NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA, Appellee v. TERRENCE PATRICK ANDREWS, Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1113 WDA 2011

Appeal from the Judgment of Sentence entered March 25, 2011,
In the Court of Common Pleas of Allegheny County,
Criminal Division, at No(s): CP-02-CR-0010169-2008

BEFORE: ALLEN, WECHT, and STRASSBURGER,* JJ.

MEMORANDUM BY ALLEN, J.: Filed: February 15, 2013

Terrence Patrick Andrews ("Appellant") appeals from the judgment of sentence imposed after he was convicted of first-degree murder and burglary.[1] We affirm.

The trial court summarized the factual background as follows:

> In May of 2008, Appellant was living in the Hampshire Hall Apartments, apartment 414, in the Shadyside section of Pittsburgh, Allegheny County. The victim, Lisa Maas, lived in the same building and on the same floor as Appellant. In the morning of May 29, 2008, Maas and Appellant were on the elevator together and got into an argument. Maas noticed a foul odor emanating from Appellant and told Appellant that he smelled or stunk. This encounter and Maas's comment angered Appellant and reinforced his perception that Maas looked down on him and "treated him like dirt."

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[1] 18 Pa.C.S.A. §§ 2502(a) and 3502(a).

* Retired Senior Jude assigned to the Superior Court.

After this encounter, Appellant was "burned up all day", and he decided that he was going to kill Maas. He planned to do so by lying in wait in his apartment for Maas to return home, whereupon he planned to force his way into her apartment and stab her to death with a pair of scissors that he kept on his desk.

Appellant waited the entire day for Maas to return, keeping watch of the sidewalk in front of the building from a window inside his apartment. Sometime after 8:30 P.M. Appellant observed Maas return to the building and go to her apartment at the end of the fourth floor hallway.

Appellant went to Maas' door, scissors in hand, and knocked. When Maas opened the door he forced his way in and began stabbing her. Maas started screaming and told Appellant that she would give him her money but Appellant indicated that he was not there for the money but to kill her. Maas attempted to defend herself by grabbing a kitchen knife and cutting Appellant but to no avail. At some point Appellant was able to secure the knife and use it to stab Maas. Appellant stabbed her multiple times, including fatal wounds to her neck and heart.

As a result of the attack Maas fell to the floor and Appellant sat on the couch to observe her in that incapacitated state. Appellant observed Maas choking on her own blood as he heard gurgling sounds coming from her. Appellant took a wash cloth and stuffed it in her mouth so he wouldn't have to hear the gurgling sounds any longer. He secured the wash cloth with tape and once the sounds stopped Appellant was satisfied that Maas was dead and left the apartment.

However, as Appellant was leaving Maas' apartment, two uniformed Pittsburgh Police officers were coming down [the] hallway in response to a neighbor's report of hearing screams from the fourth floor. Appellant was covered in blood and told the officers, "I did it, take me to jail." He also inquired as to whether Pennsylvania had the death penalty. The officers recovered a pair of scissors and a serrated kitchen knife from Appellant's pants pocket.

Medics arrived shortly thereafter and Maas was pronounced dead at the scene. Medics also tended to Appellant's head wound and transported him to a nearby hospital for treatment. Before transport from the scene,

> Appellant was briefly interviewed by homicide detectives wherein he provided an account as detailed hereinabove. Upon completion of medical treatment, Appellant was formally arrested and charged as noted hereinabove.
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> The autopsy of Lisa Maas determined that she had three stab wounds to her neck, two stab wounds to her trunk (chest and abdomen), sharp incised wounds to her left [and] right hands (13 total), and multiple contusions to her extremities and back. One of the stab wounds to Maas' neck was 4 inches deep and lacerated her bilateral carotid arteries which are the major arterial supply of blood to the brain. The stab wound to the chest was 5½ inches deep and perforated and lacerated Maas' heart. Both of those wounds are immediately incapacitating and cause death within minutes.

Trial Court Opinion, 7/13/12, at 5-8 (citations to notes of testimony omitted).

Appellant was arrested and charged with the aforementioned crimes. A jury trial commenced on March 22, 2011, and on March 25, 2011, the jury returned its guilty verdicts. On March 25, 2011, the trial court sentenced Appellant to a term of life imprisonment for first-degree murder and a consecutive term of five to ten years for burglary. Appellant filed post-trial motions on April 4, 2011, which the trial court denied by order dated June 9, 2011. This timely appeal followed. Both Appellant and the trial court have complied with Pa.R.A.P. 1925.

Appellant raises the following issues for our review:

> I. DID THE TRIAL COURT ERR IN ADMITTING GRUESOME, CLOSE-UP PHOTOGRAPHS OF THE DECEASED VICTIM'S FACE AND NECK WOUNDS SINCE THESE PHOTOGRAPHS WERE HIGHLY INFLAMMATORY AND CUMULATIVE, AND

THE DANGER OF UNFAIR PREJUDICE OUTWEIGHED THE MINIMAL PROBATIVE VALUE?

II. DID THE TRIAL COURT ABUSE ITS DISCRETION BY FINDING THAT THE VERDICT WAS NOT AGAINST THE WEIGHT OF THE EVIDENCE WHEN THE EXPERT TESTIMONY PRESENTED THAT [APPELLANT] WAS NOT SUFFERING FROM DIMINISHED CAPACITY DUE TO HIS MENTAL ILLNESS WAS UNRELIABLE AND UNTRUSTWORTHY SINCE THE EXPERT MAINLY RELIED ON THE STATEMENTS BY [APPELLANT], A PSYCHOTIC, TO FORM HIS OPINION?

Appellant's Brief at 5.

In his first issue, Appellant argues that the trial court erred in permitting the jury to view two photographs of the deceased victim. Appellant's Brief at 13-22. Appellant asserts that the photographs portraying the victim's body and her wounds were inflammatory, not relevant, and cumulative of other less prejudicial evidence presented by the Commonwealth to explain the crime scene and nature of the stab wounds. *Id*. Appellant contends that the photographs were more prejudicial than probative, and that their introduction should not have been permitted at trial. *Id*.

Our Supreme Court has explained that "[p]hotographs of a murder victim are not *per se* inadmissible." ***Commonwealth v. Tharp***, 830 A.2d 519, 531 (Pa. 2003). Rather, the admission of such photographs is a matter within the discretion of the trial judge. ***Id***. "The test for determining the admissibility of such evidence requires that the court employ a two-step analysis. First, a court must determine whether the photograph is

inflammatory. If not, it may be admitted if it has relevance and can assist the jury's understanding of the facts. If the photograph is inflammatory, the trial court must decide whether or not the photographs are of such essential evidentiary value that their need clearly outweighs the likelihood of inflaming the minds and passions of the jurors." ***Id***. "Even a gruesome or inflammatory photograph is admissible if its probative value outweighs its prejudicial effect on the jury." ***Commonwealth v. Osellanie***, 597 A.2d 130, 132 (Pa. Super. 1991).

Here, with regard to its decision to permit the jury to view the photographs, the trial court explained:

> [The first photograph] (exhibit 75) was an autopsy photograph which depicted the stab wounds of the victim's neck, and a second, (exhibit 25), was a photograph of the victim at the crime scene which depicted a wash cloth stuffed into the victim's mouth with tape over it to secure it.
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> As to the photograph of the victim at the scene, the Trial Court determined that the photograph was potentially inflammatory, but that its probative value outweighed the likelihood that it would tend to inflame the minds and passions of the jury to the prejudice of the Appellant. ***See Commonwealth v. Karenbauer***, 715 A.2d 1086, 1096 (Pa. 1998) (photographs of victim, while decidedly unpleasant to look at, illustrated the severity of the attack and that it was done with the intent to kill). Here after stabbing the victim, Appellant sat on her couch watching her as she lay mortally wounded on the floor, and when the victim started to choke on her own blood, Appellant stuffed a wash cloth in her mouth and taped it to make certain she was dead.
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> * * *
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> As to the autopsy photograph, the [trial court] found it to be non-inflammatory; and since it depicted one of the fatal

> wounds, to be admissible as it aided the jury's understanding of the pathologist's testimony, and as it may ultimately reflect on Appellant's intent at the time of the killing.

Trial Court Opinion, 7/13/12, at 12-14 (citations to notes of testimony omitted).

Having reviewed the record and the photographs at issue, we find no abuse of discretion in the trial court's decision to admit the photographs. We agree with the trial court that the first photograph from the autopsy is not inflammatory. The photograph contains no blood smears or stains or signs of decomposition, but contains rather, a quantifiable depiction of the location of the victim's stab wounds. The second photograph of the victim's body at the crime scene is, as the trial court stated "potentially inflammatory." However, the trial court directed that the picture be presented in black and white to minimize any inflammatory potential. N.T., 3/22-25/11, at 77. Moreover, the picture quality is imperfect, such that the victim's body is not portrayed in high definition or vivid detail, which mitigates the "gruesome" nature of the photograph.

Furthermore, in order to alleviate any potential prejudice, prior to the admission of the photographs, the trial court cautioned the jury that the autopsy photograph was being admitted for the limited purpose of "allowing [the forensic pathologist] to better explain his testimony." *Id*. at 59. The trial court also explained to the jury that the second photograph from the crime scene was being admitted for the limited purpose of "allowing [the

jury] to see the crime scene and to potentially explain the course of conduct that may or may not have occurred here and help [the jury] evaluate the entire body of evidence ultimately in this matter." *Id*. at 90. The trial court further advised the jury that while the photographs might be unpleasant to view, the jury "should not let them stir up any passion or emotion to the prejudice of [Appellant]". N.T., 3/22-25/11, at 59,90,626.

We conclude that the trial court did not abuse its discretion in determining that the photographs were relevant and that their probative value outweighed any potential prejudice. Dr. Todd Luckasevic, the Commonwealth's forensic pathology expert, relied on the autopsy photograph to aid the jury's understanding of the locations and nature of the victim's wounds. While Dr. Luckasevic did have the benefit of prepared diagrams to illustrate the location of the victim's injuries, he relied on the autopsy photograph to illustrate the depth and severity of the stab wounds, and to indicate which wounds may have been caused by the scissors and which may have been caused by a serrated knife blade, testimony that could not be fully explained through diagrams. N.T., 3/22-25/11, at 61-63. ***See also Commonwealth v. Rush***, 646 A.2d 557, 560 (Pa. 1994) ("the condition of the victim's body provides evidence of the assailant's intent, and, even where the body's condition can be described through testimony from a medical examiner, such testimony does not obviate the admissibility of photographs"). The second photograph, which illustrated the position of

the body and the locations of the various wounds suffered by the victim at the crime scene, was presented at trial to assist the jury in understanding the crime scene, in particular the manner in which the washcloth was placed in the victim's mouth and bound with tape to stifle the victim's dying sounds. N.T., 3/22-25/11, at 92-93. Together, the two photographs were relevant to assist the jury in determining Appellant's intent to kill the victim. Moreover, our Supreme Court has observed:

> A criminal homicide trial is, by its very nature, unpleasant, and the photographic images of the injuries inflicted are merely consonant with the brutality of the subject of inquiry. To permit the disturbing nature of the images of the victim to rule the question of admissibility would result in exclusion of all photographs of the homicide victim, and would defeat one of the essential functions of a criminal trial, inquiry into the intent of the actor. There is no need to so overextend an attempt to sanitize the evidence of the condition of the body as to deprive the Commonwealth of opportunities of proof in support of the onerous burden of proof beyond a reasonable doubt.

Commonwealth v. McCutchen, 454 A.2d 547, 602 (Pa. 1982). In light of the foregoing, we conclude the trial court did not abuse its discretion in admitting the photographs into evidence.

In his second issue, Appellant claims that the verdict was against the weight of the evidence. Appellant's Brief at 23-30. He asserts that the testimony of the Commonwealth's psychiatric expert, Dr. Bruce Wright, who testified that Appellant was not suffering from a diminished capacity, was so unreliable and untrustworthy that it should have been rejected. *Id.* Appellant contends that Dr. Wright, in forming his expert opinion that

Appellant had the specific intent to kill, improperly relied on statements made by Appellant to doctors, and to police immediately after the commission of the crime, when Dr. Wright had acknowledged that Appellant was psychotic, and had in the past had made untruthful statements to his doctors. Therefore, Appellant argues that Dr. Wright's reliance on Appellant's statements as the basis for his expert opinion renders Dr. Wright's opinion unreliable and untrustworthy. *Id*.

Our standard of review of a weight of the evidence claim is as follows:

> Our scope of review for such a claim is very narrow. The determination of whether to grant a new trial because the verdict is against the weight of the evidence rests within the discretion of the trial court, and we will not disturb that decision absent an abuse of discretion. Where issues of credibility and weight of the evidence are concerned, it is not the function of the appellate court to substitute its judgment based on a cold record for that of the trial court. The weight to be accorded conflicting evidence is exclusively for the fact finder, whose findings will not be disturbed on appeal if they are supported by the record. A claim that the evidence presented at trial was contradictory and unable to support the verdict requires the grant of a new trial only when the verdict is so contrary to the evidence as to shock one's sense of justice.

Commonwealth v. Knox, 50 A.3d 732, 737-738 (Pa. Super. 2012) (citations omitted).

Here, the trial court cogently addressed Appellant's weight of the evidence claim:

> Appellant's claim is founded on the fact that [the] jury rejected his claim that he was incapable of forming the specific intent to kill. While it was clear that Appellant had a history of mental illness and treatment, it was equally clear that his mental illness did not impair his ability to plan and premeditate, and

> thus form the required specific intent to kill that was apparent in this horrific killing of Lisa Maas. The jury had the opportunity to evaluate the diminished capacity defense offered by Appellant, as well as the testimony offered by the Commonwealth to prove that Appellant had the requisite intent for first degree murder. The Commonwealth's evidence included the rebuttal testimony of a forensic [psychiatrist] as well as Appellant's statement, wherein he detailed the killing.
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> Appellant's disappointment that the jury did not accept the conclusion of his expert does not translate into [a] cognizable weight of the evidence claim.
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> Dr. Wright was a board certified and eminently qualified forensic psychiatrist. In fact Appellant recognized that by stating at the end of defense voir dire of Dr. Wright as follows, "I don't have any more questions with regard to qualifications, your honor, and I have no objection to his being admitted as an expert in the field of psychiatry."
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> Any even handed review of Dr. Wright's testimony demonstrates that Dr. Wright: (1) performed an exhaustive review of the records associated with Appellant's mental health history; (2) analyzed those records with insight, clarity, and consistent with psychiatric standards; (3) interviewed Appellant on two occasions; (4) read and evaluated the reports associated with the killing of Lisa Maas; (5) listened thoughtfully to the testimony of the defense expert; and (6) was able to communicate clearly and succinctly to the jury his opinion on the issue of diminished capacity.
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> While there was no question that Dr. Wright placed importance on Appellant's statement as to the killing of Lisa Maas, nonetheless, [Dr. Wright's] testimony and the basis for his opinion were far more comprehensive than Appellant's present characterization.

Trial Court Opinion, 7/13/12, at 16-19 (citations omitted).

We find no abuse of discretion in the trial court's denial of Appellant's weight of the evidence claim. While Dr. Wright agreed that Appellant

suffered from mental illness, Dr. Wright concluded that Appellant's illness did not preclude him from forming a specific intent to kill. N.T., 3/22-25/11, at 506-517. In reaching this conclusion, Dr. Wright testified that Appellant's statements to doctors, and to the police immediately after commission of the crime, could not be discounted. *Id*. Dr. Wright reasoned that Appellant's statements should be considered in the context of the evidence, to assess their validity, and opined that those statements were in fact substantiated by the evidence from the crime scene, which supported Appellant's "ability to plan and premeditate and to be fully conscious" of his actions. *Id*. at 508-509. Dr. Wright testified:

> It's my opinion that he had the capacity, cognitive capacity to form the intent to kill. And that's illustrated in part by statements he made not only to me – He specifically said, quotes, "I went there to kill her. I was going to beat the shit out of her" – but [also] what he said to the detectives immediately after the event, quotes, "all day I planned on stabbing her with scissors"; …
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> Although [Appellant] had a severe psychiatric illness, there's no evidence of a formal thought disorder. In other words, illogical thoughts, disjointed thoughts, disorganized thoughts that prohibited him from forming that intent and being conscious of that intent.
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> The notes from … his outpatient psychiatrist … at Western Psych[iatric] Institute] … indicate that his thoughts were … logical and linear. No disorganization, not illogical, not disorganized.

N.T., 3/22-25/11 at 514-515.

The defense's psychiatric expert, Dr. Barbara Ziv, testified that Appellant's mental illness precluded him from forming a specific intent to kill. However, the jury was free to reject the testimony of Appellant's expert, and credit the testimony of the Commonwealth's expert, Dr. Wright. It is not within our purview to reweigh such credibility determinations on appeal. Therefore, we find no error in the trial court's denial of Appellant's weight of the evidence claim. ***Knox, supra***. ***See also Commonwealth v. Taylor***, 876 A.2d 916, 927 (Pa. 2005) ("The fact that appellant's defense expert testified that appellant was psychotic and suffered from varying degrees of mental illness does not ineluctably suggest that he lacked the capacity to form a specific intent to kill.").

For the foregoing reasons, we affirm the judgment of sentence.

Judgment of sentence affirmed.