

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
TERRANCE K. GRAHAM,	:	
	:	
Appellant	:	No. 1512 WDA 2011

Appeal from the Judgment of Sentence Entered July 26, 2011,
In the Court of Common Pleas of Washington County,
Criminal Division, at No. CP-63-CR-0001119-2010.

BEFORE: SHOGAN, OTT and COLVILLE*, JJ.

MEMORANDUM BY SHOGAN, J.:

Filed: February 15, 2013

Appellant, Terrance K. Graham, appeals from the judgment of sentence entered on July 26, 2011 in the Washington County Court of Common Pleas. We affirm.

The record reflects that Appellant was charged with two counts of first-degree murder, one count of abuse of a corpse, and one count of tampering with physical evidence in connection with the deaths of Lynna Flippen and Earnest Yarbough. Criminal Complaint, 6/7/10. At the conclusion of Appellant's trial, the jury found Appellant guilty of all charges. Verdict, 6/15/11. On July 26, 2011, the trial court sentenced Appellant to two consecutive life sentences on the murder convictions. Sentence, 7/26/11. On the charges of abuse of a corpse and tampering with physical evidence,

*Retired Senior Judge assigned to the Superior Court.

the trial court sentenced Appellant at each count to terms of six to twelve months of incarceration to run concurrently with each other and concurrently with the life sentences. Appellant timely appealed.

On appeal, Appellant raises a multitude of issues with several subparts:

I. DID THE TRIAL COURT ERR IN DENYING [Appellant's] MOTION TO SUPPRESS HIS MAY 13, 2010 STATEMENTS TO POLICE?

II. DID THE TRIAL COURT ERR IN PERMITTING THE COMMONWEALTH'S ENTRY INTO EVIDENCE [Appellant's] ALLEGED VIOLENT PAST WITH VICTIM LYNNA FLIPPEN THROUGH:

A. WASHINGTON COUNTY PROTECTION FROM ABUSE ACTIONS:

- i. 2007-4767?
- ii. 2007-8193?
- iii. 2008-9343?
- iv. 2010-1074?

B. PENNSYLVANIA STATE POLICE TESTIMONY ABOUT PRIOR INCIDENT(S) OF DOMESTIC VIOLENCE BETWEEN [Appellant] AND MS. FLIPPEN?

C. TESTIMONY OF LAY WITNESSES, INCLUDING BUT NOT LIMITED TO JOHN DZIAK'S TESTIMONY ABOUT PRIOR INCIDENTS OF ALLEGED PHYSICAL ABUSE BY [Appellant] TOWARDS MS. FLIPPEN?

III. DID THE TRIAL COURT ERR IN PERMITTING THE COMMONWEALTH'S ENTRY INTO EVIDENCE OF FOUR PHOTOGRAPHS OF THE TWO DECEASED VICTIMS:

A. RELATIVE TO MS. FLIPPEN, FROM THE VEHICLE IN WHICH SHE WAS FOUND PARTIALLY CLOTHED AND FROM HER AUTOPSY?

B. RELATIVE TO ERNEST YARBOUGH, JR., FROM HIS AUTOPSY?

IV. IN LIGHT OF THE COMMONWEALTH'S FAILURE TO PRODUCE THE FIREARM THAT CAUSED THE VICTIMS' DEATHS OR SUFFICIENT EVIDENCE LINKING [Appellant] TO A PARTICULAR FIREARM INVOLVED, DID THE TRIAL COURT ERR IN PERMITTING THE COMMONWEALTH'S ENTRY INTO EVIDENCE OF [sic] TESTIMONY AND EVIDENCE RELATING TO FIREARMS ALLEGEDLY ASSOCIATED WITH [Appellant], SPECIFICALLY THAT:

A. [Appellant] WAS KNOWN TO HAVE CARRIED A .38 CALIBER FIREARM, ONE OF THE TWO TYPES OF FIREARMS THAT COULD HAVE CAUSED THE VICTIMS' DEATHS?

B. THE PENNSYLVANIA STATE POLICE FOUND LITERATURE RELATING TO A .38 SMITH AND WESSON IN A SEARCH OF ONE OF [Appellant's] VEHICLES?

V. DID THE TRIAL COURT ERR IN ALLOWING TROOPER FRANK MYSZA TO TESTIFY, AND GIVE AN OPINION CONCERNING THE CELLPHONE OF [Appellant] IN RELATION TO TIME, PLACE, TOWER LOCATIONS, ETC. WHEN TROOPER MYZA [sic] WAS NOT QUALIFIED AS AN EXPERT AND GAVE TESTIOMNY [sic] FOR WHICH HE DID NOT POSSESS SPECIALIZED KNOWLEDGE, SKILL, EXPERIENCE, TRAINING, OR EDUCATION, AS REQUIRED BY PENNSYLVANIA RULE OF EVIDENCE 702?

VI. DID THE TRIAL COURT ERR IN REFUSING THE DEFENSE'S REQUEST TO CHARGE THE JURY ON STANDARD JURY INSTRUCTION 3.04D, RELATIVE TO AN ALLEGED VIOLATION OF MIRANDA RIGHTS DURING POLICE QUESTIONING?

VII. DID THE TRIAL COURT ERR IN ITS ANSWER TO A JURY QUESTION, WHEREIN THE COURT SUPPLEMENTED ITS INSTRUCTION ON DIRECT AND CIRCUMSTANTIAL

EVIDENCE (7.02A) BY ADDING PARAGRAPH FOUR, WHICH WAS NOT READ IN THE COURT'S CHARGE TO THE JURY?

VIII. DID THE COMMONWEALTH PRESENT SUFFICIENT EVIDENCE FOR EACH COUNT, INCLUDING:

[A]. CRIMINAL HOMICIDE, TWO COUNTS;

[B]. ABUSE OF A CORPSE; AND

[C]. TAMPERING WITH PHYSICAL EVIDENCE?

IX. WAS THE VERDICT ENTERED AGAINST THE WEIGHT OF THE EVIDENCE ON EACH COUNT, INCLUDING:

[A]. CRIMINAL HOMICIDE, TWO COUNTS;

[B]. ABUSE OF A CORPSE; AND

[C]. TAMPERING WITH PHYSICAL EVIDENCE?

Appellant's Brief at 5-7.

Upon review of the issues raised, the certified record, the briefs of the parties, and the applicable legal authority, we conclude that the thorough suppression court opinion entered on May 31, 2011, and the trial court opinion entered on February 16, 2012, comprehensively and correctly dispose of Appellant's appeal.¹ Accordingly, we affirm Appellant's judgment

¹ Insofar as Appellant challenges the admissibility of the photographs depicting the bodies of the deceased, which he alleges were inflammatory, we point out that Appellant failed to include the photographs in the certified record. Because of this failure, we are not privy to what those photographs depict. As such, we defer to the trial court's discretion regarding their admissibility. *See Commonwealth v. Miller*, 897 A.2d 1281, 1287 (Pa. Super. 2006) (stating that, where the appellant challenges the admissibility of photographs of an allegedly gruesome nature but fails to ensure they are forwarded to this Court for review, we defer to the discretion of the trial judge who had the opportunity to view the photographs).

of sentence, and we do so based on those opinions. **See** Suppression Court Opinion, 5/31/11; Trial Court Opinion, 2/16/12.

Judgment of sentence affirmed.