11. (Footnote omitted.)

The *Bernadyn* Court suggested, but did not hold, that the medical bill could have been used for a non-hearsay purpose, i.e., for the purpose of showing that an item belonging to petitioner had been found in the same room where petitioner and the marijuana were found. *Id*. at 14-15. The Court explained:

> The State also relies on the Court of Special Appeals' alternative rationale, that the bill was offered not to establish the truth of its contents, but rather for its probative value as circumstantial evidence connecting Bernadyn to the residence wherein he, the bill, and the drugs were all found. Pointing to case law from other jurisdictions in which courts have admitted documents as circumstantial evidence tending to prove a defendant's connection with a location or with other people, the State maintains that the existence of an address on the bill makes no difference in the analysis. The State ignores the fact that evidence can serve more than one purpose. If the proponent of a statement claims to offer the evidence for a purpose other than its truth, but also offers the statement to prove the truth of a matter asserted therein, the court should either exclude the evidence or make clear that the evidence is admitted for a limited purpose. Defense counsel is then on notice that the evidence is admissible, *albeit* for a limited purpose, and may then request a limiting instruction.
>
> The rationale of the Court of Special Appeals, as well as the State's argument, is *post hoc* reasoning. The defense indicated that it was objecting because the bill "has my client's address." At no time did the prosecutor proffer to the trial judge the intended use of the evidence, nor did the trial court admit the evidence specially. The prosecutor's closing argument demonstrates that the bill was used for the truth of the statement contained therein–that petitioner lived at the address reflected on the bill.

Id. at 14-15. (Footnote omitted.)

Appellant's reliance on *Bernadyn* is misplaced. In that case, there was an out-of-court declarant who made an assertion that Michael Bernadyn lived at the Morgan Street

address and the purpose of admitting the bill into evidence was to prove that Bernadyn did live at that address. As already mentioned, appellant's medical card did happen to have an address on it, but the State did not introduce the card to show that appellant lived at that address because the address on that card had no relationship to the address where the heroin was found. Therefore, in regard to the medical card, we are left only with the fact that appellant's name appeared on that card and, as appellant's counsel admitted in oral argument before us, the fact that a name appears on a label or document, standing alone, does not constitute hearsay. That concession was well founded. *See Webster v. State*, 221 Md. App. 100, 117-119 (2015) (the defendant's nickname, which was written on the cover of a notebook found in defendant's bedroom near drugs and other contraband, did not constitute hearsay.) *See also U.S. v. Snow*, 517 F.2d 441, 443-45 (9th Cir. 1975) (A name tag bearing defendant's name affixed to a machine gun case was non-hearsay and was properly admitted as circumstantial evidence that appellant owned the case.).

Nothing in the *Bernadyn* case would suggest that the dosing instructions on the three pill bottles constituted an assertion of a fact by an out-of-court declarant. Here, quite obviously, the State was not introducing the label on the prescription bottles to prove how often a certain drug should be used. In other words, whether the dosing instructions were medically correct was immaterial.

In his brief, appellant also relies on language used by this Court in *Fields v. State*, 168 Md. App. 22 (2006). Saturio Fields was charged, *inter alia*, with a murder that occurred in the doorway of a bowling alley. *Id*. at 27. Fields's primary theory of defense was that he was not even present at the bowling alley when the murder occurred. *Id*. at 28. A police officer investigating the crime observed that there was a television monitor at each bowling lane, and the names and scores of the bowlers who used that lane were displayed on the screen. *Id*. at 29. The detective copied down the information from the television monitors and recorded the names on the screen above lane 22. *Id*. Fields's nickname was "Sat Dogg" and that name appeared on the screen above lane 22. *Id*. Prior to trial, defense counsel filed a motion *in limine* to preclude the State from introducing testimony from the detective that the name "Sat Dogg" appeared on the television screen. Fields contended that the name "Sat Dogg" constituted hearsay. *Id*. The hearsay objection was overruled. *Id*. at 30. The question presented in *Fields* was whether the evidence that the appellant's nickname was projected on a television screen on bowling lane 22 constituted an implied assertion that the appellant was present in the bowling alley that night because it was offered by the State to show his presence; or, whether it was an item of circumstantial crime scene evidence from which reasonable jurors could infer that the appellant was present in the bowling alley on the night of the murder. *Id*. at 26. In *Fields*, we held that the evidence was non-hearsay and

simply "circumstantial crime scene evidence" from which a reasonable juror could infer that the appellant was present. *Id*. at 37-38. We explained:

> The prosecutor did not attempt to use the evidence of the words "Sat Dogg" on the screen at the bowling alley to show that a known declarant believed the appellant was present there, had reason to accurately hold that belief, and therefore was impliedly asserting that factual proposition by entering his nickname on the screen. Unlike the probative value of the medical bill in *Bernadyn*, *supra*, the probative value of the evidence that the appellant's name was on the television screen did not depend upon the belief of the person who typed the name on the screen, or upon the accuracy of that person's belief. The prosecutor did not argue that the person who entered the name "Sat Dogg" on the screen only would have done so if he or she believed that the appellant was present in the bowling alley. Indeed, there was no evidence about that person's belief, because the person was not identified. The prosecutor argued only that the crime scene included a bowling lane with the name "Sat Dogg" written above it.
>
> To be sure, the probative value of the name-on-the-screen evidence was that it had a tendency to show that the appellant was a bowler at the bowling alley that night, and therefore was present at the location of the shootings. Any item at the crime scene that could be connected to the appellant in some way, regardless of the veracity of its source, also would have that probative value. The jurors could have drawn the same inference that the appellant was present at the bowling alley from the evidence that the sweater with his DNA on it was found there.
>
> The appellant's name on the television screen in the bowling alley was not an implied assertion of the factual proposition that the appellant was present at the bowling alley, although it was circumstantial evidence that could be probative of that fact. Because the evidence was not an "assertion," under Rule 5-801(a), it was not a "statement" under that subsection and hence was not hearsay under Rule 5-801(c). It was admissible non-hearsay evidence. Accordingly, the trial court's evidentiary ruling was not in error.

Id. (Emphasis added.)

The holding in *Fields* is directly on point in this case. The probative value of the evidence that appellant's name was on the prescription labels did not depend on the belief of the person who typed the labels, or upon the accuracy of that person's belief. What was on the labels and what was on the medical card did not constitute an assertion of a fact. The appellant's name on the three labels affixed to the prescription bottles was simply circumstantial evidence that connected appellant to the blue bag.

Another case that is factually analogous to the one *sub judice* is *Fair v. State*, 198 Md. App. 1 (2011). In *Fair*, a Baltimore City police detective arrested appellant and a companion and searched both men. In appellant's pocket, the detective found a set of keys and a remote device that would open the Cadillac automobile, which was parked nearby. *Id*. at 3-4. The detective found suspected marijuana in the Cadillac. Also, in the vehicle's center console, the detective found, *inter alia*, "a paycheck stub" with appellant's name on it and a .9 mm handgun. In the *Fair* case, one of the questions presented was whether the words on the paycheck issued to appellant by the Mayor & City Council of Baltimore's Central Payroll Division, constituted hearsay. *Id*. at 13. We answer that question in the negative, *id*. at 37, and held that "the check was merely circumstantial non-assertive crime scene evidence." *Id*. We noted that "[t]he contents of the check, including the date, were not relevant to the crime with which appellant was charged. Its relevance was that its presence supported an inference that appellant, who happened to be the payee of the check,

had recently accessed the console and was therefore aware of its contents." *Id*. at 37-38. Exactly the same can be said in the case *sub judice*. As mentioned, the State did not introduce the dosing information contained on the three labels to prove how often the drugs should be administered. The information on the prescription label was introduced as circumstantial evidence that appellant had accessed the large blue bag that contained, among other things, a gun and heroin. Appellant's medical card was introduced for the same purpose.

Appellant contends that the State used the information on the labels of the pill bottles to prove the truth of an assertion. He points to an unobjected statement made by the prosecutor in her opening statement, *viz*.:

> [H]is medical card in there, he has his personal prescription medicines in there. And what does that tell you? Well, that stuff only gets there if you put it there. Again in your own lives, where do you keep things you have control and dominion over? Well, that's where he's [kept] it. He's keeping it with his drugs, his drug preparation materials, his drug packaging materials and his gun.

As can be seen, the foregoing argument concerning the evidence at issue was used for a non-hearsay purpose in conformity with the legal principles set forth in *Fields* and *Fair*, both *supra*.

In support of the same argument, appellant points to a second unobjected statement made by the prosecutor during closing argument, *viz*.:

> [B]ut if there 's any doubt how often the [d]efendant goes in that bag, ladies and gentlemen . . . look at these prescriptions. Take one tablet by mouth everyday with other medications... Now, he reads the instructions, and how's it going to affect him? . . . Everyday he's taking those pills. And where are those pills ladies and gentlemen? Those pills are in the blue bag with his medical card, the heroin, the preparation tools, and the cutting agent and packaging and the scale, the handgun, and the bullets. When he reads those, he's taking that medicine everyday, and he's got that medicine with him, doesn't he?

(Emphasis added.)

Once again, in the just quoted argument, the prosecutor was not asserting that the out-of-court declarant who wrote the dosing instructions was telling the truth when he or she wrote that the tablets should be taken once daily. That was irrelevant. The words of that unknown declarant, whether true or not, were being used as circumstantial evidence that appellant probably followed the dosing instructions, which was clearly a non-hearsay utilization of the declarant's words.

For the above reasons we hold that the circuit court did not err when it denied appellant's motion *in limine* and overruled appellant's objection to introduction into evidence of the three pill bottles and the medical card.

C. Second Question Presented

After the jury was instructed, defense counsel said:

> I'm objecting[,] the Court declined to give my Instruction 14, which said that any evidence offered by the State found at 718 Luke Road with the name of the [d]efendant is merely circumstantial evidence and some object

> with the same name as the [d]efendant was (inaudible) found at 718 Luke Road. I think *Fair versus State* requires the Court to give that instruction.[5]

Proposed Instruction No. 14 was based on what the Court said in *Bernadyn* (390 Md. at 15), which was quoted in *Fair* (198 Md. App. At 25) *viz*.:

> [When] the proponent of a statement claims to offer the evidence for a purpose other than its truth, but also offers the statement to prove the truth of a matter asserted therein, the court should either exclude the evidence or make clear that the evidence is admitted for a limited purpose. Defense counsel is then on notice that the evidence is admissible, albeit for a limited purpose, and may then request a limiting instruction.

The legal principle just quoted has no application in this case because what was said on the prescription bottles or on the medical card was not offered to prove the truth of what the out-of-court declarant said. In other words, the evidence was not introduced for a dual purpose. Thus, the court did not err in failing to give proposed Instruction No. 14.

JUDGMENT AFFIRMED; COSTS TO BE PAID BY APPELLANT.

[5] A written copy of proposed Instruction No. 14 is not in the record.