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RENDERED: MARCH 18, 2004
NOT TO BE PUBLISHED

FINAL

Supreme Court of Kentucky

2002-SC-0192-MR

DATE 4-8-04 ELIA Grant, D.C.

RONNIE ROY WHITT — APPELLANT

V.

APPEAL FROM ELLIOTT CIRCUIT COURT
HONORABLE SAMUEL C. LONG, JUDGE
01-CR-00021

COMMONWEALTH OF KENTUCKY — APPELLEE

MEMORANDUM OPINION OF THE COURT

REVERSING AND REMANDING

Appellant, Ronnie Roy Whitt, was convicted by an Elliott Circuit Court jury of murder and sentenced to twenty (20) years in prison. He appeals to this Court as a matter of right.[1]

Appellant's defense at trial was that the evidence sufficiently and clearly established that his wife, Zeda Whitt, committed suicide by shooting herself. He claims this is so because they were the only persons present on the evening of her death. At trial, the Commonwealth's case depended largely on circumstantial evidence. As such, this case is highly dependant upon fact sensitive trial testimony.

On July 7, 1999, Appellant and the victim had reconciled from their separation and moved back into Appellant's residence. During the evening of July 9,

[1] Ky. Const. § 110(2)(b).

1999, Appellant came home from work, and found the victim drinking beer and in a good mood. Appellant, who had himself consumed some alcohol, joined her on the back porch and prepared to grill food for dinner.

That same evening around 11:00 p.m., the victim died of brain injuries resulting from a gunshot wound to the head. Appellant called 911 and reported that his wife had shot herself. Emergency personnel quickly responded to Appellant's residence and found Appellant's wife lying on the floor with blood flowing from two head wounds. Appellant's handgun was found on a nearby bed where Appellant stated that he had moved the handgun after entering the room and discovering his wife lying on the floor.

Testimony at trial presented two different pictures of what transpired that evening. Appellant's witnesses attempted to show that the decedent was mentally unstable and had committed suicide. To show suicidal motive, Appellant's witnesses testified that the decedent was taking medication because she was depressed about her work and family, and because she was experiencing financial trouble in her life.

The Commonwealth's witnesses testified to a tumultuous marital history between Appellant and the decedent and to his knowledge of her recent affair with another man. The Commonwealth introduced testimony of domestic violence incidents in 1996 and 1997.

The Kentucky State Police lab presented the limited physical evidence that was discovered. First, the lab performed gunshot residue tests on the decedent. The results of testing showed that while no significant levels of antimony were found on her hands, significant levels of barium were found on the back of her left hand and her left palm. The Kentucky State Police lab technician testified that unless significant

levels of lead, barium and antimony were found, the existence of residue was not conclusive. Appellant suggested that the gunshot residue showed that his wife had killed herself and that the antimony was brushed off either when she fell to the floor or was moved by emergency personnel while taking her blood pressure twice and her pulse once. The Commonwealth posited that because gunshot residue tests were inconclusive as to whether she had shot a gun, there was an inference that Appellant fired the gun. Although the .32 caliber pistol was an emitting weapon, Appellant was never tested for gun residue.

The state crime laboratory conducted other forensic tests for blood on Appellant's shorts and two washcloths in his house, and although blood was found on the shorts, that blood did not belong to the decedent. A separate lab technician testified to finding no blood at all on the shorts. Appellant also points to the fact that he left the grill on, presumably as evidence that he was not in the bedroom at the time of the shooting. Constable Roger Wagner testified that he turned off the grill after arriving at Appellant's home.

As to the point of entry of the victim's head wound, one emergency medical technician (EMT) testified that the entry wound appeared to be on the right side of the decedent's head. The coroner did not determine a cause of death because someone said the decedent had considered suicide. He merely testified that death was caused by a gunshot wound to her head. The doctor who performed the autopsy testified that the entry wound was on the left side of the decedent's head. The Commonwealth suggested it was unlikely that a right-handed person would shoot herself on the left side of her head. Appellant rebutted this by testifying that the decedent was as good with her left hand as she was with her right hand.

Appellant presents various issues on appeal and further facts will be presented as necessary.

Appellant contends that the trial court committed reversible error when it excluded Constable Roger Wagner's testimony that the victim's friend, Connie Ison, told him that the victim told her she was going to kill herself. At issue are two statements: (1) the decedent's statement to Ison that she was going to commit suicide; and (2) Ison's statement to Wagner reporting the substance of the conversation. The proffered testimony of Wagner was preserved for review by avowal.[2]

Ison, a friend of the decedent for approximately four or five years, testified that she spent the entire day with the decedent on the day of the decedent's death. She testified that the decedent and Appellant got back together after Appellant's car accident. She also testified that she could not remember if she told a police detective or Constable Roger Wagner that the decedent intended to kill herself, but stated that if she did say that, the statement was accurate. Ison also testified that the decedent was afraid of Appellant.

Constable Roger Wagner testified that he had heard about a shooting on his scanner and that he, David Blair (a friend of Appellant and the decedent), and Connie Ison traveled to Appellant's home. During that drive, Ison reportedly disclosed the "suicide" statement to Wagner. The trial court held Wagner's testimony wherein he repeated what Ison had told him about what the victim had told her to be inadmissible hearsay.

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[2] Mills v. Commonwealth, Ky., 95 S.W.3d 838, 843 (2003).

Under KRE 805, double hearsay statements must individually meet hearsay exceptions or both statements are excluded.[3] Appellant first argues that when suicide is the theory of defense, the decedent's previous threats of self-destruction are admissible and not excluded by the hearsay rule. Appellant relies on Powell v. Commonwealth[4] for the proposition that a decedent's declarations and threats are admissible during a self-defense claim, if made within a reasonable time before death. Powell states:

> Evidence of a suicidal disposition is analogous to evidence of threats or bad feeling[s] which is admissible as tending to show who was the aggressor when self-defense is claimed in a homicide case. When suicide is the theory of defense the decedent's previous threats or attempts to kill himself are admissible for the same reason.[5]

In this case, the victim's statements to Ison are out of court offered in court to prove the truth of the matter asserted, i.e., that the victim intended to kill herself. Such statements are admissible to establish the state of mind of the decedent during a reasonable time prior to death.[6] This Court has held that a declaration of intent to kill made two years prior to a victim's death was properly admitted to show the state of mind at a later date.[7] Powell treats statements of intent to harm others the same as statements of intent to harm oneself, and thus to show a suicidal state of mind. Accordingly, the decedent's statement to Ison satisfies the state of mind exception to the hearsay rule, as set forth in KRE 803(3).

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[3] Thurman v. Commonwealth, Ky., 975 S.W.2d 888, 893 (1998).
[4] Ky., 554 S.W.2d 386, 390 (1977).
[5] Id.
[6] See Partin v. Commonwealth, Ky., 918 S.W.2d 219, 222 (1996).
[7] Rogers v. Commonwealth, Ky., 60 S.W.3d 555, 558 (2001) (*citing* Fleenor v. Commonwealth, Ky., 75 S.W.2d 1 (1934)).

For Wagner's testimony to be admissible, Connie Ison's statement to him must also meet a hearsay exception.[8] Appellant argues that Wagner's testimony is admissible as impeachment of Ison's prior inconsistent statement, i.e., she could not remember. Pursuant to KRE 801A(a)(1):

> A statement is not excluded by the hearsay rule, even though the declarant is available as a witness, if the declarant testifies at the trial or hearing and is examined concerning the statement, with a foundation laid as required by KRE 613, and the statement is: (1) Inconsistent with the declarant's testimony;

KRE 613(a) requires that a proper foundation be laid to permit a prior inconsistent statement by asking the witness about the statement in court.[9] If the foundation is proper, the prior inconsistent statement may be admitted to impeach the testimony of the witness and may be received as substantive evidence of the truth of its contents.[10]

In this case, Ison was questioned and testified that she could not recall whether she told Wagner and the detective that the decedent had threatened suicide on the day of her death.[11] In his avowal testimony, Wagner was asked whether Ison had said anything and he replied, "Yes." By avowal, Wagner then testified that Ison was "crying and going on and she said, 'I could have prevented this' [the victim's death]....And, she said, '[s]he [the victim] told me today she was going to kill herself.'" Ison's professed inability to recall and proof of her inconsistent statement to Wagner satisfied the requirements of KRE 801(A)(a)(1) and rendered Wagner's testimony

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[8] Thurman, 975 S.W.2d at 893.
[9] Id.
[10] Jett v. Commonwealth, 436 S.W.2d 788 (1969).
[11] See Brock v. Commonwealth, Ky., 947 S.W.2d 24, 28 (1997) (holding that a statement of inability to recall will be treated as an inconsistent statement for purposes of KRE 801A(a)(1)).

admissible.[12] Exclusion of this key testimony was prejudicial error for which a new trial is required.

Appellant next contends that the trial court committed reversible error when it permitted a family friend, Cleat Ferguson, to testify to the following:

> Q. And, what did you tell her?
>
> A. I told her –- I said, "Based upon the information that you have given me, if you go back, I said, he will kill you."
>
> Q. Okay; was this based upon the fact that Mr. Whitt had learned of the relationship between Larry and Zeda?
>
> A. Yes.

The Commonwealth contends that this issue is unpreserved for appellate review and indeed it appears that Appellant may have missed the mark with his objection. The grounds stated by Appellant were as follows: "All right; I am going to object to that, your honor, because this is just – that is a self-serving statement. It is hearsay." Nevertheless, in view of our determination that a new trial is required on other grounds, we deem it expedient to address this issue as it will likely recur upon retrial. It is important to note that the evidence was not offered to prove that Appellant had learned of Zeda's relationship with another man, but instead it was offered to prove Ferguson's reaction to that information. A statement offered to show an effect on the person who heard it is not hearsay because it is not offered for the truth of the matter asserted.[13] This particular statement, however, fails the test of relevancy in that it fails to make the

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[12] Jett, supra.
[13] See McCormick on Evidence Sec. 249, at 589 (Cleary ed. 1975).

evidence of a fact of consequence more probable or less probable than it would be without the evidence.[14] This evidence should have been excluded as it was irrelevant.

Appellant argues in the alternative that Furguson's statement was inadmissible lay opinion testimony. While Ferguson's statement was phrased as a declaration of fact to the victim, in actuality, it amounted to an expression of his opinion as to what would likely occur. A number of this Court's decisions have held such opinion testimony to be inadmissible. In Meredith v. Commonwealth,[15] we reversed upon the admission of a letter expressing a belief in Appellant's guilt. "Placing the contents of the Childers' letter before the jury was also improper because it contained an opinion of a witness as to Meredith's guilt." Meredith relied on Nugent v. Commonwealth[16] in which this Court noted the highly prejudicial effect such evidence has on a jury and reiterated that such evidence is inadmissible.

> We hold that it was clearly erroneous to admit into evidence Bryant's opinion as to Appellant's guilt. . . . The issue of guilt or innocence is one for the jury to determine and the opinion of a witness which intrudes on this function is not admissible, even through a route which is, at best, "back door" in nature.[17]

Deverell v. Commonwealth[18] reached a similar conclusion in a prosecution for exhibition of an obscene movie. A police witness was permitted to narrate the film and describe in graphic detail what was depicted on the screen. In response to this, we commented:

> His testimony is replete with expressed opinions as to what the characters in the film intended by their comments and gestures.... His testimony was, at the best, nothing other than his version of "Sin and Temptation" as drawn from his original viewing of the movie, and the video tape exhibited.

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[14] KRE 401.
[15] Ky., 995 S.W.2d 87, 92 (1997).
[16] Ky., 639 S.W.2d 761, 764 (1982).
[17] Id.
[18] Ky., 539 S.W.2d 301 (1976).

> His testimony had the effect of "herding" the jury, whether voluntarily or reluctantly, along the primrose path of "guilty."[19]

Thus, we held that the police officer should not have been allowed to give his view of the impact of the film upon the public, or express conclusory statements concerning obscenity. As the foregoing authorities demonstrate, whether the Ferguson testimony is regarded as merely irrelevant or as inadmissible lay opinion testimony, it is inadmissible. Upon retrial, if the same or similar evidence is proffered, the objection should be sustained.

Appellant next complains that the trial court committed reversible error by admitting the testimony of Sandra Woods wherein she revealed statements made by the victim shortly before her death. On direct examination, the Commonwealth asked Woods what the victim had said about how things were going with Appellant. In response, Woods testified as follows:

> She said that they had had a lot of trouble and that she [Zeda] had told Ronnie that she had a relationship with Larry Lawson. She – this is hard for me. She said that Ronnie was threatening to kill her. He swore to her that he would, and that he was – she kept telling me the whole entire day, over and over, "You have to swear to me if anything happens to me that you have it investigated. You call somebody. Roy is going to kill me." And, I asked her, "Why did you tell Ronnie that, Zita [sic]?" And, she said, "I don't know. I just felt like. I finally just told him everything." And, I said, "Well, if you had gone out with somebody else, maybe it wouldn't be so bad. But, why did you go out with his best friend – his childhood friend? That is just humiliating." And, she said, "I know it is the worst thing I could have done." She said, "But, I went on and told him." And, she said, "Now, I am afraid." She just kept over and over that day saying, "Whatever you do, if something happens to me make sure that you tell somebody that he is going to tell [kill] me. And, he said if he does, he will get away with it.

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[19] Id.

Wood's testimony that Zeda told her four days before her death that Appellant threatened to kill her is generally inadmissible as pure hearsay.[20] Appellant's defense was that the victim committed suicide thereby placing her state of mind in issue.[21] Zeda's statement to Woods was not a statement of future intent but a statement of memory or belief, evidence specifically precluded under KRE 803(3).[22] Appellant argues that it was reversible error to admit testimony concerning domestic violence incidents between Appellant and the decedent in 1996 and 1997, and error to admit testimony of a prior violent incident in 1997 involving an individual other than the decedent. The Commonwealth introduced and the trial court admitted the evidence of the 1997 domestic violence under KRE 404(b).

Trooper Elliott Gollihue testified that in 1996 he responded to a domestic-related incident in Elliott County. He testified that, "[d]uring the course of the investigation I learned that the two parties, Mr. and Mrs. Whitt, were involved in a domestic related altercation where Ronnie had waved a pistol in the air and threatened..." Appellant then lodged a hearsay objection. In chambers, the Commonwealth agreed with the objection and withdrew its question, and nothing further was said by the trial court as to Trooper Gollihue's testimony.

Trooper Bowling testified that in 1997 he responded to a domestic disturbance at Appellant's house where Appellant had fired a .38 caliber pistol twice before his arrival. He testified that Appellant fired one shot into the air and one shot into the ground. Trooper Bowling testified that after Appellant fired the gun, Mike Smith

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[20] Moseley v. Commonwealth, Ky., 960 S.W.2d 460, 461-62 (1997) (victim told witnesses before her death that defendant had physically abused her).
[21] Partin, 918 S.W.2d at 222.
[22] Moseley, supra at 462.

and Hope Saunders left the premises. The officer testified that he arrested Appellant because he found that the decedent had a swollen black and bluish bruise, choke marks on her neck and was upset and scared, in addition to the fact that Appellant had fired the gun twice. Finally, there was testimony that Appellant appeared before the Grand Jury and Ronnie was indicted for wanton endangerment and fourth degree assault.

Evidence of other crimes, wrongs or acts under KRE 404(b) is generally inadmissible to prove "the character of a person in order to show action in conformity therewith." Such evidence may be admitted, however, "[i]f offered for some other purpose, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident."[23] It is within the "sound discretion" of the trial judge to exclude such evidence if "its probative value is substantially outweighed by the danger of unfair prejudice."[24] Upon review, we apply the abuse of discretion standard.[25]

First, Appellant argues that any testimony concerning domestic violence either in 1996 or 1997 is inadmissible because the incidents occurred too long ago to be probative. Appellant also argues that the prejudicial effect of the testimony concerning the domestic violence against Appellant outweighs the probative value. Although the officers' testimony concerning the 1996 domestic violence incident was not introduced in full, we will discuss the admissibility of both the 1996 and the 1997 incidents as they will likely recur upon retrial.

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[23] KRE 404(b)(1).
[24] KRE 403; English v. Commonwealth, Ky., 993 S.W.2d 941, 945 (1999).
[25] Partin, 918 S.W.2d at 222.

In Jarvis v. Commonwealth,[26] this Court held that evidence that a murdered wife had been physically abused without evidence linking the abuse to the defendant husband was excluded under KRE 403 as being substantially more prejudicial than probative. Appellant also relies on Robey v. Commonwealth[27] to suggest that the prior violent incidents were too remote to be probative and that the admission of this evidence was prejudicial error. In Robey, we held that a single sixteen-year-old conviction was too remote, but noted that there is no "bright line ruling concerning the temporal remoteness of other crimes."[28]

In this case, it is not evident that admission of the two and three year old threats by Appellant against the decedent was an abuse of discretion.[29] This Court has held that prior violence of one spouse against another was relevant and admissible to prove motive, common scheme or intent.[30] Therefore, it is consistent with earlier case law that the trial court did not abuse its discretion by admitting evidence of Appellant's domestic violence against his wife.

Second, Appellant argues that the testimony of Kentucky State Trooper Bowling was prejudicial error because testimony concerning violent acts not directed toward the decedent is outweighed by its prejudicial effect. Appellant relies on Henson v. Commonwealth[31] to support the proposition that "[a] threat to kill or injure someone

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[26] Ky., 960 S.W.2d 466 (1998).
[27] Ky., 943 S.W.2d 616, 618 (1997).
[28] Id.
[29] English, 993 S.W.2d at 945.
[30] McCarthy v. Commonwealth, Ky., 867 S.W.2d 469 (1993) (*rev'd on other grounds*); Harris v. Commonwealth, Ky., 199 S.W.2d 445 (1947).
[31] Ky., 812 S.W.2d 718, 721 (1991).

specifically, other than the deceased, is inadmissible in a murder trial." Henson was actually discussing Jones v. Commonwealth,[32] which it distinguished as follows:

> It has long been the rule in this jurisdiction that while a threat to kill or injure someone which is couched in vague terms and directed at no one person in particular is admissible in a homicide prosecution to show a hostility towards mankind in general and hence toward the deceased, a threat to kill or injure someone which is specifically directed at some individual other than the deceased is inadmissible, as it shows only a special malice resulting from a transaction with which the deceased had no connection.[33]

Appellant's acts of violence against third parties other than the decedent should not have been admitted. Further, since Appellant did not fire the gun at anyone, the evidence was irrelevant and should have been excluded on that basis. Bowling's testimony that he charged Appellant with wanton endangerment in the first-degree because of a past domestic incident should have been excluded because no conviction was obtained on that charge.[34]

Additionally, Bowling's testimony that he observed a bruise on Zeda's left eye and a choke marks on her neck should also have been excluded since, at the time that evidence was elicited, no evidence indicated that Appellant inflicted these injuries.[35] That error, however, was rendered harmless when Appellant later admitted that he had a physical altercation with Zeda prior to Bowling's arrival.

Finally, we will touch upon Appellant's claim of trial court error in its rejection of evidence that "Zeda had a motive to kill herself because she failed to

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[32] Ky., 560 S.W.2d 810, 812 (1977).
[33] Henson, 812 S.W.2d at 721;Jones, 560 S.W.2d at 812.
[34] See generally Milton Roberts, Annotation, Right to Impeach Witness in Criminal Case by Inquiry or Evidence as to Witness' Criminal Activity for Which Witness was Arrested or Charged but Not Convicted – Modern State Cases, 28 A.L.R. 4th 505 (1984) (evidence admissible only to show witness's bias, interest, or motive, but not character).
[35] Jarvis v. Commonwealth, Ky., 960 S.W.2d 466, 470 (1998).

answer a summons to appear in court on an emergency protective order on the day of her death." In the same issue, Appellant makes scattered claims of various perceived errors. Our review of these claims reveals no abuse of trial court discretion and no need for further analysis.

For the foregoing reasons, the judgment of conviction herein is reversed and this cause remanded for a new trial.

Cooper, Graves, Johnstone, and Stumbo, JJ., concur. Lambert, C.J., concurs by separate opinion. Keller, J., concurs by separate opinion. Wintersheimer, J., dissents without opinion.

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COMMONWEALTH OF KENTUCKY — APPELLEE

CONCURRING OPINION BY CHIEF JUSTICE LAMBERT

I concur with the result of this case, but write separately as I believe that the testimony of Sandra Woods repeating the decedent's statements expressing fear of Appellant was admissible.

The victim's statements expressing fear of Appellant and requesting an investigation in the event of her death are admissible under KRE 803(3) because the decedent's state of mind was put in issue because Appellant had claimed suicide as a defense. Our most recent encounter with evidence of this type occurred in Partin v. Commonwealth[1] wherein persons acquainted with the victim were permitted to testify that she was afraid of the defendant. We commented that the testimony had little relevancy except toward providing an inference of Appellant's guilt, but based on the victim's expression of fear in the

[1] 918 S.W.2d 219, 222 (1996).

form of speech, we concluded that the probative value of the testimony outweighed its prejudicial effect:

> In a murder prosecution, evidence that the victim, a normal adult woman, harbored fear of her accused killer is probative of the central inquiry. It is not unreasonable to ask in such circumstances why she would have such fear and whether it tended to render a disputed fact more or less likely . . . . As a result, we find the testimony of the four Commonwealth witnesses who testified concerning Carnes' fear of Appellant was permissible pursuant to KRE 401 and KRE 403.[2]

The victim's statements to Woods also rebutted Appellant's claim that the decedent committed suicide and cast light upon a future event (her death), as opposed to a past event.

The law of evidence has long recognized that certain hearsay statements bear such indicia of reliability as to be worthy of admission into evidence. Evidence law permits hearsay statements of medical history where those statements were communicated to a physician whom the declarant saw for purposes of treatment or diagnosis.[3] Similarly, statements made under a belief of impending death are admissible when those statements concern the cause of what the declarant believes to be his impending death.[4] These and numerous other exceptions to the hearsay rule have been acknowledged to be reliable based on the prevailing circumstances. KRE 803(3) creates an exception to the hearsay rule for "[t]hen existing state of mind, emotion, sensation or physical condition (such as intent, plan, motive, design, mental felling, pain and bodily

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[2] Id. (holding that hearsay statements of a victim's fear falls under the 803(3) hearsay exception).
[3] KRE 803(4).
[4] 804(b)(2).

health), but not including a statement of memory or belief. . ." In the rule, a sharp distinction is drawn between contemporaneous or future events, which are not rendered inadmissible by virtue of their hearsay character, and past events, which are generally inadmissible. Decedent's hearsay statements in the instant case were clearly expressions of her currently held fear that Appellant would in the future kill her because she had told him of her extra-marital relationship.

As with all hearsay exceptions, the ultimate test of admissibility is reliability. Dying declarations are admissible because of the belief that one would not prevaricate in such a circumstance. Statements of physical condition for purposes of treatment are believed to be reliable because of the patient's interest in obtaining a cure of a malady. A statement of fear of homicide bears similar indicia of reliability and one who planned suicide would not simultaneously be formulating a scheme to implicate another person.

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CONCURRING OPINION BY JUSTICE KELLER

I concur in the majority's holding, which reverses Appellant's Murder conviction and remands the indictment for a new trial. I write separately, however, because the exclusion of Constable Warner's testimony that Connie Ison told him that Zeda Whitt had told her that she was going to kill herself, was neither erroneous nor prejudicial. In fact, the majority opinion specifically references the testimony that demonstrates that there was no error – and certainly no prejudice – from the exclusion of this evidence: "[Ison] also testified that she could not remember if she told a police detective or Constable Roger Wagner that the decedent intended to kill herself, but stated that if she did say that, the statement was accurate." Slip Op. at 4 (emphasis added).

If Ison had been asked whether the decedent had told Ison of her plans to commit suicide, and Ison had denied that the decedent had made such a statement, the defense could have: (1) laid a foundation under KRE 613 and CR 43.08 by asking Ison whether she recalled telling Constable Warner that the decedent had told her of

her intent to commit suicide; and then only if Ison denied or could not recall making that statement to Constable Warner, (2) questioned Constable Warner about what Ison had told him. Under those circumstances, Constable Warner could testify about Ison's out-of-court statement to him because Ison's statement to him would be a prior inconsistent statement under KRE 801-A(1)(A). Here, however, the question that was actually posed to Ison "skipped a step." Instead of asking Ison what the decedent had told her, the defense posed an improper question concerning Ison's own out-of-court statement, i.e., whether she had told Constable Warner of the decedent's suicide plans. And, while Ison did not recall whether she had actually discussed this matter with Constable Warner, she clearly stated that the information was truthful – i.e., the decedent had told her that she intended to take her own life. Accordingly, the trial court properly sustained the Commonwealth's objection to Constable Warner's testimony, which did not relate any prior inconsistent statement by Ison, but instead simply and improperly bolstered Ison's trial testimony. In any event, I emphasize again that Ison herself testified that the decedent told her that she wanted to commit suicide. Appellant was not prejudiced by the fact that he was prevented from introducing inadmissible evidence that Ison had said the same thing in a previous out-of-court statement.