

**IMPORTANT NOTICE**  
**NOT TO BE PUBLISHED OPINION**

**THIS OPINION IS DESIGNATED “NOT TO BE PUBLISHED.” PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, CR 76.28(4)(C), THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS BINDING PRECEDENT IN ANY OTHER CASE IN ANY COURT OF THIS STATE; HOWEVER, UNPUBLISHED KENTUCKY APPELLATE DECISIONS, RENDERED AFTER JANUARY 1, 2003, MAY BE CITED FOR CONSIDERATION BY THE COURT IF THERE IS NO PUBLISHED OPINION THAT WOULD ADEQUATELY ADDRESS THE ISSUE BEFORE THE COURT. OPINIONS CITED FOR CONSIDERATION BY THE COURT SHALL BE SET OUT AS AN UNPUBLISHED DECISION IN THE FILED DOCUMENT AND A COPY OF THE ENTIRE DECISION SHALL BE TENDERED ALONG WITH THE DOCUMENT TO THE COURT AND ALL PARTIES TO THE ACTION.**

Supreme Court of Kentucky

FINAL

2007-SC-000106-MR

DATE 12-17-08 EAC/GOV/H/DC.

WILLIAM ASHLEY YEAGLE

APPELLANT

V. ON APPEAL FROM DAVIESS CIRCUIT COURT  
HONORABLE THOMAS O. CASTLEN, JUDGE  
NO. 05-CR-000447

COMMONWEALTH OF KENTUCKY

APPELLEE

**MEMORANDUM OPINION OF THE COURT**

**AFFIRMING**

Appellant, William Ashley Yeagle, appeals, as a matter of right, Ky. Const. § 110(2)(b), his Daviess Circuit Court conviction on a single count of murder for the 2003 death of Carol Hamilton. Appellant was found guilty by a Daviess County jury and sentenced to forty (40) years in prison. This appeal followed.

**Facts**

Appellant is an admitted user and manufacturer of methamphetamine and many of his friends and acquaintances are associated with the methamphetamine drug culture. On August 22, 2003, Appellant's friend, Rodney Lyle, arrived home to find Carol Hamilton and Michelle Gaddis in his residence. After eating dinner, Lyle,

Hamilton and Gaddis began to use methamphetamine together. Lyle called Appellant to see if he was going to come by his house that night, since they wanted more methamphetamine.

Hamilton, who was romantically involved with Appellant, talked to Appellant on the telephone and got into an argument with him. During the phone conversation, Appellant told Lyle that he had some methamphetamine and that he was on his way to Lyle's house. Appellant then told Lyle to seize Hamilton, tie her up, and prevent her from leaving the residence. Lyle told Hamilton what Appellant requested him to do and advised her to leave because Appellant was very angry. Hamilton laughed about it, but did leave Lyle's residence before Appellant arrived.

When Appellant arrived at Lyle's residence around 11:00 at night, he was still very angry. He brought a duffle bag that contained guns into the house. Appellant threw a bag of methamphetamine to Lyle and told him to "dig in." Lyle then injected the methamphetamine into his arm using a syringe. According to testimony, Lyle had a "bad trip," or negative reaction to the drug, experiencing temporary blindness, stupor, and other symptoms. At some point, thereafter, Hamilton came back to the house while Lyle was in a stupor. Appellant then seized Hamilton. Gaddis saw Appellant tie Hamilton's hands behind her back. Hamilton called to Gaddis for help, but Appellant told Gaddis to go away or "she was next."

As Lyle emerged from his stupor, he saw Appellant choking Hamilton with some type of rawhide cord that broke during the throttling. Lyle observed Appellant become frustrated and begin a series of abuses to the now unconscious, but not dead, Hamilton. Appellant took a mercury thermometer, broke it open, and poured the mercury into Hamilton's ear. Appellant then collected various cleaning products from beneath Lyle's kitchen sink and filled Lyle's used syringes with the solutions, whereupon he injected these chemicals into Hamilton. Finally, Appellant grabbed an extension cord, wrapped it around Hamilton's neck, and choked her to death.

Appellant wrapped Hamilton's body in a camouflage tarp, whereupon Lyle helped Appellant carry the body outside and put it into the trunk of Hamilton's car. Appellant then drove Hamilton's car, followed by Lyle and Gaddis in Appellant's car, to Appellant's farm on the Green River. Once at the farm, they parked the victim's car down by the river, with her body still in the trunk. Appellant, Lyle, and Gaddis then all went back to Appellant's house on the farm and smoked more methamphetamine. Appellant gave Gaddis, Lyle, and Appellant's other romantic interest, Kim Warner, who joined them in Appellant's farmhouse, \$100 each to keep quiet about the murder.

Early the next morning, Appellant and Lyle went over to Appellant's brother-in-law's, Darrin Buck's, house. Appellant told Buck that he had just killed a girl and that he needed to borrow a boat. Buck agreed and smoked some methamphetamine with them.

At trial, Appellant admitted that he and Buck disposed of Hamilton's body, explaining that they launched Buck's boat onto the Green River, and piloted it to his farm on the river. Appellant removed Hamilton's body from the trunk of her car, and placed it into a large Rubbermaid tool box, with holes drilled in it and filled with iron parts to make it sink. Using the boat, they dumped the box containing Hamilton's body in the middle of the Green River. Hamilton's body was never recovered.

Although he ultimately denied killing Hamilton, Appellant testified at trial as to how he disposed of Hamilton's car. First, Appellant took the car to the Nashville, Tennessee airport and parked it in the long-term parking lot. He allowed the car to sit in the parking lot for some time and then returned to Nashville and retrieved it. Appellant then took the car to a friend's farm in Ohio County, and once there, he dismantled it. The majority of the parts were thrown into a pond on the property. Some items including the car doors and seats, Appellant placed behind a shed on the property.

Police eventually found Hamilton's car, cut up, in a pond belonging to James Bratcher. Some of the car parts, including the seats, were found behind a building on the property. Appellant's fingerprints were found on some tape that had been used to wrap the car seats.

Appellant also talked to other members of the local drug culture and made admissions that connected him with the murder and revealed his motive for killing her: he thought Hamilton was a police informant.

Appellant had a conversation with his old high school friend, Terry Dennis, wherein he told Dennis that he thought Hamilton was a snitch. As they stood by a large ravine, Appellant told Dennis that if he ever found out that he was also a snitch, he could disappear quickly over the edge. Appellant told Dennis that he would disappear just like Hamilton did, that he had made Hamilton disappear, that Hamilton “got what she got,” and that several people might be getting the same thing.

In November of 2003, Appellant was at the home of a longtime acquaintance, Charles Robertson, when he admitted to Robertson that he killed Hamilton. Appellant said he killed her because she was a police informant. Appellant asserted that Lyle was with him when he did it. Appellant told Robertson how he choked Hamilton to death at Lyle’s house. Appellant then told Robertson how he had put the body in a box, drilled holes, weighed it down, and dumped it in the Green River.

At trial, Appellant’s defense consisted primarily of shifting the blame for Hamilton’s death. Appellant denied murdering Hamilton, but did admit to disposing of the car and her body. The jury, however, found him guilty of murder and sentenced him to a term of forty (40) years in the penitentiary. On appeal, Appellant alleges three (3) errors: 1) the trial court erred by denying him use of Michelle Gaddis’ mental health records, 2) the prosecutor engaged in prosecutorial misconduct, and 3) the trial court erred by improperly admitting prior “bad acts” evidence. For the following reasons, we affirm the trial court’s conviction.

### **I. Gaddis Medical Records**

In his first claim of error, Appellant argues the trial court erred by not allowing him to have the mental health records of Michelle Gaddis from Kentucky Correctional Psychiatric Center (KCPC) that were created when she underwent a competency evaluation for her concurrent criminal action involving Hamilton's murder.

Before trial, Appellant made a motion for Gaddis's KCPC records compiled while she was under indictment and undergoing competency evaluation, claiming that these records might be useful for impeachment purposes. The Commonwealth objected to Appellant's use of the records. Appellant, however, argued that Gaddis had waived the confidentiality of the records and the fact that she went to KCPC at all showed that she had mental problems. The trial court requested the records and reviewed them *in camera*.

After the *in camera* review, the trial court told counsel that it had obtained the records from KCPC, but was having trouble making sense of them, so the court allowed counsel for both sides to review the KCPC reports off-the-record and advise the court what was relevant. After review, Appellant asserted that some of the records showed possible mental retardation, malingering and neurofunction exaggeration that was relevant to impeachment and requested admission for those records. Appellant proposed to question Gaddis' treating KCPC doctor about her medical records. The trial court, however, rejected Appellant's request, ruling that evidence of possible malingering and/or mental retardation

was not sufficient to overcome the confidential nature of witness medical records.

In analyzing the issue, we begin with the standard for introduction of evidence concerning a prosecution witness's psychotherapy records.

As we held in Commonwealth v. Barroso,

(1) If the psychotherapy records of a crucial prosecution witness contain evidence probative of the witness's [in]ability to recall, comprehend, and accurately relate the subject matter of the testimony, the defendant's right to compulsory process must prevail over the witness's psychotherapist-patient privilege, and

....

(2) *In camera* review of a witness's psychotherapy records is authorized only upon receipt of evidence sufficient to establish a reasonable belief that the records contain exculpatory evidence.

122 S.W.3d 554, 563-564 (Ky. 2003). In Barroso, this Court was called upon to balance the psychotherapist-patient privilege contained in KRE 507(b) with the criminal defendant's right to cross-examine a witness. Although we did recognize that the KRE 507(b) privilege is an "absolute privilege," not subject to avoidance merely because a defendant may "need" the evidence, we also recognized that, generally, constitutional rights prevail over state court rules. Id. at 558. We also acknowledged state privilege rules must yield to constitutional rights. Id. at 562.

Quoting the Connecticut Supreme Court, we reaffirmed in Barroso what we characterized as a universally recognized proposition:

The capacity of a witness to observe, recollect and narrate an occurrence is a proper subject of inquiry on cross-examination. If as a result of a mental condition such



capacity has been substantially diminished, evidence of that condition before, at and after the occurrence and at the time of trial is ordinarily admissible for use by the trier [of fact] in passing on the credibility of the witness.

Id. at 562 (quoting State v. Esposito, 471 A.2d 949, 955 (Conn. 1984)).

We recognized, however, that not every mental disorder affects the credibility of a witness or their ability to recall events:

Certain forms of mental disorder have high probative value on the issue of credibility. Although the debate over the proper legal role of mental health professionals continues to rage, even those who would limit the availability of psychiatric evidence acknowledge that many types of “emotional or mental defect[s] may materially affect the accuracy of testimony; a conservative list of such defects would have to include the psychoses, most or all of the neuroses, defects in the structure of the nervous system, mental deficiency, alcoholism, drug addiction and psychopathic personality.

Id. (quoting United States v. Lindstrom, 698 F.2d 1154, 1160 (11th Cir.

1983)). We then adopted a test to determine if the particular mental illness was one that affected credibility or the ability to recall:

Factors a court should consider in allowing such evidence are the nature of the psychological problem the temporal recency or remoteness of the condition, and whether the witness suffered from the condition at the time of the events to which she is to testify. For example, a mental illness that causes hallucinations or delusions is generally more probative of credibility than a condition causing only depression, irritability, impulsivity, or anxiety.

Id. at 562-563 (quoting People v. Anderson, 22 P.3d 347, 391 (Cal. 2001)

(Kennard, J., concurring)).

We also noted in Barroso that “[a] person’s credibility is not in question merely because he or she is receiving treatment for a mental health problem.” Id. at 563. Recognizing this, we set forth a test for introduction of mental records:

Thus, we depart from the less restrictive standard established in Eldred and hold that *in camera* review of a witness’s psychotherapy records is authorized only upon receipt of evidence sufficient to establish a reasonable belief that the records contain exculpatory evidence.

Id. at 564.

Here, Appellant asserts that the mere fact that Gaddis was sent to KCPC for an evaluation shows that she had mental problems. However, we find no evidence in the record that Appellant demonstrated a *reasonable* belief that Gaddis’s competency evaluation records had any exculpatory impact. Thus, the trial court was not required to conduct an *in camera* review of Gaddis’s medical records.

Moreover, Appellant did not establish the records contained such evidence as would be necessary, or even helpful, to his defense. Therefore, there was no error in denying Appellant’s request to use the records on the cross-examination of Gaddis or her treating psychiatrist. As we held in Barroso, after the party seeking disclosure of the medical records introduces evidence sufficient to establish a reasonable belief that the records contain exculpatory evidence, the trial court conducts an *in camera* review; then, only if “satisfied that the records reveal evidence necessary to the defense is the evidence to be supplied to

defense counsel.” *Id.* at 564. (quoting *People v. Stanaway*, 521 N.W.2d 557, 575 (Mich.1994)).

Here, an *in camera* review, conducted despite Appellant’s failure to demonstrate the necessity for such a hearing, revealed possible mental retardation, malingering and neurofunction exaggeration. However, the trial court found that evidence of possible malingering and borderline intelligence was not probative on the issue of Gaddis’ credibility or competence as a witness. Significantly, the trial court found that Appellant’s proposed cross-examination of Gaddis’ treating psychiatrist for impeachment purposes was not sufficient to overcome Gaddis’ psychotherapist-patient privilege. We agree.

Appellant claimed that his concerns about Gaddis were enough to warrant an in-camera review. However, the nature of Appellant’s concerns was vague and essentially an assertion that the information in Gaddis’ records *might* affect her credibility. Further, Appellant failed to demonstrate how anything in the records would affect Gaddis’ “ability to recall, comprehend, and accurately relate the subject matter of the testimony.” *Peak v. Commonwealth*, 197 S.W.3d 536, 546 (Ky. 2006).

Thus, we find no abuse of discretion in the trial court's decision to deny Appellant's motion and therefore, no error.

## **II. Alleged Prosecutorial Misconduct**

For his second assignment of error, Appellant asserts that the Commonwealth committed reversible error during the guilt phase closing

argument by referencing the “cold” nature of Appellant’s testimony as showing no feeling of remorse.

During his closing argument, the Commonwealth’s Attorney developed the theme that Appellant was only concerned with covering up the death of Hamilton. To this end, the prosecutor commented that Appellant showed no expression of concern or remorse about the murder as he testified to the jury; he repeated that theory several times. Specifically, the prosecutor stated that Appellant treated Hamilton like “a piece of trash” and argued that is “not how one would treat someone that one admittedly had a romantic relationship with.” Counsel commented that what happened to Hamilton bothered lots of people, but not the Appellant.

We begin our analysis with our standard of review. Appellant concedes that this issue was not preserved for appellate review, and requests palpable error review under RCr 10.26. “To prove palpable error, Appellant must show the probability of a different result or error so fundamental as to threaten his entitlement to due process of law.”

Brooks v. Commonwealth 217 S.W.3d 219, 225 (Ky. 2007) (citing Martin v. Commonwealth, 207 S.W.3d 1 (Ky. 2006)). For palpable error to be found, the error must be “shocking or jurisprudentially intolerable.”

Martin, 207 S.W.3d at 4.

When reviewing claims of prosecutorial misconduct in a closing argument, “the required analysis, by an appellate court, must focus on the overall fairness of the trial and not the culpability of the prosecutor.”

. a prosecutor may comment on the tactics, may comment on the evidence, and may comment as to the falsity of a defense position.” Slaughter v. Commonwealth, 744 S.W.2d 407, 411-412 (Ky. 1987). Reversal based on misconduct of the prosecutor is only warranted if the misconduct is so severe as to render the entire trial fundamentally unfair. Partin v. Commonwealth, 918 S.W.2d 219, 224 (Ky. 1996), overruled on other grounds by Chestnut v. Commonwealth, 250 S.W.3d 288 (Ky. 2008).

Here, although Appellant asserts that the comments of the prosecutor were outside the evidence and amounted to only the prosecutor’s opinion, we note that the Commonwealth’s Attorney is permitted to comment on the evidence, as well as the demeanor of the witnesses, as it goes ultimately to credibility.

In the case-at-bar, the prosecutor simply drew permissible inferences concerning perception of the cold, seemingly rehearsed, testimony of Appellant and commented on his stoic demeanor. As we have previously held, comments on the demeanor of a testifying defendant are proper, as is the opinion of the prosecutor as to the evidence. Woodall v. Commonwealth, 63 S.W.3d 104, 125 (Ky. 2001). Further, it would be logically unsound to hold these comments, made in closing argument, as palpable error, for reasons that we have previously concluded that actual witness testimony about lack of remorse, when unpreserved, is not palpable error. See Epperson v. Commonwealth, 197 S.W.3d 46, 54 (Ky. 2006).

Therefore, we find the comments by the Commonwealth did not constitute palpable error. Appellant's trial was not rendered fundamentally unfair, nor was there any "shocking or jurisprudentially intolerable" commentary by the prosecution. Martin, 207 S.W.3d at 4.

### **III. Prior "Bad Acts" Evidence**

For his final assignment of error, Appellant argues the admission of evidence pertaining to drug use, by Appellant and the various witnesses, was improper as it constituted inadmissible prior "bad acts" evidence under KRE 404(b). For the following reasons, we disagree.

The Commonwealth filed notice of its intent to use other crimes, wrongs, and acts in its case-in-chief against the Appellant. Appellant objected and requested the Commonwealth allege specific crimes and acts. The Commonwealth requested that witness Terry Dennis be allowed to testify that he and Appellant used drugs and delivered drugs during a period after Hamilton's death when Appellant admitted to Dennis that he killed Hamilton. The Commonwealth also sought to admit testimony that Darrin Buck, Appellant, and Lyle were under the influence of drugs when they talked to Buck. Further, the Commonwealth sought to introduce evidence that Appellant gave Lyle drugs just before he killed Hamilton, and that they were using drugs while discussing disposal of the body. The Commonwealth also sought to introduce testimony that Gaddis saw Appellant give Lyle drugs immediately before Hamilton was killed. Finally, the Commonwealth

sought to admit drug statements made by Appellant in his statement to the police.

Appellant objected that all the drug use was gratuitous and should be removed. After listening to the Commonwealth's position, the court found that methamphetamine permeated the case and that it was unfair to not allow the evidence in. Thus, the trial court admitted all the requested drug evidence under the theory that it was inextricably intertwined and finding that separation could not be accomplished without extreme prejudice to the Commonwealth, with the exception of a witness' comment about "being high as a kite." The court further found that much of the evidence also went to motive, intent, and plan.

We begin with the standard of review for admissibility of other crimes or "bad acts." The basic rule is that evidence of uncharged misconduct is inadmissible, subject to the exceptions set forth in KRE 404(b). O'Bryan v. Commonwealth, 634 S.W.2d 153, 156 (Ky. 1982). Under KRE 404(b), generally, evidence of other crimes or wrongs is inadmissible, but can be admitted if it is "for some other purpose such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake." KRE 404(b)(1). We note that the list of permissible uses under KRE 404(b) is not exhaustive. Tamme v. Commonwealth, 973 S.W.2d 13, 29 (Ky. 1998).

Under KRE 404(b)(2), evidence of other crimes or wrongs is also admissible if it is so inextricably intertwined with other evidence essential to the case that separation of the two could not be

accomplished without serious adverse effect on the offering party. As we noted in Adkins v. Commonwealth, 96 S.W.3d 779, 793 (Ky. 2003), “KRE 404(b)(2) allows the Commonwealth to present a complete, unfragmented picture of the crime and investigation.”

For this regard, we note:

[o]ne of the accepted bases for the admissibility of evidence of other crimes arises when such evidence “furnishes part of the context of the crime: or is necessary to a “full presentation” of the case, or is intimately connected with and explanatory of the crime charged against the defendant and is so much a part of the setting of the case and its “environment” that its proof is appropriate in order “to complete the story of the crime on trial by proving its immediate context or the ‘res gestae’” or the “uncharged offense is ‘so linked together in point of time and circumstances with the crime charged that one cannot be fully shown without proving the other . . .” [and is thus] part of the res gestae of the crime charged.

Norton v. Commonwealth, 890 S.W.2d 632, 638 (Ky. App. 1994) (quoting United States v. Masters, 622 F.2d 83, 86 (4th Cir. 1980)).

This Court has set forth a three (3) part test used to determine the admissibility of evidence under KRE 404(b): 1) relevance, 2) probativeness, and 3) prejudice. Bell v. Commonwealth, 875 S.W.2d 882, 889-891 (Ky. 1994); see also Matthews v. Commonwealth, 163 S.W.3d 11, 19 (Ky. 2005). Under Bell, evidence of prior bad acts and/or other wrongs must be relevant for some purpose other than to prove Appellant’s criminal disposition. 875 S.W.2d at 889. Moreover, a trial court’s decision concerning the introduction of evidence under KRE 404(b) will only be reversed if there is an abuse of discretion. Matthews, 163 S.W.3d at 19.



Here, application of the Bell test shows the trial court did not abuse its discretion. Under the first Bell prong of relevance, evidence of Appellant's and the witnesses' methamphetamine use was relevant because its use was inextricably intertwined with the other proof in this case. It necessarily provided the context for their association, conduct, and discussions. All of the major witnesses in this case were methamphetamine users. The methamphetamine drug culture was the basis of their association with each other and its use formed the basis of their interaction. Its use figured into the events as they unfolded. Thus, the trial court correctly recognized that it was impossible to remove methamphetamine references from this trial without severely compromising the Commonwealth's ability to present its case. Likewise, methamphetamine use was relevant to motive because Appellant believed Hamilton was a police informant regarding his methamphetamine manufacture and distribution and insinuated to witnesses that this is why she was killed.

The second Bell prong is whether the proposed evidence is "sufficiently probative of its commission by the accused to warrant its introduction into evidence." 875 S.W.2d at 890. The drug use discussed by the witnesses involved Appellant using methamphetamine or, as in the case of Lyle, providing methamphetamine just before the death of Hamilton. The methamphetamine use was probative as to why Appellant would fear that Hamilton was an informant and provides the basis of why Appellant would seek retribution. It is also probative of the actions

and motivations of the parties that helped Appellant after the murder: Appellant was a known drug dealer and supplied their methamphetamine habits.

Finally, the third Bell prong is whether “the potential for prejudice from the use of other crimes evidence substantially outweigh[s] its probative value.” 889 S.W.2d at 890. We note that exclusion is only proper if the prejudice substantially outweighs the probative value. Here, there was little potential for undue prejudice. We recognize that Appellant was prejudiced by the evidence introduced against him, however, the test is for *undue* influence. Price v. Commonwealth, 31 S.W.3d 885, 888 (Ky. 2000) (“the real issue is whether [Appellant] was unduly prejudiced, i.e., whether the prejudice to him was unnecessary and unreasonable.”). Here, we find no such undue prejudice.

In addition, Appellant’s defense was based on methamphetamine. First, at trial, he blamed Hamilton’s death on a methamphetamine overdose. Next, he tried to explain his actions in disposing of the car and Hamilton’s body by admitting that he was a methamphetamine manufacturer, claiming that, because he made the drugs that he alleged had killed Hamilton, he was responsible for her death; so, to hide his role in Hamilton’s overdose, he dumped the body in the river and dismantled the car. Moreover, Appellant cross-examined the prosecution witnesses extensively on the effects of methamphetamine on their perception of the major events. Indeed, Appellant even argued in closing that all the witnesses were under the influence of methamphetamine and that

“methamphetamine led to Carol Hamilton’s death.” Here, clearly, the 404(b) evidence satisfied the Bell inquiries and the trial court properly found the evidence of methamphetamine use by both Appellant and the witnesses was so inextricably intertwined with the material facts of this case, as to render of evidence of methamphetamine use admissible.

Thus, there was no error.

**Conclusion**

For the foregoing reasons, we affirm Appellant’s conviction.

All sitting. All concur.

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