19-P-913 Appeals Court

COMMONWEALTH vs. MICHAEL P. McCARTHY.

No. 19-P-913.

Suffolk. November 16, 2020. - June 7, 2021.

Present: Massing, Kinder, & Grant, JJ.

Homicide. Practice, Criminal, Instructions to jury, Presumptions and burden of proof. Evidence, Relevancy and materiality, Third-party culprit, Prior misconduct, Impeachment of credibility.

Indictment found and returned in the Superior Court Department on December 18, 2015.

The case was tried before Janet L. Sanders, J.

Jonathan Shapiro (Mia Teitelbaum also present) for the defendant.
Benjamin Shorey, Assistant District Attorney, for the Commonwealth.

GRANT, J. A jury convicted the defendant, Michael P. McCarthy, of murder in the second degree of two year old Bella Bond, whose body was found on a beach at Deer Island in Winthrop. On appeal, the defendant argues that the evidence was insufficient to prove that it was he, rather than the victim's

mother, who inflicted the fatal injuries; that the judge erred in instructing the jury that the Commonwealth did not have to exclude the possibility that someone other than the defendant was "also involved in the crime"; and that the judge erred in admitting evidence of the defendant's interest in Satanism and excluding certain evidence that would have cast the mother in a negative light. We affirm.

Background. We summarize the facts that the jury could have found, reserving certain details for our discussion of the legal issues.

The victim's mother, Rachelle Bond (Bond), had a troubled history of use of substances including heroin, cocaine, and pills. As a result, in 2000 and 2006 she lost custody of two older children to the Department of Children and Families (DCF). After that she was living "[o]n the street," supporting herself by sex work and dealing drugs, and was convicted of related crimes.

The victim was born in August 2012. During the first year of her life, she and Bond lived in shelters and DCF twice assessed Bond's ability to care for her. In 2013, they moved to an apartment in the Mattapan section of Boston. Neighbors described Bond as "[v]ery loving" and "really nice to" the victim, who was "really happy, always playing." Other than marijuana and prescribed medications, Bond was not using drugs.

Bond met the defendant when he struck up a conversation with her outside a pharmacy and persuaded her to give him some Klonopin. In February 2015, he sent Bond a text message to buy drugs, and he then came to her apartment and moved in. Bond was impressed by his intelligence, particularly on subjects involving spirituality. He told Bond that he felt negative energy around her and burned sage to eliminate an "evil presence" in her apartment. He said he could treat her abdominal pain with a reiki technique by which he held his palms above her body while she thought of the color yellow, and she believed that it worked. A romantic relationship developed between them.

Soon after the defendant moved in, his childhood friend Michael Sprinsky stayed at Bond's apartment for two weeks. During that time the victim was smiling, laughing, and playing, and the apartment was neatly kept. Sprinsky became increasingly annoyed by the defendant's frequent talk about demons and his claim that he could "rid evil spirits." The defendant had been interested in those topics since childhood, but in Sprinsky's view he had become obsessed with them.

That spring, Bond resumed using heroin, together with the defendant. When Sprinsky visited, the apartment was in disarray. Little attention was paid to the victim, and so sometimes Sprinsky prepared food for her. The defendant and

Bond both told Sprinsky that the victim was "possessed," the defendant more often than Bond. They both frequently asked the victim if she was possessed by demons; if she did not agree that she was, Bond sometimes spanked her. The defendant never intervened in the spankings, and several times he locked the victim in a closet as punishment for her "demons."

In April and May 2015, the defendant's brother Joseph McCarthy (Joseph) saw the victim several times. She was a normal, happy two year old child, and was not disheveled, abused, or bruised. He last saw her in the third week of May.

In early June 2015, Bond was having difficulty putting the victim to bed. One night after Bond had tucked her in at about 11:30 P.M., the victim ran out of her bedroom repeatedly, and each time Bond put her back to bed. When Bond and the defendant heard her playing in her room in the dark, the defendant said he would put her to sleep and went into her room, leaving the door ajar. Within five minutes, Bond followed him. The victim was lying across her bed on her back. The defendant punched the victim in the stomach so hard that she "bounced up." Bond yelled, "What the fuck did you do?" In response, the defendant just looked at Bond. The victim was not breathing and her head looked swollen and gray, so Bond tried to resuscitate her. When it did not work, Bond picked the victim up in her arms to leave. The defendant grabbed Bond by the throat with both hands and

said he would kill her. The victim fell out of Bond's arms, and Bond lost consciousness.

When Bond regained consciousness, she was on the living room couch. She was too afraid of the defendant to try to flee. She passed out again and awoke sometime later when the defendant injected heroin into her neck, which she welcomed. Bond said, "What the fuck did you do? You fucking killed her." The defendant replied, "It was her time to die. She was a demon." After the defendant injected Bond with heroin, he guided her to his car.[1] On the back seat were weights and a green duffel bag containing the victim's body. When Bond saw it, she screamed. The defendant hit her on the head, and she lost consciousness.

When Bond next regained consciousness, the car was in an open area next to a wharf with pylons in a body of water. The defendant, the duffel bag, and the weights were no longer in the car. The defendant came from the direction of the water, got into the car, and drove away. As they left the area, Bond recognized it as City Point in the South Boston section of Boston.

The next morning, Bond said, "[Y]ou killed my kid." The defendant replied, "[S]he was a demon, it was her time to die."

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[1] Bond did not have access to a car. That spring, the defendant had had his car repaired by a mechanic in Quincy; previously it had not been functional.

Bond did not report the victim's death. She was using heroin heavily and wanted "to be taken out of reality" because the victim was dead. The defendant repeatedly threatened to kill Bond, which she believed he would do because he had killed the victim. The defendant told her that "children go missing all the time," and that no one would believe her if she reported the victim's death. For the next couple of weeks, he stayed near Bond constantly, even when she used the bathroom or took a shower. Eventually he started leaving the apartment occasionally; when he did, he loaned Bond a cell phone that did not have Internet access so he could contact her. For the next several months, they injected heroin between four and seven times a day.

On June 25, 2015, a woman walking on a beach on Deer Island found a knotted trash bag containing the dead body of a female toddler wrapped in two blankets. Autopsy revealed bruises on her arms, abdomen, and legs, and hemorrhaging on her abdomen, lower back, and shoulder blade. The medical examiner opined that she had died of either asphyxia, which might have been caused by compression of her abdomen as shown by the bruising, or a heart dysrhythmia caused by a sharp blow below the heart. She had likely been dead at least a week. Within hours, discovery of the girl's body received widespread media coverage. Because her identity was unknown, she was called "Baby Doe."

The next morning, the defendant made several calls from downtown Boston to the cell phone he had loaned to Bond. Cell site location information showed that he traveled to Mattapan at 9:47 A.M. Then he traveled to South Boston, where at 9:53 A.M. he was near the Reserved Channel.

Investigators continued to try to identify Baby Doe. The National Center for Missing and Exploited Children generated a computer image approximating her appearance, which was widely publicized. The Coast Guard analyzed currents in Boston Harbor to try to determine from where her body had drifted, but without information as to how long she had been in the water, they could not locate a point of origin.

In June, Sprinsky asked the defendant and Bond where the victim was. They both replied that she was with Bond's sister; neither mentioned DCF. In July, Joseph asked in the presence of both the defendant and Bond where the victim was. One of them replied that she was with her father for the summer; neither mentioned DCF.

On July 16, 2015, Bond went to Housing Court to oppose an eviction. While she was there the defendant repeatedly sent her text messages, warning her not to claim that she needed housing for her child because the court might involve DCF. He demanded that she prove to him that she was in court. Bond told her landlord's attorney that her boyfriend was "keeping tabs on"

her, and at her request the attorney wrote down his cell phone number and a notation that Bond had been in court until 2 P.M.

On September 9, 2015, the victim's father, Joseph Amoroso, showed up at Bond's apartment asking to see the victim. With the defendant monitoring the conversation, Bond told Amoroso that the victim was visiting her godparents.

At about 11:50 P.M. on September 15, 2015, Amoroso returned to Bond's apartment and knocked at the door for a long time. Eventually Bond came outside and spoke to him while the defendant watched from a window, holding a baseball bat. Bond again told Amoroso that the victim was with her godparents. When Bond came back inside, the defendant berated her for about ten minutes, in Sprinsky's presence, screaming insults while wielding the bat.

The next day, while the defendant was in the hospital being treated for an abscess, Bond tearfully told Sprinsky that the defendant had killed the victim. Sprinsky searched the Internet for information about Baby Doe and saw a photograph of a blanket that he recognized as the victim's. Sprinsky sent a text message to the defendant that stated, "She told me everyth[ing] . . . she sa[id] you killed [B]ella." The defendant replied, "[Y]ou [are] listening to a cracked out hooker. D[CF] took [B]ella, that's what she told me." Sprinsky called the defendant and asked, "How could you do that to a child?" The

defendant cut the conversation short, saying, "Why are you even talking about this on the phone?" When Sprinsky called again, the defendant had shut off his phone.

On September 17, 2015, Sprinsky told a probation officer that Baby Doe was Bella Bond. Interviewed by State Police, Sprinsky disclosed Bond's address and the text messages between him and the defendant.

That day, Bond heard a knock at her apartment door. She looked out and saw police, so she left through a back window. She met up with Amoroso and told him that the victim was dead. After using a bag of heroin together, they decided to get a lawyer and go to the police, but first they went to Amoroso's mother's home in Lynn for the night. The next morning, police found them there and interviewed them.

On September 18, 2015, police interviewed the defendant. He admitted he had been staying at Bond's home, which he described as a two-bedroom apartment where she lived alone, though sometimes people spent the night. Asked who occupied the bedrooms, he volunteered that Bond's daughter Bella had been taken by DCF. Asked what happened when DCF took Bella, he replied that Bond often complained about Amoroso, who had shown up at the apartment several nights before yelling and screaming. Asked again about when DCF took Bella, the defendant said that

not long after Easter,[2] he came home one day and Bella was gone and Bond said that DCF had taken her. Asked if Bond ever worked with a DCF case worker or tried to get Bella back, the defendant replied that Bond had told him that someone from DCF had said, "[W]e can either . . . do this the nice way or the hard way," that DCF took Bella because Bond had given her "a little spank in the ass," and that "once they take your kids, you don't get them back." Asked if he ever saw Bond hit the victim, the defendant said, "[N]o." When police told him that the victim had been killed, the defendant acted surprised and said he did not know she was dead. Asked if he had gone to South Boston or Boston Harbor, he denied it.

Based on Bond's description, police went to the place in City Point where there was a wharf with direct access to the Reserved Channel. It was about 300 yards from where the defendant had lived as a teenager, and he and his friends used to drink there. After about five minutes of searching, in the water about five feet from the wharf, a State Police diver found a duffel bag and some weights. One of the weights was the same brand as a set that police found in the defendant's father's plumbing shop in Quincy. At trial, a Coast Guard search and rescue controller opined that it was "quite possible" that the

[2] Easter fell on April 5, 2015.

victim's body had floated from the Reserved Channel to Deer Island.

Bond pleaded guilty to being an accessory after the fact to murder and to larceny over $250, for having continued to collect benefits for the victim after her death.

Discussion. 1. Sufficiency of the evidence. The defendant argues that the evidence was insufficient to prove that he, rather than Bond, killed the victim. He maintains that Bond's testimony was uncorroborated and contradicted by other evidence, and that Bond's failure for more than three months to tell anyone about the murder rendered her testimony not credible. He further argues that the evidence was not specific enough as to the time or means of the victim's death.

In reviewing the sufficiency of the evidence, we view the evidence in the light most favorable to the Commonwealth. See Commonwealth v. Lopez, 484 Mass. 211, 215 (2020). "[Q]uestions of credibility belong properly to the finder of fact . . . and, in considering whether the evidence is sufficient to support a conviction, should be resolved in favor of the Commonwealth" (citation omitted). Commonwealth v. Copeland, 481 Mass. 255, 262 (2019). Circumstantial evidence may be enough to establish guilt, as long as it shows beyond a reasonable doubt that the defendant, "and not someone else," was responsible for the killing, but the Commonwealth need not prove that "no one else

could have committed the crime." Commonwealth v. Conkey, 443 Mass. 60, 72 (2004), S.C., 452 Mass. 1002 (2008). See Commonwealth v. Merola, 405 Mass. 529, 533 (1989).

Bond's testimony that the defendant punched the victim in the abdomen so hard that she "bounced," after which she stopped breathing and died, sufficed to prove that he killed her. From Bond's account and the medical examiner's testimony, the jury could infer that the defendant's punch caused the victim's death, either by asphyxia or by heart dysrhythmia. The credibility of Bond's testimony was for the jury to decide. See Commonwealth v. Norris, 483 Mass. 681, 686 (2019) (rejecting argument that evidence was insufficient because percipient witnesses were "untrustworthy addicts"). Even if that punch were not the fatal blow, the jury could infer from circumstantial evidence that the defendant inflicted the fatal injury in the five minutes before Bond entered the bedroom. Only minutes before, the victim had been running and playing. See Collazo v. Commonwealth, 483 Mass. 1025, 1026-1027 (2020) (evidence not "in equipoise" whether defendant or mother killed infant victim, where mother testified that victim was "normal" when she left him in defendant's care). See also Commonwealth v. Anderson, 48 Mass. App. Ct. 508, 511-512 (2000). This is not like those cases in which a witness sees the defendant with a victim shortly before the killing but does not see the fatal

blow. Contrast Lopez, 484 Mass. at 216 (witness testimony that defendant was in group fighting with victim in driveway not enough to prove joint venture murder where victim was found behind fence in back yard); Commonwealth v. Salemme, 395 Mass. 594, 601-603 (1985) (where evidence was presented that defendant or another man could have fired shot that killed victim, defendant's flight insufficient to permit jury to infer defendant fired shot).

Moreover, ample evidence beyond Bond's testimony proved the defendant's guilt. See Norris, 483 Mass. at 685 (in addition to witness who "effectively witnessed" murder, several others saw defendant dispose of victim's body and other evidence). In the water next to a wharf at City Point, just as Bond had described, police found the duffel bag and weights. The defendant, but not Bond, had access to a car, which was necessary to transport the victim's body to that dump site and to return there on June 26, the morning after news broke of the discovery of Baby Doe. The defendant, but not Bond, had a key to his father's shop, where the weights were kept. Testimony of the attorney at Housing Court, Sprinsky, and Amoroso corroborated Bond's descriptions of the defendant's controlling behavior toward her in the months after the victim's death.

In addition, the defendant's contradictory statements evidenced his consciousness of guilt. See Copeland, 481 Mass.

at 262. In June, he told Sprinsky that the victim was with Bond's sister. In July, Joseph was told in the defendant's presence that the victim was with her father. On July 16, the defendant sent a text message to Bond when she was in Housing Court, warning her not to mention the victim lest DCF become involved. Each of those statements contradicted the defendant's September 18 story to police that Bond had told him in April that DCF had taken the victim. And when police told the defendant that the victim was dead, he claimed he did not know that -- even though Sprinsky had told him she was dead in a text message two days before.[3]

2. Jury instructions. The defendant argues that the judge erred in instructing the jury, in response to a comment in defense counsel's closing argument, that the Commonwealth did not bear the burden of excluding the possibility that one or more persons in addition to the defendant was involved in the crime. In closing, defense counsel told the jurors: "The question that will be facing you when you deliberate on a

[3] As for the defendant's argument that the evidence was insufficient because the Commonwealth did not prove the precise date of the victim's murder, the short answer is that it was not required to do so. See G. L. c. 277, § 20. The indictment alleged that the defendant murdered the victim "on a date uncertain in late May or early June 2015." Bond testified that the defendant murdered the victim on a night in early June and admitted that she had previously told police that the date was May 27. Her credibility was for the jury to decide. See Norris, 483 Mass. at 686.

verdict is whether the prosecution has proven beyond a reasonable doubt that [the defendant], and only [the defendant], murdered [the victim]" (emphasis added). The prosecutor objected, noting that even though the Commonwealth was not arguing that the defendant committed the murder in a joint venture with Bond, if the jury found that they were both involved in the murder, that would not absolve the defendant. At the Commonwealth's request, the judge in her final charge included this curative instruction:

> "[Defense counsel] stated, I think at the beginning of his closing argument, that you can find [the defendant] guilty only if you conclude that [the defendant] and [the defendant] alone killed [the victim]. As to that I would simply instruct you as follows. The Commonwealth bears the burden of proving beyond a reasonable doubt that [the defendant] killed [the victim]. On the other hand, the Commonwealth does not have the burden of excluding the possibility that one or more other persons were also involved in the crime. [The defendant] is the individual on trial here."

Defense counsel objected, arguing that because the Commonwealth had not charged Bond with murder or argued that she was a joint venturer, the instruction unfairly injected a new theory into the case, but there was "no evidence" that the defendant and Bond committed the murder as a joint venture.[4]

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[4] Neither party filed a written request for a joint venture instruction, and the judge did not give one. Just before the jury charge, defense counsel commented that if the judge was going to give the curative instruction, then "the jury has to be instructed on joint venture." The judge disagreed, ruling that the curative instruction did not inject joint venture into the

A trial judge has the duty to instruct the jury clearly and correctly on the law applicable to the case. See Commonwealth v. Wall, 469 Mass. 652, 670 (2014); Commonwealth v. Corcione, 364 Mass. 611, 618 (1974). The judge's instruction that "the Commonwealth does not have the burden of excluding the possibility that one or more other persons were also involved in the crime" was a correct statement of the law. See Commonwealth v. Scesny, 472 Mass. 185, 206 (2015) ("The Commonwealth does not have the burden of proving that no one else may have committed the murder"); Commonwealth v. Farley, 443 Mass. 740, 745, cert. denied, 546 U.S. 1035 (2005) (same). As the judge noted, she gave the curative instruction to correct a misstatement of law in defense counsel's closing. See Wall, supra at 669-670 (after defense counsel argued that murder defendant's blood alcohol level was almost three times "the legal limit," judge properly instructed that .08 limit applied only in cases of operating motor vehicle under influence of alcohol).

The defendant maintains that his counsel's closing argument was an accurate statement of the law because the evidence established that it was "either" the defendant "or" Bond who

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case. After the jury charge, the defendant did not object to the lack of a joint venture instruction, see Mass. R. Crim. P. 24 (b), 378 Mass. 895 (1979), and has not raised on appeal the lack of such an instruction, see Mass. R. A. P. 16 (a) (9) (A), 481 Mass. 1629 (2019).

killed the victim. We disagree. "Contrary to the defendant's argument, this is not a case where the murder could only have been committed by either the defendant or a specific alternate suspect, requiring that in order to find beyond a reasonable doubt that the defendant committed the crime the jury had to conclude that the alternate suspect did not commit it." Farley, 443 Mass. at 746. The defendant and Bond were the two adults who lived with the victim and who both had access to her. Cf. Commonwealth v. Alammani, 439 Mass. 605, 608 (2003) (defense theory was not joint venture, but that infant's injuries were inflicted when mother had access). Contrast Conkey, 443 Mass. at 69-70 (where adult murder victim lived alone, landlord was specific alternate suspect with motive and opportunity to commit crime). The jury heard no evidence that Bond inflicted the injuries that caused the victim's death, and the judge clearly and repeatedly instructed that the Commonwealth bore the burden of proving that the defendant "caused" the victim's death.[5]

[5] The defendant misplaces his reliance on Choy v. Commonwealth, 456 Mass. 146, 151-152 (2010), an arson murder where the jury asked if in order to convict they had to find that the defendant "actually started the fire," and the judge erroneously answered no. The thorny issues as to causation that may arise in arson cases -- see Commonwealth v. Pfeiffer, 482 Mass. 110, 128-129 (2019); compare Doull v. Foster, 487 Mass. 1, 5, 18 & n.23 (2021) (discussing standards for tort liability under "twin fires" hypothetical) -- are not relevant to the facts of this case.

The judge's instruction that the Commonwealth was not required to exclude the possibility that someone other than the defendant "[was] also involved in the crime" did not go as far as the instructions deemed proper in both Scesny, 472 Mass. at 206, and Farley, 443 Mass. at 745-746, that the Commonwealth did not have to prove "that no one else may have committed the murder." The jury certainly heard evidence that Bond was "involved in the crime": she testified that she had pleaded guilty to being an accessory after the fact to murder. She also admitted that she was with the defendant when he disposed of the victim's body, and that she failed to report the victim's death for more than three months. But Bond's "involve[ment] in the crime" would not absolve the defendant. As the judge put it, "it defies common sense and also the law" to say that even if the jurors were convinced beyond a reasonable doubt that the defendant had committed the murder, "they would be able to find him not guilty . . . if they also thought there was some possibility that someone else was involved."

3. Evidentiary rulings. a. Admission of defendant's interest in Satanism. The defendant argues that the judge erred in admitting evidence showing his interest in Satanism. After both parties raised the issue in motions in limine, the judge admitted computer data showing that for over a year before the murder, the defendant had used Internet search terms including

"[S]atan" and "demon"; testimony of Bond and Sprinsky that the defendant had discussed those topics, and of Sprinsky that the defendant had books about them; and two books on Satanism that police found in Bond's apartment. The defendant argues that the evidence was irrelevant because the Commonwealth did not prove either that the victim's death occurred during a Satanic ritual, or what he "ultimately thought" of those topics.

The Commonwealth may not introduce evidence of a defendant's prior bad acts to show bad character, but that evidence may be admissible if relevant for a nonpropensity purpose. See Commonwealth v. Chalue, 486 Mass. 847, 866 (2021). See generally Mass. G. Evid. § 404(b) (2021). Even if the evidence is relevant, it will not be admitted if its probative value is outweighed by unfair prejudice to the defendant. See Commonwealth v. Crayton, 470 Mass. 228, 249 & n.27 (2014). The defendant moved in limine to exclude the evidence and objected contemporaneously at trial; accordingly, we review the judge's rulings to determine if there was an abuse of discretion and, if so, whether it amounted to prejudicial error. See Chalue, supra.

The judge ruled that the evidence was relevant for two purposes: to explain the defendant's statements immediately after the victim's death that she was a "demon," and to explain why Bond did not report the victim's death sooner. As to the

first purpose, the judge reasoned that the evidence was admissible in particular to corroborate Bond's testimony, to which the defendant did not object, that just after he killed the victim and again after he disposed of her body, the defendant said she was a "demon" and it was "her time to die." In these circumstances, the defendant's interest in Satanism was "inextricably intertwined" with the killing.[6] Commonwealth v. Drew, 397 Mass. 65, 79 (1986) (Satanic rituals that defendant previously performed in victim's presence intertwined with killing). The evidence gave context to his statements that the two year old victim was a "demon." See id. ("The prosecutor was entitled to present as full a picture as possible of the events surrounding the incident itself"). See also Commonwealth v. Veiovis, 477 Mass. 472, 485 (2017) (fascination with amputation and human dismemberment); Commonwealth v. Guy, 454 Mass. 440, 443 (2009) (interest in serial killers); Commonwealth v. Robidoux, 450 Mass. 144, 158-159 (2007) (religious beliefs involving withholding food from children). The defendant's

[6] Contrary to the defendant's argument, the Commonwealth did not have to prove that he actually thought the victim was a demon for evidence of his interest in Satanism to be admissible. As the judge instructed the jury, the Commonwealth was not required to prove motive. See Massachusetts Superior Court Criminal Practice Jury Instructions § 5.1.2(e) (Mass. Cont. Legal Educ. 3d ed. 2018). Cf. Commonwealth v. Dunn, 478 Mass. 125, 140 (2017) (lack of evidence of motive not grounds for G. L. c. 278, § 33E, relief).

long-standing interest in Satanism and demons -- shown by evidence including Internet searches that predated his relationship with Bond -- corroborated Bond's testimony that the defendant said that the victim was a "demon" and it was "her time to die." See Chalue, 486 Mass. at 867.

As for the second purpose, the judge noted that evidence of the defendant's interest in Satanism helped to explain why Bond did not report the killing for several months. See Chalue, 486 Mass. at 867 (witness's knowledge of defendant's involvement with Aryan Brotherhood "was probative to explain . . . why he did not initially go to the police or tell anyone else about what he had done"). Bond testified that she was impressed by the defendant's knowledge on subjects involving spirituality and believed he had cured her abdominal pain. After the victim died, the defendant strangled Bond to unconsciousness and threatened to kill her; she was too afraid of him to flee. In addition to repeatedly telling Bond that the victim was a "demon" and it was "her time to die," he also described his "epiphanies" involving reptilian demons that kill children, demanding that Bond record them in her journal. The defendant's interest in Satanism and demons tended to show that Bond was both enthralled by and afraid of the defendant and helped explain why she did not report the murder.

We conclude that the judge properly exercised her discretion in determining that the evidence was admissible and that its probative value was not outweighed by its prejudicial impact. See Chalue, 486 Mass. at 868-869. Notably, the judge excluded evidence including the defendant's text message referring to another child as a "demon," and his Internet search for information about Charles Manson. She further blunted the impact of the Satanism evidence by permitting defense counsel to question prospective jurors on voir dire whether evidence about angels, demons, and Satanism would impact their impartiality. Cf. id. at 868 (judge's voir dire about jurors' attitudes about Aryan Brotherhood).[7]

b. Limitation of impeachment evidence of Bond. The defendant argues that the judge erred in excluding evidence impeaching Bond's credibility that was contained in her therapy records, in her journal entries, and in DCF records pertaining to her older children. On motions in limine, the judge ruled that the prejudicial impact of that evidence outweighed its probative value. Because these rulings were not clear errors of

[7] Neither party requested, and the judge did not give, an instruction that the jury should not consider the evidence of the defendant's interest in Satanism to show his propensity to commit the crime, but only for the limited purposes set forth above. A limiting instruction would have further ameliorated any prejudicial impact of the evidence. See Chalue, 486 Mass. at 868.

judgment outside the range of reasonable alternatives, she did not abuse her discretion. See L.L. v. Commonwealth, 470 Mass. 169, 185 n.27 (2014).

First, the judge excluded Bond's therapy records in which she described a childhood memory about her mother killing her brother. Because Bond did not have a brother, the defendant argues that the statement was sufficiently "bizarre" that it would have impeached Bond's credibility about the victim's killing.[8] The prosecutor explained that Bond's statement to her therapist related to when, as a child, Bond overheard a conversation about her mother having a miscarriage. The judge agreed with the prosecutor that the issue was collateral and would likely confuse the jury. See Mass. G. Evid. § 403. See also Commonwealth v. Dabney, 478 Mass. 839, 859-860 (2018) (records of Internet prostitution advertisements inadmissible to impeach witness; absent information about website's billing practices, evidence would be "too confusing" to jury).

Second, the judge excluded evidence of Bond's journal entries describing frightening dreams that she had had as a child and traumatic experiences that she had as an adult. After

[8] The defendant proffered no expert testimony that might have linked those records to any psychological diagnosis of Bond. Contrast Commonwealth v. Polk, 462 Mass. 23, 33-35 (2012) (judge erred in excluding expert testimony of psychologist about dissociative memory disorder).

a voir dire, the judge found that the entries described events that were remote in time and dissimilar to the evidence in this case. She did not abuse her discretion. See L.L., 470 Mass. at 185 n.27.

Finally, the defendant finds fault with the judge's exclusion of evidence contained in DCF records pertaining to the termination of Bond's parental rights with respect to two older children, years before the victim's birth. Those DCF records contained allegations that seventeen years before the victim's murder, Bond had dropped a baby carrier containing her oldest child, and nine years before the murder Bond had punished her second child with slaps and spankings. The judge excluded the DCF records as constituting "hearsay upon hearsay," and as describing events too remote in time and too dissimilar from the killing to provide any basis to infer that Bond was responsible for the victim's death. See Commonwealth v. Alcantara, 471 Mass. 550, 560 (2015); Commonwealth v. Bizanowicz, 459 Mass. 400, 418-419 (2011). She did not abuse her discretion in excluding the evidence as "limited in both reliability and relevance." Commonwealth v. Scott, 470 Mass. 320, 327 (2014).

It was within the judge's discretion to rule that those three categories of evidence were so tangential that their prejudicial impact outweighed their probative value. "'[W]e afford trial judges great latitude and discretion' with respect

to the probative-unfairly prejudicial analysis, and 'we uphold a judge's decision in this area unless it is palpably wrong.'" Chalue, 486 Mass. at 869, quoting Commonwealth v. Facella, 478 Mass. 393, 401 (2017). In exercising her discretion, the judge admitted ample other impeachment evidence more relevant to Bond's credibility. On cross-examination, Bond admitted that she had told her therapist that her mother was a Satan worshipper, which she believed after she told the defendant stories about her childhood and he convinced her that her mother was one. She also admitted that she wrote lengthy journal entries about demons; she testified that the defendant had told her to write them and they were transcriptions of his visions.

Conclusion. For the foregoing reasons, we affirm the defendant's conviction of murder in the second degree.

So ordered.