NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA Appellee v. PHILLIP DONALD WALTERS Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 446 MDA 2021

Appeal from the Judgment of Sentence Entered December 10, 2020
In the Court of Common Pleas of Wyoming County
Criminal Division at No: CP-66-CR-0000058-2019

BEFORE: PANELLA, P.J., STABILE, J, and DUBOW, J.

MEMORANDUM BY STABILE, J.: **FILED: APRIL 5, 2022**

Appellant, Phillip Donald Walters, appeals from the December 10, 2020 judgment of sentence imposing life without parole for first degree murder, a concurrent one to five years for strangulation, and a consecutive one to 23 months for abuse of a corpse.[1] We affirm.

The trial court summarized the pertinent facts:

> On or about December 31, 2018, [Appellant] reported his twenty-four (24) year-old girlfriend, Hayley Lorenzen (hereinafter "Ms. Lorenzen") missing. On or around January 8, 2019, the Wyoming County District Attorney's office was contacted by an attorney informing the office that his client, Gabel Bell (hereinafter "Ms. Bell"), had information regarding Ms. Lorenzen's death. Following an interview by Ms. Bell by the Pennsylvania State Police, [Appellant] was arrested and charged with Criminal Homicide.

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[1] 18 Pa.C.S.A. §§ 2502(a), 2718, and 5510, respectively.

On October 21, 2020, Ms. Bell testified that she met [Appellant] in or around September of 2018 on a dating application. Ms. Bell and [Appellant] began a sexual relationship and communicated typically via text messaging regarding sexual fantasies, including choking and [Appellant] killing Ms. Bell. Eventually, [Appellant] and Ms. Bell stopped seeing each other when Ms. Lorenzen moved in with [Appellant]. After a few weeks, Ms. Bell and [Appellant] resumed their sexual relationship and "sexting" their sexual fantasies.

In or around November of 2018, Ms. Bell informed [Appellant] she did not want to be with someone that was living with another woman and [Appellant] indicated he was working on breaking up with Ms. Lorenzen and having her move back to Oregon. On December 27, 2018, [Appellant] and Ms. Bell were texting about a sexual fantasy, in which [Appellant] inquired into how Ms. Bell would kill Ms. Lorenzen and that afterwards, her body would be thrown into a river.

Ms. Bell and [Appellant] spoke briefly via text messages on December 28, 2018. On December 29, 2018, Ms. Bell texted [Appellant] that she did not want to "play his game anymore." The following morning, Ms. Bell awoke to a text message from [Appellant] indicating that [Appellant] and Ms. Lorenzen had been drinking the night before and that [Appellant] wanted to hurt her. [Appellant] then asked Ms. Bell to stop texting and switch to Snapchat, an application for your phone utilized for messaging that goes away after a certain period of time. [Appellant] sent Ms. Bell a picture of Ms. Lorenzen on the bathroom floor, in which she appeared to be passed out. [Appellant] told Ms. Bell that Ms. Lorenzen might be hurt or dead and asked Ms. Bell to come to his home. Ms. Bell went to [Appellant's] home where she saw Ms. Lorenzen in the same spot as the Snapchat photo that was sent earlier by [Appellant]. Ms. Bell noticed scratches on [Appellant's] arms, particularly a deeper gouge like scratch on the inner part of his right arm. Ms. Bell testified that when she asked [Appellant] what happened,

> He confirmed that she was dead and that he had done it. And he was in bed with Haley. Haley was sleeping. And he said that he tried to choke her while she was sleeping and break her neck. And it didn't work. So she woke up and she was upset and wasn't feeling well. And she went to the bathroom and she

> was over the toilet not feeling well. And then, he said he hit her on the back of the head with a hammer. And from there, he choked her until there was no – until she wasn't fighting back anymore.
>
> Thereafter, Ms. Bell put Ms. Lorenzen's arm inside of her onesie and removed a necktie that was tightly tied around Ms. Lorenzen's cold neck. [Appellant] then put grocery bags around Ms. Lorenzen's hands and face so there would be no blood left anywhere. [Appellant] then put Ms. Lorenzen in the trunk of his car and tied trash bags of rocks around her. After cleaning the blood out of [Appellant's] home, [Appellant] took Ms. Bell about ten minutes to bridge [sic] where they threw Ms. Lorenzen into the river. Ms. Lorenzen's remains were discovered in the Susquehanna River on or around July 20, 2019.

Trial Court Opinion, 3/11/21, at 2-4 (record citations omitted).

The Commonwealth arrested Appellant and charged him with the aforementioned offenses. On October 26, 2020, at the conclusion of a five-day trial, a jury found Appellant guilty on all counts. Appellant filed a timely post-sentence motion. The trial court denied the post-sentence motion on March 11, 2021, and this timely appeal followed.

Appellant presents three questions:

> 1. Did the trial court err in precluding the defense, on cross-examination, from questioning Gabel Bell, concerning her internet searches involving BDSM and fantasy role-playing for the purpose of impeachment, thus depriving [Appellant] of due process and a fair trial?
>
> 2. Did the trial court err in allowing the testimony of Dr. Ralph Riviello, whose testimony could not be considered anything but expert testimony, which was based on impermissible hearsay which not only violated Pa.R.E. 602 and 702 but, also, improperly bolstered the credibility of the Commonwealth's key witness, Gabel Bell, causing prejudice which far outweighed its probity

and deprived Appellant of his right to due process and a fair trial?

3. Did the trial court err in allowing the Commonwealth to present the testimony of Dr. Gary Ross concerning the cause of death "by history" which was not only based upon hearsay but, also, was devoid of any objective medical findings and did not comport with a conclusion or opinion of "within a reasonable degree of medical certainty" thereby not only improperly bolstering the credibility of Gabel Bell but depriving Appellant of his right to due process and a fair trial?

Appellant's Brief at 2.

Appellant's assertions of error challenge evidentiary rulings. We review the trial court's decision for an abuse of discretion. ***Commonwealth v. Elliot***, 80 A.3d 415, 446 (Pa. 2013), ***cert. denied***, 574 U.S. 828 (2014). "A trial court may exclude evidence that is irrelevant to the issues presented. Evidence is not relevant "unless the inference sought to be raised by it bears upon a matter in issue and renders the desired inference more probable than it would be without the evidence." ***Id.*** at 446-47.

At trial, Appellant sought to introduce evidence of Bell's internet searches related to "BDSM"[2] to impeach her credibility.[3] Appellant argued

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[2] Appellant's Brief cites Miram-Webster.com for the definition of BDSM. It includes "sexual activity involving such practices as the use of physical restraints, the granting and relinquishing of control, and the infliction of pain." Appellant's Brief at 26, n.1. "Bondage and discipline consist of using physical or psychological restraints […], and sadism and masochism refer to taking pleasure in others' or one's own pain or humiliation." ***Id.***

[3] "The credibility of any witness may be impeached by any evidence relevant to that issue, except as otherwise provided by statute or these rules." Pa.R.E. 607(b).

that Bell testified on direct that the "hurting fantasies" she acted out with Appellant were his idea. Appellant argues that cross examination based on Bell's internet searches would reveal that the hurting fantasies were her own, thus contradicting her testimony on direct and damaging her credibility.

A careful review of the record reveals that Appellant waived this issue:

> Q. [Defense Counsel]: Ma'am do you remember searching the internet following December 30th for pornographic images?
>
> [Prosecutor]: Objection (inaudible) and move to strike.
>
> THE COURT: It's –
>
> [Prosecutor]: I'm sorry?
>
> THE COURT: It's just the –
>
> [Defense Counsel]: May we approach, Judge?
>
> THE COURT: Alright.
>
> (The following discussion was held at sidebar at 1:48 p.m.)
>
> [Defense Counsel]: Judge, the pornographic images, are we – the pornographic images that she searched for were related to BDSM content. She stated during her testimony on direct that [Appellant] was the one who pushed her into rough sex, it wasn't her.
>
> [Prosecutor]: No, that's incorrect. She testified that the rough sex fantasies were her own. She was clear about that.
>
> [Defense Counsel]: I don't believe that's true, Judge.
>
> [Prosecutor]: That is true.
>
> THE COURT: I believe she did say –
>
> [Defense Counsel]: She said the hurting fantasies were not hers. The hurting fantasies were [Appellant's]. The rough sex fantasies were her own. She was into that.

N.T. 10/21/20, at 141-42.

After debate about the import of Bell's direct examination testimony and relevance of evidence of her internet activity, the trial court permitted defense counsel to lay a foundation for the evidence he sought to introduce:

> THE COURT: No, listen, listen. I'll allow you to go in and re-ask the questions, okay. And if you think that this then impeaches what she's saying, we'll come back up here and we'll take another look at it, alright?
>
> [Defense Counsel]: Your Honor –
>
> THE COURT: So I'll allow you to go ahead and revisit the BDSM stuff, the choking stuff, all of that with her, okay? You can revisit that with her. And then, if you feel that whatever it is that you're able to show and I – I mean, (inaudible) the fact that she (inaudible) certain porn sites, the prejudice probably outweighs the probative value on that. If you can show this would impeach the testimony that she's given, then we'll revisit the whole thing, okay?
>
> [Defense Counsel]: Alright.
>
> THE COURT: That's as far as I can do.
>
> [Defense Counsel]: I'll ask one or two questions. That will be it.
>
> THE COURT: Huh?
>
> [Defense Counsel]: I'll ask one or two questions. That will be it.
>
> THE COURT: You can ask one or two questions on and [sic] if you still think that this is going to show, then you come back up here and we'll decide whether we can go on with the post – the post, that searching, okay?
>
> [Defense Counsel]: Alright .

Id. at 145-46.

Defense counsel then proceeded with his cross examination of Bell:

Q. When you testified on direct with the District Attorney, you said there was a lot of rough sex with [Appellant]?

A. That's correct.

Q. And you stated that he was controlling?

A. In bed, yes.

Q. And all of that is coming from him?

A. Mainly.

Q. So, (inaudible) anything interested in rough sex, is that you or him?

A. At the time, I was into rough sex.

Q. Were you—what type of rough sex were you into? Why don't you explain what rough sex means, give me an example?

A. Throw around on the bed, choking, hard slapping on the butt, um, doing what you're told.

Q. So when you said this was coming from him, what did that mean?

A. Meaning he was the one doing that to me.

Q. He was the one that what?

A. He was the one doing that to me.

Id. at 147-48.

After this exchange with Bell, defense counsel pursued the matter no further, did not ask to revisit the issue at side bar, and moved on to another line of questioning. Perhaps counsel concluded, based on Bell's answers, that he could not lay a sufficient foundation for his assertion that she did not share in Appellant's "hurting fantasies." Regardless, there was never a definitive

trial court ruling on this issue, and it is not preserved for appellate review. Pa.R.A.P. 302(a) ("Issues not raised in the trial court are waived and cannot be raised for the first time on appeal.").

Next, Appellant argues the trial court erred in admitting the expert testimony of Dr. Ralph Riviello because it improperly bolstered Bell's credibility. Dr. Riviello testified on the use of a necktie to cause strangulation. Appellant claims Dr. Riviello's testimony was within the knowledge of a layperson, and therefore not an appropriate subject of expert testimony. Furthermore, because the autopsy did not confirm strangulation, given the state of decomposition of the victim's body, and because Bell's testimony was the only evidence that Appellant strangled the victim, Appellant argues Dr. Riviello's testimony improperly bolstered Bell's credibility.

Rule of Evidence 702(a) provides that expert testimony is appropriate only where "the expert's scientific, technical, or other specialized knowledge is beyond that possessed by the average layperson[.]" Pa.R.E. 702(a). Our Court has addressed the admissibility of expert testimony regarding the process of strangulation. ***Commonwealth v. Lopez***, 854 A.2d 465 (Pa. 2004). "The average layperson is generally unacquainted with the physical processes accompanying ligature strangulation; therefore, this was a proper subject for [the expert] to explain." ***Id.*** at 470. The issue in ***Lopez*** arose because the expert testified that the victim would experience terror during strangulation, and the defendant argued the expert should not have been

allowed to testify to the victim's state of mind. ***Id.*** The Supreme Court found no reversible error. While perhaps the comment about a "terrifying period" may not have been necessary, it did little more than articulate the obvious; any conscious person is going to be terrified as they are strangled to death. Viewed in the context of the entire trial, there was nothing prejudicial about [the expert's] statement." ***Id.***

The instant record reveals that the trial court refused to admit Dr. Riviello's written report, concluding that it was "devoid of any kind of scientific conclusion." N.T., 10/23/20, at 5. "Basically, he opines that there was – the body was in such a state of decompensation [sic] that he could not make any kind of medical or physiological determinations." ***Id.*** The prosecution nonetheless sought admission of Dr. Riviello's testimony regarding the physiological effects of strangulation since the Crimes Code requires the Commonwealth to prove beyond a reasonable doubt that Appellant knowingly and intentionally impeded the victim's airways.[4] ***Id.*** at 8-9.

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[4] Section 2718 provides:

> **(a) Offense defined.--**A person commits the offense of strangulation if the person knowingly or intentionally impedes the breathing or circulation of the blood of another person by:
>
> (1) applying pressure to the throat or neck; or
>
> (2) blocking the nose and mouth of the person.

18 Pa.C.S.A. § 2718(a).

The trial court permitted Dr. Riviello to testify: "But I will allow you to go into the science of the – in a limited fashion that the – that a necktie that was positioned as Gabel Bell described it could cause death by strangulation." ***Id.*** at 16. The trial court also permitted the Commonwealth to introduce evidence that strangulation can cause nausea, finding it relevant because Bell testified that Appellant told her that he first tried to strangle the victim in bed, and the victim got up and went to the bathroom feeling nauseous after Appellant's first strangulation attempt failed. ***Id.*** at 16-18. Further, Dr. Riviello was permitted to testify that strangulation would impede the victim's ability to make sounds, thus accounting for the lack of evidence that Appellant's child and/or upstairs neighbors did not report hearing a disturbance. ***Id.*** at 18-19. Dr. Riviello gave brief testimony in accord with the trial court's limitations. ***Id.*** at 45-47.

In essence, the trial court largely accepted Appellant's argument that an average layperson would understand that a necktie around the victim's neck could have strangled her. Accordingly, the trial court excluded Dr. Riviello's written report and, presumably, the bulk of the testimony the Commonwealth planned to elicit from him. Dr. Riviello's testimony was limited in scope and very brief. Appellant does not address why the trial court was wrong to conclude that an average person would know that Appellant's first, failed attempt to strangle the victim in bed could have accounted for her apparent nausea shortly thereafter. Nor does Appellant explain why an

average layperson would know that the victim could have lost the ability to call for help or make any sound. And, regarding this latter scenario, Dr. Riviello testified only that strangulation victims "**sometimes** lose the ability to make sound or noise or call out." N.T., 10/23/20,a t 46-47. We therefore find no merit in Appellant's argument that Dr. Riviello's brief testimony on these topics should have been excluded under Rule 702.

Appellant also argues that Dr. Riviello's testimony should have been excluded under Rule 403, which provides that "evidence may be excluded if its probative value is outweighed by the danger of unfair prejudice[.]" Pa.R.E. 403. Appellant notes that Bell, in her first meeting with police investigators, did not mention the necktie around the victim's neck. Several weeks later, she told investigators she removed a necktie from the victim's neck. The necktie was never found.

We find this argument unpersuasive because, in most respects, we discern no basis upon which Dr. Riviello's testimony could have bolstered Bell's credibility. The jury was aware of the variations in Bell's statements to investigators, and it could assess her credibility accordingly. Dr. Riviello's testimony may have bolstered Bell's account only in that he explained that nausea is a possible effect of attempted strangulation, and, in Bell's account, the victim was ill after Appellant's first, failed attempt to kill her by strangulation. And, as we just explained, nausea as an effect of attempted strangulation is an appropriate subject of expert testimony. To the extent Dr.

Riviello's testimony bolstered Bell's credibility on this point, we discern no unfair prejudice. Overall, however, nothing in Dr. Riviello's testimony suggested any greater or lesser probability that Appellant used a necktie.

Furthermore, we find ***Lopez*** instructive. Even if we accept Appellant's argument that Dr. Riviello's testimony was unnecessary, or at least of limited utility, we cannot conclude, in the context of the entire trial and the voluminous evidence, that Dr. Riviello's testimony was unfairly prejudicial. Here, as in ***Lopez***, Dr. Riviello's testimony about the potential for a necktie to be used as an instrument of strangulation did "little more than articulate the obvious." ***Lopez***, 854 A.2d at 470. For the foregoing reasons, we find no merit to Appellant's second argument.[5]

Finally, Appellant argues that the trial court should have excluded the expert testimony of Dr. Gary Ross because it was based on Bell's account of the victim's death, thus bolstering Bell's credibility, and not rendered to a reasonable degree of medical certainty.[6] Our Supreme Court has written with apparent approval of a medical examiner's ability to consider the case history in arriving at a cause of death. In ***Commonwealth v. Bullock***, 913 A.2d 207 (Pa. 2006), the Supreme Court wrote with apparent approval of the coroner's

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[5] Appellant's Brief does not address the assertion, included in his question presented, that Dr. Riviello based his testimony on inadmissible hearsay. We therefore do not analyze it.

[6] Appellant preserved his objection to Dr. Ross's in a pretrial motion *in limine* filed October 22, 2019.

reliance on case history to arrive at a cause of death: "At trial, the coroner stated that [the victim's] cause of death was 'strangulation by history,' which refers to the events immediately preceding the death, […] this conclusion was apparently based, in part, upon the occurrences as related by Appellant in his statement to police." ***Id.*** at 211.[7] Thus, to the extent Appellant argues the trial court erred in permitting Dr. Ross to consider Bell's account of the victim's

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[7] Appellant criticizes the trial court's reliance on ***Commonwealth v. Williams***, 316 A.2d 888 (Pa. 1974). There, the Commonwealth's pathologist conducted an autopsy and concluded the victim died by burning and asphyxiation. The victim's corpse was so badly decomposed that the pathologist's conclusions were not supportable by the autopsy itself, though the skeleton was charred and it was recovered from the site of a fire. Thus, the pathologist excluded, as best he could, other causes of death before concluding that burning and asphyxiation were most likely. The trial court excluded the pathologist's testimony, apparently because the pathologist did not arrive at his conclusions beyond a reasonable doubt. The Supreme Court, on appeal from the judgment of sentence, criticized the trial court for applying the wrong standard for analyzing the admissibility of expert testimony. ***See id*** at 890-91.

Instantly, the trial court cited ***Williams*** in support of its decision to admit Dr. Ross' testimony even though the results of the autopsy itself do not support his conclusions as to the cause of death. We observe that the ***Williams*** Court's opinion on this issue was *dicta*—the trial court excluded the pathologist's testimony. The defendant therefore had no basis for challenging its admissibility. Further, ***Williams*** is distinguishable because the corpse exhibited charring, and it had been removed from the site of a fire. Thus, there was some physical evidence to support the pathologist's conclusions. Instantly, in contrast, the only evidence of the victim's cause of death came from Bell. Dr. Ross, as we explain in the main text, testified repeatedly that he found no physical evidence to support Bell's account of the victim's death. Given the foregoing, we find ***Williams*** somewhat instructive but certainly not controlling. In any event, we discern no reversible error in the trial court's reliance on it.

death, Appellant has provided no legal support for it, and the applicable law is to the contrary.

More importantly, our review of Dr. Ross' testimony reveals no support for Appellant's assertion that Dr. Ross vouched for Bell's credibility. Dr. Ross testified that the victim's body exhibited "almost complete skeletonization of the head and neck organs." N.T., 10/26/20, at 19. Thus, there was no evidence from which Dr. Ross could determine whether the victim suffered neck trauma. ***Id.*** at 20. Dr. Ross sought to exclude other potential causes of death; he examined the remains of the victim's brain, heart, lungs, and other organs and found no sign of disease or other explanation for the victim's death. ***Id.*** at 25-27. There was no trauma to the victim's skull or skeletal system, other than the absence of hands and feet, which Dr. Ross stated was common given the state of decomposition. ***Id.*** at 18-19, 27, 29. In summary, Dr. Ross found no evidence of death from natural causes.

Dr. Ross summarized his findings and stated he relied on process of elimination and the history of the case to conclude that the victim died of strangulation. "The conclusion my cause of death was that she died by strangulation which was by history. **There was no anatomic indication that she was actually strangled. If I looked at the body alone without any history, I could not say that.** It would have to be an undetermined death." ***Id.*** at 31 (emphasis added). Contrary to Appellant's argument, Dr.

Ross testified that his conclusions were within a reasonable degree of medical certainty. ***Id.*** at 36.

On cross-examination, defense counsel highlighted the fact that none of the victim's bones were broken, despite Bell's testimony that her body was dropped from a bridge. ***Id.*** at 42. Dr. Ross found no evidence that the victim "fell from a height." ***Id.*** at 54. Likewise, the skeleton exhibited no evidence consistent with domestic violence. ***Id.*** at 42-44. Dr. Ross further testified that the victim's skull did not evidence that she was struck with a hammer, as Bell stated. ***Id.*** at 50-51. Dr. Ross explained once again that his conclusion of strangulation was based on the history provided to him:

> Q. Would you agree that you identify the history – the death by history in this case, right?
>
> A. I determined the cause and manner of death by history and the exclusion of everything else from the autopsy.
>
> Q. Right. And so you decided that you took everything else based on your physical autopsy. And you said I couldn't find a cause of death. So then you turn to somebody else's statements as to how the death occurred?
>
> A. Well, somebody else's statements are the history. And that's what I refer to. And that's what I based my findings largely upon, yes.

Id. at 48-49.

Dr. Ross would go on to reconfirm that none of his physical findings supported Bell's account:

> Q. And so your report identifies that there's no medical evidence to support strangulation in this case?
>
> A. **There's no physical evidence to support that.**

Id. at 53 (emphasis added). Dr. Ross made clear, "I can't by autopsy alone state that the decedent was strangled." ***Id.*** at 55.

In summary, the record does not support Appellant's argument that Dr. Ross, in rendering his opinion, vouched for Bell's credibility. He stated that he recovered no evidence to support Bell's claim of strangulation, and that he based his conclusion on the history of the case as provided to him. Dr. Ross also testified that rendering an opinion based on the case history is something he had done in other cases. ***Id.*** at 32. Dr. Bell's expert opinion did not invade the jury's province of assessing Bell's credibility. We find no merit in Appellant's assertion that the trial court should have excluded it.

Because Appellant's first argument is waived and his second and third arguments lack merit, we affirm the judgment of sentence.

Judgment of sentence affirmed.

Judgment Entered.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 4/5/2022