

NOTICE: All slip opinions and orders are subject to formal revision and are superseded by the advance sheets and bound volumes of the Official Reports. If you find a typographical error or other formal error, please notify the Reporter of Decisions, Supreme Judicial Court, John Adams Courthouse, 1 Pemberton Square, Suite 2500, Boston, MA, 02108-1750; (617) 557-1030; SJCRreporter@sjc.state.ma.us

SJC-12393

COMMONWEALTH vs. BENJAMIN MARTINEZ.

Hampden. November 4, 2020. - April 23, 2021.

Present: Budd, C.J., Gaziano, Lowy, Cypher, & Kafker, JJ.

Homicide. Evidence, Third-party culprit, Credibility of witness, Intoxication, Hearsay. Witness, Credibility. Intoxication. Practice, Criminal, Exclusion of evidence by judge on own motion, Hearsay, Instructions to jury, Capital case.

Indictments found and returned in the Superior Court Department on December 22, 2014.

The cases were tried before Richard J. Carey, J.

Jeffrey L. Baler for the defendant.
Travis H. Lynch, Assistant District Attorney, for the Commonwealth.

BUDD, C.J. On the afternoon of June 9, 2004, the body of Caridad Puente was discovered in a closet of her Springfield apartment. In 2017, the defendant, Benjamin Martinez, was convicted of murder in the first degree on the theory of extreme

atrocious or cruel in connection with the victim's death.¹ On appeal, the defendant claims that the judge excluded certain evidence the defendant sought to introduce, and omitted certain jury instructions, resulting in reversible error. The defendant also argues that the evidence presented at trial was insufficient to establish that he committed the offense. After conducting a plenary review of the record and the parties' briefs, we affirm the defendant's convictions and decline to exercise our extraordinary power under G. L. c. 278, § 33E.

Background. We summarize the facts as the jury could have found them, reserving certain details for discussion of specific issues.

In June 2004, the victim was engaged in selling heroin from her apartment where she lived with her two young sons and a male known only as "Monster." At approximately 8:30 A.M. on June 9, the victim's sister picked up the victim's older son to take him to school. A witness observed two men leaving the victim's apartment between 11:15 A.M. and 12:30 P.M. and another man banging on the victim's door around 2:20 P.M. At approximately 3:30 P.M., after the victim failed to pick her son up from school, the victim's sister went to the apartment to check on

¹ The defendant also pleaded guilty to possession of heroin, a class A controlled substance, which he does not challenge on appeal.

her. Upon arrival, she found the door locked and heard the sound of a baby crying inside. The sister broke one of the apartment windows and, upon entering, discovered the victim's lifeless body propped up in a sitting position against the back wall of a closet in a pool of blood, with her toddler son by her side crying. The victim had suffered thirty-two sharp force injuries to her face, neck, and chest.

In addition to the blood in the closet where the victim's body was discovered, blood was found in various locations throughout the apartment, including the kitchen, the bathroom, and a bedroom. Deoxyribonucleic acid (DNA) analyses conducted on bloodstains in the kitchen as well as on scrapings taken from the victim's fingernails eventually² were matched to the defendant's DNA profile. In December 2014, a grand jury indicted the defendant, charging him with murder in the first degree and unlawful possession of heroin.

At trial, the defendant testified that he had purchased heroin from the victim and that his blood was present in the victim's apartment because he accidentally injured himself while unsuccessfully injecting heroin. He claimed that a third party was responsible for killing the victim.

² There were no leads in the case until 2014, when an inquiry with the Combined DNA Index System (known as CODIS) determined that the defendant's DNA profile matched the profiles developed from several of the identified bloodstains.

On March 8, 2017, a jury found the defendant guilty of murder in the first degree on the theory of extreme atrocity or cruelty. The following day, the defendant pleaded guilty to possession of a class A controlled substance. The trial judge sentenced the defendant to a term of life imprisonment on the murder conviction and to a concurrent, two-year term on the possession conviction. The defendant timely appealed.

Discussion. The defendant argues that the judge erroneously excluded third-party culprit and Bowden defense evidence, as well as portions of the defendant's proffered evidence when he testified in his own defense. See Commonwealth v. Bowden, 379 Mass. 472, 485-486 (1980). He also challenges the jury instructions concerning witness credibility and faults the judge for failing to instruct the jury to consider the defendant's potential intoxication. Finally, the defendant contends that the evidence was legally insufficient to support the jury's verdict and asks this court to exercise its power under G. L. c. 278, § 33E, to grant him a new trial or to reduce his verdict.

1. Exclusion of third-party culprit evidence. Prior to trial, the defendant unsuccessfully moved in limine to admit evidence suggesting that the victim might have been killed by other individuals. On appeal, the defendant claims that the judge's exclusion of that evidence was reversible error. As the

exclusion of third-party culprit evidence is an issue of constitutional dimension, we examine the defendant's arguments on this matter de novo. Commonwealth v. Conkey, 443 Mass. 60, 66-67 (2004), S.C., 452 Mass. 1022 (2008). Third-party culprit evidence is admissible if it "tends to show that another person committed the crime or had the motive, intent, and opportunity to commit it," and if the evidence is "of substantial probative value, and will not tend to prejudice or confuse" (citations omitted). Commonwealth v. Silva-Santiago, 453 Mass. 782, 800-801 (2009). See Mass. G. Evid. § 1105 (2021). Here, we conclude that the judge did not err in excluding any of the third-party culprit evidence that the defendant sought to admit.

a. Rodriguez. The defendant sought to implicate Alex Quinito Rodriguez, a family friend of the victim, by introducing evidence that Rodriguez drove a motor vehicle registered to the victim and was seen banging on the victim's apartment door on the day she was killed. During the subsequent investigation, although investigators spoke with someone purporting to be Rodriguez on the telephone, that person refused to meet with police.

These alleged facts, without more, are wholly inadequate to be admissible as third-party culprit evidence. That Rodriguez was banging on the victim's apartment door on the day she died suggests, at most, that he may have had the opportunity to

commit the murder; it says nothing about motive or intent.³ See Commonwealth v. O'Brien, 432 Mass. 578, 589 (2000) (evidence that third party appeared at crime scene at around time of murder did not constitute substantial link between third party and murder). Further, that Rodriguez may have been uncooperative with the investigation is also of little consequence. An individual's decision not to speak with police is not itself inculpatory, especially where, as here, Rodriguez was believed to be an undocumented immigrant. See Commonwealth v. Chicas, 481 Mass. 316, 322 (2019) (witness's status as undocumented immigrant may make witness less likely to cooperate with government); Irwin v. Commonwealth, 465 Mass. 834, 852 (2013) ("An individual who has not been arrested or charged . . . may choose not to speak with police for a myriad of reasons").

b. Monster. Similarly, the judge properly excluded the defendant's proffered evidence regarding an individual known as "Monster." Because there were no signs of forced entry when the victim was found, the defendant sought to introduce the fact that Monster lived with the victim at the time of her death, and that investigators were unable to locate him following the

³ An attempt to attribute intent to kill based on the fact that Rodriguez was banging on the victim's door would be impermissibly speculative.

murder, as proof that he may have been the killer. As with the evidence concerning Rodriguez, this evidence demonstrates no more than Monster's potential opportunity to kill the victim; it does not tend to prove that he was in fact the culprit. See O'Brien, 432 Mass. at 589. Nor does the fact that police could not locate Monster following the victim's death tend to prove that he killed her. See Irwin, 465 Mass. at 852.

c. The Dominican brothers. The defendant also argues that hearsay evidence demonstrating that a group of four brothers from the Dominican Republic (Dominican brothers) had a motive to murder the victim was excluded improperly. The defendant wanted to demonstrate that the Dominican brothers had violent interactions with Roberto Colon,⁴ the father of the victim's younger son, and also were upset with the victim because she told people that they had stolen money and drugs.

The defendant sought to introduce investigator notes and the statements of various detectives, based on an interview with Colon during the initial investigation, indicating that the Dominican brothers were angry with the victim. The defendant also wanted to introduce statements made to detectives by two other individuals who knew the victim: Ramon Rivera, who told

⁴ Colon told detectives that one of the Dominican brothers cut Colon's face and shot him in the leg because of an incident in Chicopee.

police that the victim had told him that "they" were in the United States and that "people" were telling her to move out; and Moises Zapata, who told police that the "word on the street" was that the Dominican brothers may have killed the victim in retaliation.

Hearsay offered as third-party culprit evidence is admissible, even if it does not fall within a hearsay exception, provided that "the evidence is otherwise relevant, will not tend to prejudice or confuse the jury, and there are other 'substantial connecting links' to the crime." O'Brien, 432 Mass. at 588, quoting Commonwealth v. Rosa, 422 Mass. 18, 23 (1996). Given its widest latitude, the evidence that the defendant sought to introduce demonstrates that the Dominican brothers may have had a motive to kill the victim. However, motive alone is not enough to demonstrate third-party culpability. See Commonwealth v. Bright, 463 Mass. 421, 440 (2012). Accordingly, the trial judge properly excluded the hearsay statements at issue here, as they did not establish a substantial connecting link between the Dominican brothers and the victim's death. See Commonwealth v. Smith, 461 Mass. 438, 447 (2012) (victim's fear of third party insufficient to constitute substantial connecting link between third party and crime). Contrast Commonwealth v. Keizer, 377 Mass. 264, 267 (1979) (substantial connecting links between offense charged and

subsequent crime included similar modus operandi by individuals of similar description).

Because the hearsay statements provided no substantial connecting links between the Dominican brothers and the victim's death, their probative value was substantially outweighed by their tendency to confuse the jury.⁵ See Silva-Santiago, 453 Mass. at 801 ("the admission of feeble third-party culprit evidence poses a risk of unfair prejudice to the Commonwealth, because it inevitably diverts jurors' attention away from the defendant on trial and onto the third party"). Thus, there was no error in excluding the statements. See O'Brien, 432 Mass. at 589.

2. Bowden evidence. The defendant also argues that in excluding evidence regarding the Dominican brothers, the judge deprived him of being able to demonstrate that police had information concerning other suspects but failed adequately to investigate those leads. "Defendants have the right to base

⁵ Moreover, the third-party culprit evidence that the defendant sought to introduce regarding Rodriguez, Monster, and the Dominican brothers likely would have been confusing to the jury, given the defendant's testimony directly implicating Alexi Guzman in the victim's death. See part 3, infra. Further, given that the jury ultimately rejected the defendant's testimony directly implicating Guzman as the victim's attacker, it is difficult to imagine how he was disadvantaged by the exclusion of evidence regarding Rodriguez, Monster, and the Dominican brothers, whose involvement was completely speculative.

their defense on the failure of police adequately to investigate a murder in order to raise the issue of reasonable doubt as to the defendant's guilt in the minds of the jury." Commonwealth v. Phinney, 446 Mass. 155, 165-166 (2006), S.C., 448 Mass. 621 (2007), citing Bowden, 379 Mass. at 486. See Mass. G. Evid. § 1107.

Such evidence is admissible where the probative weight of the proffered evidence is not substantially outweighed by the risk of unfair prejudice to the Commonwealth "from diverting the jury's attention to collateral matters." See Commonwealth v. Moore, 480 Mass. 799, 808, 809 n.9 (2018). The decision to exclude such evidence is reviewed for an abuse of discretion.⁶ See Silva-Santiago, 453 Mass. at 804 & n.26.

As discussed supra, there were no connecting links between the Dominican brothers and the victim's death. The evidence that the defendant sought to introduce was no more than speculation and conjecture. It therefore did not have "sufficient indicia of reliability" such that a jury would have reasonably expected further investigation into the lead than was conducted. Id. at 804. The risk of unfair prejudice in

⁶ Unlike third-party culprit evidence, the exclusion of Bowden evidence does not implicate constitutional rights. See Silva-Santiago, 453 Mass. at 804 n.26. For this reason, we disagree with the defendant's contention that the exclusion of Bowden evidence implicated his rights under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution.

introducing evidence that the police failed to pursue the Dominican brothers as a lead substantially outweighed probative value of the evidence.⁷

3. The defendant's testimony. At trial, the defendant took the stand in his own defense. He testified that on the day the victim was killed, he went to her apartment to purchase and use heroin. He further claimed that, while there, he saw Alexi Guzman argue with the victim and that the argument escalated, culminating with Guzman attacking the victim with a kitchen knife. The defendant testified that he himself was injured as he attempted to separate them.

On appeal, the defendant argues that the judge committed reversible error by barring the defendant from testifying as to statements made by Guzman before and after the attack as inadmissible hearsay. See Commonwealth v. McLaughlin, 431 Mass. 241, 246 (2000) (claims of error preserved at trial reviewed for prejudice). As the Commonwealth concedes (properly) that the statements were in fact admissible, we must satisfy ourselves that the errors "did not influence the jury, or had but very

⁷ We also note that the judge allowed the portion of the defendant's motion seeking to elicit testimony from detectives to demonstrate deficiencies in their investigation of Rodriguez and Monster as suspects. See Commonwealth v. Scott, 470 Mass. 320, 332 (2014) (that judge allowed some but not all Bowden evidence defendant sought to admit was factor in abuse of discretion calculus).

slight effect" (citation omitted). Commonwealth v. Flebotte, 417 Mass. 348, 353 (1994). Applying this standard, we conclude that the exclusion of Guzman's statements was not prejudicial.

First, the Commonwealth objected to the defendant relating statements made by Guzman as he argued with the victim. At sidebar, defense counsel proffered that the defendant would testify that Guzman made statements such as "Look how much you like him; What are you doing; Sleeping with him; things of that nature," and argued that the testimony was not being offered for the truth, but instead to demonstrate Guzman's state of mind. Specifically, the defendant offered these statements to show Guzman's animosity towards him and the romantic relationship between Guzman and the victim.

We agree that, because Guzman's statements were not offered for their truth, they were excluded improperly on hearsay grounds. See Commonwealth v. Sullivan, 410 Mass. 521, 526 (1991). The defendant nevertheless was able to testify that he felt like he "just got caught by someone's husband with his wife at his house." He further testified that Guzman was "upset" and "angry," that "[t]here was animosity" between Guzman and the victim, and that they were saying "nasty things" to each other. Based on this testimony, the jury readily could have inferred that Guzman and the victim were in a relationship and that Guzman was angry with the victim because the defendant was in

the apartment. We therefore conclude that the exclusion of Guzman's actual statements was nonprejudicial. See Commonwealth v. Cassidy, 470 Mass. 201, 216 (2014) (erroneous exclusion of statements made during telephone call not prejudicial, as jury could infer threats were made because defendant fled after telephone conversation).

As for the second excluded statement, the defendant testified that after the altercation, Guzman spoke to Rodriguez on the telephone, but the defendant was not permitted to testify that, after the call, Guzman told the defendant that Guzman was going to take the victim to a hospital and that Rodriguez was going to pick up the defendant to bring the defendant to the hospital. The defendant offered these statements to demonstrate both Guzman's alleged intent to deceive the defendant and to explain why the defendant would leave a badly injured woman alone with her attacker. Here again, because the statement was offered not for its truth, it was not hearsay and was admissible to demonstrate state of mind. See Sullivan, 410 Mass. at 526.

However, as with the earlier statements, the exclusion of Guzman's statement after the attack did not prejudice the defendant. On direct examination, the defendant testified that, after the altercation, he told Guzman, "[W]e need to go to the hospital," and that Guzman then telephoned Rodriguez. On cross-examination, the defendant testified that he left the victim

with Guzman in the apartment because he understood that Guzman was going to bring the victim to the hospital. Thus, although excluded in error, Guzman's purported statement after the altercation would have been cumulative of other evidence that was before the jury. See Commonwealth v. Alammami, 439 Mass. 605, 611-612 (2003) (even if excluded in error, testimony was cumulative of admitted evidence and therefore nonprejudicial).

The defendant points out that as the excluded testimony also pertains to third-party culprit evidence, we must determine whether the error was harmless beyond a reasonable doubt. See Conkey, 443 Mass. at 70. Here, the error was harmless beyond a reasonable doubt because, as discussed supra, the information would have been cumulative of the evidence that the jury already had before them. Further, the information would not have negated the powerful DNA evidence implicating the defendant. See Commonwealth v. Tague, 434 Mass. 510, 515-517 (2001), cert. denied, 534 U.S. 1146 (2002) (erroneously excluded third-party culprit evidence harmless given overwhelming evidence of defendant as coventurer); Commonwealth v. Perrot, 407 Mass. 539, 549 (1990) ("The essential question is whether the error had, or might have had, an effect on the jury and whether the error contributed to or might have contributed to the verdicts").

4. Jury instructions. The defendant challenges two aspects of the instructions provided to the jury: he argues

that the judge's instructions regarding witness credibility were incomplete, and that the judge failed to inform the jury that they could consider intoxication when determining whether the crime was committed with extreme atrocity or cruelty. As the defendant failed to raise either of these issues at the time of trial, we first must determine whether there was error and, if so, whether it created a substantial likelihood of a miscarriage of justice,⁸ see Commonwealth v. Vinton, 432 Mass. 180, 188 (2000), citing Commonwealth v. Wright, 411 Mass. 678, 681 (1992), S.C., 469 Mass. 447 (2014), keeping in mind that "[t]he adequacy of instructions must be determined in light of their over-all impact on the jury" (citation omitted), Commonwealth v. Niemic, 427 Mass. 718, 720 (1998). We address each issue raised in turn.

a. Witness credibility. The judge instructed the jury regarding the credibility of a witness largely based on Instruction 2.260 of the Criminal Model Jury Instructions for Use in the District Court (2009) (District Court Model

⁸ In addition to arguing that the judge erred in omitting certain instructions, the defendant also claims that his trial counsel was ineffective in failing to insist upon the instructions to which he now says he was entitled. As the standard under G. L. c. 278, § 33E, is more favorable to the defendant than the standard for ineffective assistance of counsel, we review both claims for a substantial likelihood of a miscarriage of justice. See Commonwealth v. Wright, 411 Mass. 678, 682 (1992), S.C., 469 Mass. 447 (2014).

Instructions) (replaced by Instruction 2.120 in 2019). He explained that it was the jury's duty to decide disputed issues of fact, and that they were the sole judges of the credibility of the witnesses.⁹ The defendant contends that the judge erred by omitting the following portion of that model instruction:

"If you do not believe a witness's testimony that something happened, of course your disbelief is not evidence that it did not happen. When you disbelieve a witness, it just means that you have to look elsewhere for credible evidence about that issue."

The defendant argues that the failure to give this portion of the model instruction left open the chance that if the jury credited neither the defendant's testimony nor that of the Commonwealth's witnesses, they may have convicted the defendant based on speculation. We disagree.

To begin, we note that the District Court Model Instructions are not sanctioned by, or binding upon, this court. See Commonwealth v. Quinn, 439 Mass. 492, 500 n.14 (2003). Thus, we decline to evaluate the instruction at issue based on

⁹ The judge stated:

"It will be your duty to decide any disputed questions of fact. You will have to determine which witnesses to believe and how much weight to give their testimony. You should give the testimony of each witness whatever degree of belief and importance that you judge it is fairly entitled to receive. You are the sole judges of the credibility of the witnesses and if there are any conflicts in the testimony, it is your function to resolve those conflicts and to determine where the truth lies."

how closely it adhered to the model instruction on witness credibility. Instead, we examine the instruction "in light of [its] over-all impact on the jury" to determine whether the jury would have been prompted to base their verdict on pure speculation (citation omitted). See Niemic, 427 Mass. at 720.

The judge instructed the jury that the defendant was presumed to be innocent unless the Commonwealth met its burden to prove the defendant's guilt beyond a reasonable doubt, and properly defined the burden of proof. He further explained that the burden remains with the Commonwealth, and that the defendant was not required to present any evidence at all. Viewing the instructions as a whole, it is clear that the over-all message was that the jury were not to reach a verdict based on pure speculation. There was no error.

b. Voluntary intoxication and extreme atrocity or cruelty.

In determining whether a homicide was committed with extreme atrocity or cruelty, whether and to what extent a defendant's mental capacity is impaired is a factor that the jury can consider. Commonwealth v. Kolenovic, 478 Mass. 189, 194 (2017). Here, as the Commonwealth concedes, because evidence was presented that the defendant used heroin on the night of the victim's death, he was entitled to an instruction that the jury could consider such evidence in determining whether the killing was committed with extreme atrocity or cruelty. See

Commonwealth v. Gonzalez, 469 Mass. 410, 421-422 (2014), citing Commonwealth v. Perry, 385 Mass. 639, 648-649 (1982).

Nevertheless, we conclude that the error did not result in a substantial likelihood of a miscarriage of justice, as the evidence presented at trial did not suggest that the defendant was actually intoxicated or otherwise impaired. Although the defendant testified that he had attempted to inject himself with heroin while he was at the victim's apartment, he said that he was unable to do so successfully. Further, the defendant did not claim that the heroin he attempted to use had any effect on his mental capacity.¹⁰ Because the evidence did not demonstrate that the defendant actually was impaired, the failure to instruct on voluntary intoxication in connection with whether the defendant killed the victim with extreme atrocity or cruelty did not create a substantial likelihood of a miscarriage of justice.

5. Sufficiency of the evidence. The defendant next argues that the judge erred in failing to allow his motions for a required finding of not guilty because the evidence presented was insufficient to support his conviction without relying on

¹⁰ At any rate, we note that the jury heard testimony that the defendant was a long-time heroin addict and that heroin addicts frequently build immunity to heroin use.

surmise and conjecture.¹¹ More specifically, the defendant argues that the Commonwealth failed to demonstrate that his DNA was deposited in the victim's apartment at the time of the crime. In reviewing claims of insufficient evidence, we view the evidence presented at trial, together with reasonable inferences therefrom, in the light most favorable to the Commonwealth to determine whether any rational jury could have found the defendant guilty of the offense beyond a reasonable doubt. See Commonwealth v. Latimore, 378 Mass. 671, 676-677 (1979). In so doing, we conclude that the defendant's argument is unavailing.

The evidence presented at trial was more than sufficient to allow a rational fact finder to conclude beyond a reasonable doubt that the DNA extracted from the victim's fingernail scrapings and from bloodstains in the kitchen, matching the defendant's DNA profile, were deposited at the time of the crime. The jury heard testimony from the victim's son and the victim's sister regarding the fact that when the former left the apartment that morning for school, there was no visible blood splattered about, and regarding the state of the apartment when

¹¹ The defendant also maintains that the Commonwealth presented no evidence of motive for the crime. However, as motive is not an essential element of murder, the Commonwealth is not required at all to prove that the defendant had one. See Commonwealth v. Campbell, 378 Mass. 680, 688 n.8 (1979).

the latter entered that afternoon and discovered the victim's body. Moreover, during his testimony, the defendant admitted to being present in the apartment when the victim was attacked.¹²

This evidence, although circumstantial, was sufficient to allow the jury to infer that the defendant attacked the victim with a knife and sustained wounds as the victim attempted to protect herself. See Commonwealth v. Mejia, 461 Mass. 384, 392 (2012) (Commonwealth may rely entirely on circumstantial evidence, so long as inferences drawn from it are reasonable and possible). Thus, although the defendant provided an alternative explanation for how DNA matching his profile came to be found on the victim's body among other places in the apartment, i.e., that he was injured as he attempted to stop Guzman's knife attack on the victim, where "the evidence lends itself to several conflicting interpretations, it is the province of the jury to resolve the discrepancy and 'determine where the truth lies.'" Commonwealth v. Platt, 440 Mass. 396, 401 (2003), quoting Commonwealth v. Lydon, 413 Mass. 309, 312 (1992). That is exactly what the jury properly did here. The judge did not

¹² The defendant's reliance on Commonwealth v. Morris, 422 Mass. 254 (1996), and Commonwealth v. Anitus, 93 Mass. App. Ct. 104 (2018), is misplaced. In those cases, the convictions were overturned because the mere presence of fingerprints in the former case and DNA in the latter were insufficient alone to prove guilt beyond a reasonable doubt. See Morris, supra at 257-258; Anitus, supra at 109.

err in denying the defendant's motions for a required finding of not guilty.

6. Relief pursuant to G. L. c. 278, § 33E. Finally, the defendant asks us to exercise our extraordinary power under G. L. c. 278, § 33E. Upon review of the entire record, we discern no error that resulted in a substantial likelihood of a miscarriage of justice. Accordingly, we will not exercise our extraordinary power under § 33E to order a new trial or to reduce the defendant's sentence.

Judgments affirmed.