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THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE
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DOCUMENT TO THE COURT AND ALL PARTIES TO THE
ACTION.

Supreme Court of Kentucky

2014-SC-000082-MR

MICHAEL RUSSIAN

APPELLANT

V. ON APPEAL FROM MCCRACKEN CIRCUIT COURT
HONORABLE CRAIG Z. CLYMER, JUDGE
NO. 12-CR-00346

COMMONWEALTH OF KENTUCKY

APPELLEE

MEMORANDUM OPINION OF THE COURT

AFFIRMING

On January 15, 2014, a McCracken Circuit Court Jury found Appellant, Michael C. Russian, guilty of murdering Adam Bullock. Prior to the night of Bullock's death, neither men had ever met. They were brought together due to their involvement with a woman by the name of April Darnell.

Around 1 a.m. on June 27, 2012, April was asleep at Appellant's home. When Appellant was taking trash out to the parking lot dumpster, Adam Bullock arrived. He inquired if April was inside. Believing Bullock was April's brother, Appellant answered in the affirmative and allowed him to enter the apartment. Bullock then explained that he was actually April's friend and that he was there to take her home. Appellant told Bullock that April was asleep upstairs and that he would have to leave. However, Bullock refused Appellant's request, and instead demanded that he wake up April.

Appellant claimed that Bullock became angry once he realized that April would not be leaving with him. The two men started arguing and it quickly turned physical. According to Appellant, Bullock took a swing at him, pushed him down onto the nearby couch, and then headed up the stairway. Appellant admitted that at this point he "just freaked out." Enraged, Appellant grabbed a dumbbell and ran up the stairs to catch Bullock. Appellant eventually caught up with Bullock at the top of the stairs and began hitting him over the head. Appellant maintains that he immediately blacked out after hitting Bullock and does not remember what occurred next. Appellant's next memory was him standing over Bullock at the bottom of the stairs. Appellant stated that Bullock was positioned face down, and was unconscious with a bootlace around his neck.

April was awakened by the altercation. Appellant claimed that the two of them then determined that the victim was dead. Appellant decided to wrap the victim up in an area rug and carry him to the outside storage shed. Appellant also moved the victim's vehicle several blocks from his apartment. April and Appellant spent the rest of the night cleaning the affected areas of the apartment.

April gives a different story. She testified that she was unaware that Bullock had been killed. When she woke up, Appellant told her to stay in the bedroom because he had company over. April stated that when she was allowed to come downstairs, she noticed blood on Appellant's clothes and the

smell of bleach. Appellant told her that a “crack head” came to the apartment with a gun looking for drugs and that he “took care of business.”

Several days later, in the morning of July 1, 2012, Appellant placed Bullock, who was still rolled up in the area rug, into a shopping cart. Appellant rolled the cart down the Paducah city sidewalks. He intended on dumping Bullock’s body at the river floodwall. Before reaching the floodwall, however, Appellant was stopped by a police officer. As the officer inquired as to what was in the shopping cart, he noticed what appeared to be a human knee sticking out of the rug. The officer immediately arrested Appellant. After being Mirandized, Appellant confessed to hitting Bullock with a dumbbell, but claimed that he blacked out prior to his death.

On July 27, 2012, a McCracken Grand Jury indicted Appellant for murder and tampering with physical evidence. The trial commenced in January of 2014. The Commonwealth claimed that Appellant intentionally murdered Bullock out of jealousy. As the Commonwealth theorized, Appellant stole April’s phone, as he had done many times before, and saw text messages between her and Bullock. Once April went to sleep, Appellant used her phone to continue their previous text messaging conversation. Appellant lured Bullock to his apartment under the false pretense that April needed transportation home. His plan was to murder Bullock once he arrived.

The defense, on the other hand, disputed the Commonwealth’s theory. Appellant testified that he did not have April’s phone. Instead, Appellant claimed that Bullock came to his apartment, assaulted him, and proceeded to

go upstairs without permission. Appellant believed that Bullock was under the influence of drugs and that he was a danger to April and his daughter. Consequently, Appellant struck Bullock in the head in order to stop him from proceeding upstairs. Moreover, Appellant maintained that he was so distraught over the whole incident, he lost consciousness and had no memory of strangling Bullock. The defense's last attempt at downplaying the degree of homicide was to provide the jury with evidence that Bullock was drunk and high on methamphetamine. As Appellant claimed, Bullock's intoxication caused him to react aggressively to Appellant's requests that he leave the apartment.

The jury was instructed on all ranges of homicide, including extreme emotional disturbance, self protection, protection of another, and protection against burglary. On January 15, 2014, the jury convicted Appellant of committing wanton murder and tampering with physical evidence. The jury recommended a sentence of fifty years imprisonment for wanton murder and five years imprisonment for tampering with physical evidence, with the charges to run consecutively. The trial court sentenced Appellant in conformity with the jury's recommended sentence for a total of fifty-five years imprisonment. The trial court also ordered Appellant to pay restitution for the funeral expenses in the amount of \$2,449.00. Appellant now appeals his conviction and sentence as a matter of right pursuant to § 110(2)(b) of the Kentucky Constitution.

Right to Present a Defense

Appellant's first assignment of error is that he was denied his constitutional right to present a defense due to the trial court's failure to ensure that all exhibits were present in the jury room during deliberations.

During the Commonwealth's case-in-chief, Paducah Police Detective Anthony Copeland testified that he photographed Appellant's apartment after the murder. Detective Copeland showed the jury, via projection screen, approximately eighty pictures of Appellant's apartment. All eighty pictures were introduced into evidence and purportedly provided to the jury within a single envelope. As it turned out, only fifteen prints were in that envelope.

After four hours of deliberation, the jury sent a note to the trial judge stating, "We request the photos showing the steps at the crime scene (apartment)." In order to determine which photographs were missing, the trial judge had the jury send out the envelope containing the photographs. After the parties realized that only fifteen photographs made it back to the jury room, the Commonwealth sent out to have duplicates made while the jury continued to deliberate. Before the duplicates could be made, the jury returned with a verdict of guilty.

After the jury rendered Appellant's recommended sentence, the trial judge asked the foreperson to explain why the jury requested to see pictures of the stairway. The foreperson clarified that they were curious to see the distance from the couch to the stairway. Without explaining the jury's reasoning, the foreperson stated that they wanted to determine how long it

would have taken Appellant to reach Bullock as he ran up the stairs.

Appellant subsequently moved for a new trial on the grounds that had the jury been given the requested photographs, they may have returned a not-guilty verdict. The trial judge denied Appellant's motion because the missing photographs were the Commonwealth's exhibit and were misplaced due to the Commonwealth's own error. Consequently, the trial court believed it was the Commonwealth that had suffered harm, if any, from the error, not Appellant.

On appeal, both Appellant and the Commonwealth cite Kentucky Rules of Criminal Procedure ("RCr") 9.72 in support of their respective arguments. This rule states, in pertinent part, the following: "Upon retiring for deliberation the jury may take all papers and other things received as evidence in the case." However, the trial judge did not violate RCr 9.72 because he did not prohibit the jury from taking the pictures to the deliberation room. *See McAtee v. Commonwealth*, 413 S.W.3d 608, 622 (Ky. 2013) (RCr 9.72 has been interpreted as providing trial courts with discretion in determining which items the jury "may take with it to deliberations") For that reason, we are not dealing with a possible violation of RCr 9.72.

Neither was the Appellant denied his right to present a complete defense. The United States Supreme Court has unequivocally pronounced that "the Constitution guarantees criminal defendants a meaningful opportunity to present a complete defense." *Holmes v. South Carolina*, 547 U.S. 319, 324 (2006) (internal quotations omitted). Essentially, Appellant is entitled to "a fair opportunity to defend against the State's accusations." *Chambers v.*

Mississippi, 410 U.S. 284, 294 (1973). This right is abridged when “evidence rules [] infring[e] upon a weighty interest of the accused and are *arbitrary or disproportionate* to the purposes they are designed to serve.” *Holmes*, 547 U.S. at 324 (internal quotation marks omitted).

After careful review, this Court is unable to determine how the missing photographs would have aided Appellant in proving his innocence. As stated by the foreman, the jury was interested in obtaining only pictures of the staircase in order to examine how long it would have taken Appellant to reach Bullock at the top of the stairs. Appellant has failed to demonstrate how this inquiry would have aided him in presenting his defense. During the trial, the jury observed numerous pictures of Appellant’s apartment, including the living room, adjacent stairway, and upstairs landing. The jurors certainly had a visual idea of the length of the staircase. Moreover, Appellant discussed the apartment layout and even specified that there were twelve or thirteen stairs. In light of the amount of evidence presented to the jury regarding the stairway length, we do not believe that Appellant was unable to present a complete defense solely due to these photographs being inadvertently left out of deliberations. As a result, this Court cannot conclude that Appellant was denied his constitutional right to present a complete defense.

404(b) Evidence

Appellant’s second argument is that reversible error occurred when the Commonwealth was allowed to introduce evidence of Appellant’s prior bad acts in violation of Kentucky Rules of Evidence (“KRE”) 404(b). Prior to trial, and in

conformity with KRE 404(c), the Commonwealth filed notice of its intent to present the jury with evidence of Appellant's violent reactions to April's involvement with other men. In addition, the Commonwealth sought to introduce evidence of Appellant's "stalker-like" behavior and overall obsession with April. Appellant filed a motion to exclude the evidence in its entirety. The trial court held a hearing on the matter on the morning of trial and ruled the evidence admissible.

In reviewing the trial court's decision to admit KRE 404(b) evidence, we look for an abuse of discretion. *E.g., Clark v. Commonwealth*, 223 S.W.3d 90, 96 (Ky. 2007). The general rule regarding Appellant's prior bad acts is that they are not admissible "to show action in conformity therewith." KRE 404(b). Yet, such evidence may be admissible to prove "motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." KRE 404(b)(1). Even if the evidence falls within an exception to the general rule of exclusion, the evidence must also be relevant, and more probative than prejudicial. *Lanham v. Commonwealth*, 171 S.W.3d 14, 31 (Ky. 2005).

David Hannah and Kenny Williams

During the trial, the Commonwealth placed David Hannah and Kenny Williams on the stand. Both men testified about Appellant's aggressive and jealous behavior. In regards to Hannah, the Commonwealth provided the jury with a detailed account of an altercation between him and Appellant which occurred on January 1, 2012. Appellant, April, and Hannah gave their

respective accounts of what transpired. Although the three witnesses had conflicting accounts of what happened, certain facts were consistent.

On the afternoon of December 31, 2011, April and Hannah were together at Hannah's residence. April and Hannah had an on-going relationship that preceded April and Appellant's involvement. Appellant testified that April called him that afternoon and requested that he pick her up at Hannah's residence because the two were fighting. Appellant, however, did not have a mode of transportation at the time. Thusly, April was stranded at Hannah's residence for the evening. The next morning, unbeknownst to April or Hannah, Appellant gained access to a vehicle and drove to Hannah's residence. Appellant knocked on Hannah's front door, but neither Hannah nor April would answer. Appellant became exceedingly frustrated and proceeded to the back door. Once again, no one answered the door when he knocked. Consequently, Appellant kicked the back door in to gain access to Hannah's residence. Once inside, Appellant and Hannah began arguing. Hannah managed to move the altercation to the back yard. When Hannah turned to April to ask if she preferred to leave, Appellant used a crescent wrench he had brought with him to strike Hannah in the head twice. April and Appellant subsequently left the scene. Hannah did not notify law enforcement, nor did he seek medical treatment.

The Commonwealth also introduced threatening text messages Appellant sent to Hannah in June of 2012, the same month Bullock was murdered. In the text messages, Appellant threatened to physically assault Hannah as he did

on New Year's Day. Another man by the name of Kenny Williams also testified that he had received menacing text messages from Appellant. April claimed that she was not romantically involved with Williams. Even so, after spending time with April on more than one occasion, Appellant sent Williams text messages threatening to kill them both.

The trial court relied exclusively on *Davis v. Commonwealth*, 147 S.W.3d 709 (Ky. 2004) in concluding that the above-referenced testimony was admissible to prove motive, intent, lack of mistake or accident, and knowledge. We agree with the trial court to the extent that our prior decision in *Davis* allows admission of the above-mentioned bad acts to prove motive and intent.

In *Davis*, this Court held that evidence of the defendant's bad acts towards other men involved with his ex-wife was admissible to show his motive and intent in murdering her new boyfriend. *Id.* at 723-24. We explained that evidence of the defendant's jealous reactions to his ex-wife's relationships with other men "illustrated his animosity toward any man whom he suspected of receiving [her] affection or attention." *Id.* at 724. For that reason, such evidence was indicative of the defendant's reason for killing the victim. *Id.* Likewise, we find that evidence of Appellant's altercation with Hannah and threatening text messages to Hannah and Williams tends to prove his motive and intent in killing Bullock—a man Appellant believed had a relationship with April.

Furthermore, any prejudice Appellant endured from such evidence is outweighed by its probative worth. "[A] factor to consider in determining

whether evidence is admissible to prove motive depends on whether the issue of motive is in actual dispute.” Robert G. Lawson, *The Kentucky Evidence Law Handbook*, § 2.25[3][b] at 127 (4th ed. LexisNexis 2003). As already mentioned, Appellant completely disputes the Commonwealth’s theory that he lured Bullock to his apartment after falling into a jealous rage. Instead, Appellant claims that he did not have a jealous motive, as he was merely protecting April and his daughter from Bullock. Thusly, the verdict hinged entirely on which theory the jury believed was more likely to have occurred. Testimony that Appellant had acted violently due to similar instances of jealousy demonstrates the evidence’s high probative worth. Accordingly, we find no error in the trial court’s denial of Appellant’s motion to exclude evidence of his prior bad acts committed against Hannah and Williams.

April Darnell

The Commonwealth also provided the jury with evidence of Appellant’s “stalker-like behavior.” April testified that her relationship with Appellant started off rather intensely, with the two spending a significant amount of time together. April claimed that she was clear with Appellant from the beginning of their relationship that she would often seek refuge from her home life by riding around town with her male friends. Yet, as time went on, Appellant became all the more jealous of the time she spent with other men. April alleged that Appellant would incessantly call her cell phone and demand to know her whereabouts. When the two were together, Appellant would take April’s cell phone without permission and go through her call history and text messages.

Sometimes Appellant would keep April's phone for days at a time. Appellant would even text message her male friends from her phone.

April further testified that she constantly felt as though Appellant's feelings toward her were more intense than she could handle. As a result, April made multiple attempts to break things off with Appellant. Even though April tried to limit her contact with Appellant, he would call all of her friends and demand to know her location. April testified that once Appellant learned of her whereabouts, he would go looking for her at that location. In fact, Appellant would often times show up at her house or in her neighborhood unannounced and uninvited. April told the jury of one particular incident during which Appellant gained access to her residence without permission. When April arrived home to find him inside, Appellant stated that he was there to "catch [her] doing something."

The trial court found evidence of Appellant's obsession with April to be admissible "for the same reasons as stated [in] the Hannah incident." In other words, the trial court believed the evidence was admissible to prove motive, intent, lack of mistake or accident, and knowledge. We also agree with the trial court to the extent that Appellant's obsession with April and jealousy of other men were admissible to show his motive and intent to kill Bullock.

Furthermore, in *Davis*, we stated that "Appellant's stalking of [his ex-wife] was relevant to prove his obsession with her, thus tending to prove his motive to kill [the victim]." 147 S.W.3d at 726. Likewise, proof that Appellant was fixated on April's whereabouts is evidence probative of Appellant's

obsession with her and overall jealousy of her male friends. Consequently and in light of *Davis*, we cannot find that the trial judge's decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles.

Closing Arguments

Appellant also requests that we find reversible error in the Commonwealth's use of the aforementioned 404(b) evidence used during its opening and closing arguments. More specifically, the Commonwealth notified the jury during its opening arguments that they would hear stories of Appellant's "stalker-like behavior." The Commonwealth then discussed Appellant's assault on Hannah. In closing, the Commonwealth reminded the jury of Appellant's jealousy of other men.

We find no error in the Commonwealth's closing argument. *See Stopher v. Commonwealth*, 57 S.W.3d 787, 805–06 (Ky. 2001) (holding that opening and closing arguments are not evidence); *see also Slaughter v. Commonwealth*, 744 S.W.2d 407, 412 (Ky. 1987).

Jury Instructions

Appellant next argues that the trial court erred in instructing the jury as to the entire statute proscribing murder, including murder committed wantonly. Appellant maintained that neither his, nor the Commonwealth's theory of the case, supported a wanton murder instruction. The trial court overruled Appellant's objection due to his testimony that he only intended on stopping Bullock from reaching April and his daughter and that he did not plan on killing him. Consequently, the trial court believed the jury may have

inferred that since Appellant had no intention of killing Bullock, he created a grave risk to Bullock's life by beating and strangling him so severely. In reviewing the trial court's decision to instruct the jury on the charge of wanton murder, we look for an abuse of discretion. *Ratliff v. Commonwealth*, 194 S.W.3d 258, 274 (Ky. 2006).

We note that it was not error for the trial court to include more than one theory of liability in a single instruction. The jury was instructed on all ranges of homicide, with the crime of murder being instructed on first. Kentucky Revised Statute ("KRS") 507.020 states that a person is guilty of murder when he *either* (a) has the intent to cause death to another or (b) "manife[sts] extreme indifference to human life [and] wantonly engages in conduct which creates a grave risk of death to another person and thereby causes the death of another person." As a result, sample instructions include these two alternative theories of liability into one instruction. We have previously approved this method of instructing by declaring that "instructions in criminal cases should conform to the language of the applicable statute and, generally, it is left to the lawyers to flesh out the bare bones in closing argument." *Noakes v. Commonwealth*, 354 S.W.3d 116, 120 (Ky. 2011) (citing *Parks v. Commonwealth*, 192 S.W.3d 318, 326 (Ky. 2006)). A unanimous verdict is insured because the jury may only choose intentional or wanton murder on the verdict form. Accordingly, we find no error in the trial court's use of a single instruction which lists both theories of murder.

We must further determine if there was evidence presented to support an instruction on wanton murder. In order for the jury to conclude that Appellant acted wantonly, there must have been evidence demonstrating that he was aware of and consciously disregarded “a substantial and unjustifiable risk” that his actions would result in Bullock’s death. See KRS 501.020(3).

Appellant claims that wanton murder was not supported by the evidence as the Commonwealth’s prosecution rested upon the theory that Appellant intended on murdering Bullock by luring him to the apartment and killing him once he arrived. Similarly, the evidence submitted by Appellant was also centered on an intentional murder charge—that he was acting under extreme emotional distress. However, we must look beyond the prosecution’s overriding theory of guilt and Appellant’s main defense.

The determination of what issues to submit to the jury must be made based upon the totality of the evidence. *Rice v. Commonwealth*, 472 S.W.2d 512 (Ky. App. 1971). After listening to Appellant’s testimony, we believe the jury was provided with sufficient evidence indicating that he acted wantonly. Appellant stated on more than one occasion that he merely intended on stopping Bullock from going upstairs. Appellant believed Bullock was under the influence of drugs and was fearful that Bullock would reach his sleeping daughter and girlfriend. Moreover, when specifically asked, Appellant claimed that he did not intend to cause Bullock’s death. If the jury were to believe that Appellant hit and strangled Appellant in order to stop him from going upstairs, they could certainly infer that Appellant’s actions were wanton. Hitting

someone with a dumbbell five times, in addition to strangling that person until he or she lost consciousness demonstrates actions manifesting an extreme indifference to human life.

The trial court is required to instruct the jury on “every state of the case deducible or supported *to any extent* by the testimony.” *Taylor v. Commonwealth*, 995 S.W.2d 355, 360 (Ky. 1999) (emphasis added) (citing *Lee v. Commonwealth*, 329 S.W.2d 57, 60 (Ky. App. 1959)); RCr 9.54(1). Contrary to Appellant’s belief, it does not matter that the Commonwealth’s theory of guilt was based on intentional murder, so long as some evidence was presented to support a wanton murder instruction. *See Mishler v. Commonwealth*, 556 S.W.2d 676, 680 (Ky. 1977) (“It is the privilege of the jury to believe the unbelievable if the jury so wishes.”). Therefore, the trial court did not err by including a wanton murder instruction.

Exclusion of Photographs

Appellant also alleges that the trial court erred in allowing the jury to view “gruesome” photographs of Bullock’s decomposing body. During the medical examiner’s testimony, the Commonwealth sought to display photographs of Bullock’s injuries as found during his autopsy. Appellant maintains that the amount of decomposition Bullock’s body endured rendered the photographs too gruesome for the jury to view. The trial court, however, determined that the pictures were admissible as they were not unduly prejudicial and were needed to support the tampering with physical evidence charge. The Court will review the admission of these purported “gruesome”

photographs for an abuse of discretion. *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999).

This Court has held that since the Commonwealth must prove the “*corpus delicti*, photographs that are probative of the nature of the injuries inflicted are not excluded unless they are so inflammatory that their probative value is substantially outweighed by their prejudicial effect.” *Adkins v. Commonwealth*, 96 S.W.3d 779, 794 (Ky. 2003) (citing KRE 403). The general rule is that a photograph does not become inadmissible simply because it is gruesome and the crime is heinous. *Funk v. Commonwealth*, 842 S.W.2d 476, 479 (Ky. 1992) (citing *Gall v. Commonwealth*, 607 S.W.2d 97 (Ky. 1980), *overruled on other grounds by Payne v. Commonwealth*, 623 S.W.2d 867, 870 (Ky. 1981)).

The photographs at issue in the case before us show lacerations to Bullock’s head, in addition to a ligature mark obtained when he was strangled. The photographs also showed the amount of decomposition Bullock’s body endured in between the time of his death and the time his body was preserved by law enforcement. The decay was more advanced than a normal cadaver due to his body being kept in Appellant’s shed for more than 48 hours while subjected to the late June heat.

After viewing the photographs, this Court agrees with the trial court that they were not unduly prejudicial. Appellant’s main complaint is that the decomposition caused Bullock’s skin to darken. While the pictures may have been disturbing, decomposition in the form of darker skin does not in and of

itself induce prejudice. *Compare Funk*, 842 S.W.2d at 478. Additionally, any prejudice the jury may have suffered was likely outweighed by the photograph's probative value. The photographs illustrated the nature of the crime and displayed the injuries Bullock sustained. Such injuries helped the jury to better understand the events that unfolded on the night in question. For example, the depth and severity of the lacerations and ligature mark may have aided the jury in determining if Appellant acted wantonly. Moreover, the advanced decomposition of Bullock's body provided the jury with proof that Appellant tampered with Bullock's body after the murder.

Appellant's admission to killing Bullock does not negate the probativeness of the photographs. In *Gall*, this Court was presented with a similar situation, wherein the defendant had admitted to killing the victim and sought exclusion of pictures showing the victim's deceased body. 607 S.W.2d 97. This Court stated the following:

The Commonwealth has a right to prove its case to the jury even when the defendant pleads guilty. The defendant is not entitled to erase the ugly parts of the picture and substitute words in their place. In order for a jury to be able to size up a case fairly and wisely it must be allowed to gain a reasonable perspective, and that can best be done by permitting it to see an unadulterated picture. We are of the opinion that the photographs here in question were admissible.

Id. at 107. Thusly, we find no error in the trial court's admission of photographs of Bullock's body.

Credibility of Other Witnesses

Appellant also maintains that reversible error occurred when he was asked to comment on the credibility of three other witnesses. Appellant first complains of the Commonwealth's line of questioning relating to April and David Hannah's testimonies. During the Commonwealth's cross-examination, Appellant was asked if he thought David Hannah and April were both lying. Appellant was also asked by the Commonwealth if his daughter Marissa was "mistaken" in her testimony. Appellant failed to object to the Commonwealth's questioning. Consequently, this issue is not preserved for our review. Nevertheless, Appellant requests palpable error review pursuant to RCr 10.26.

This Court has long held that it is error to require a witness to comment on the credibility of another witness. *Howard v. Commonwealth*, 12 S.W.2d 324 (Ky. App. 1928). Whether a witness is telling the truth or lying is the exclusive job of the jury. *Id.* We have explained that asking a witness to characterize the testimony of another witness as lying "places the witness in such an unflattering light as to potentially undermine his entire testimony." *Moss v. Commonwealth*, 949 S.W.2d 579, 583 (Ky. 1997). Therefore, the trial court should have prohibited the Commonwealth from asking Appellant if April and David Hannah were lying. Furthermore, we see nothing wrong with the question of Appellant whether his daughter was mistaken. *See Duncan v. Commonwealth*, 322 S.W.3d 81, 88 (Ky. 2010) (distinguishing between questions that ask a witness to characterize another witness as a liar from asking if the witness was mistaken).

Regardless of the trial court's errors, we do not believe it rendered his trial fundamentally unfair. Indeed, similar questioning rarely results in a finding of manifest injustice. See, e.g., *Ernst v. Commonwealth*, 160 S.W.3d 744, 764 (Ky. 2005); *Moss*, 949 S.W.2d at 583. In light of the amount of evidence pointing to Appellant's guilt, we do not believe the verdict would have been different had these questions been withheld. Consequently, we find no palpable error.

Restitution

At the conclusion of the sentencing phase of trial, Appellant waived his right to a pre-sentence investigation and asked the trial court to impose final sentencing. The Commonwealth tendered a restitution sheet in the amount of \$2,449.00 to be paid to Bullock's mother, Penny Stewart, for funeral expenses. Appellant had no objection to Ms. Stewart's request for restitution. Accordingly, the trial court ordered Appellant to pay Ms. Stewart \$100.00 per month, upon his release, until the entire amount is paid in full. Appellant initially argued that Ms. Stewart is not statutorily entitled to recover restitution. However, Appellant has since abandoned his argument and concedes that Ms. Stewart is an eligible recipient of restitution.

Conclusion

For the foregoing reasons, the judgment of the McCracken Circuit Court is hereby affirmed.

All sitting. All concur.

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