

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
NATHAN HENRY WILLIAMS,	:	
	:	
Appellant	:	No. 896 WDA 2013

Appeal from the Judgment of Sentence Entered September 24, 2012,
In the Court of Common Pleas of Allegheny County,
Criminal Division, at No. CP-02-CR-0015286-2011.

BEFORE: FORD ELLIOTT, P.J.E., SHOGAN and MUSMANNO, JJ.

MEMORANDUM BY SHOGAN, J.: **FILED DECEMBER 23, 2014**

Appellant, Nathan Henry Williams, appeals from the judgment of sentence entered in the Court of Common Pleas of Allegheny County on September 24, 2012, following a jury trial. We affirm.

The trial court summarized the facts of the crime as follows:

The facts introduced at trial established that on August 28, 2011, at approximately 6:00 a.m., Devola Hatten was in her bedroom on Colwell Street when her attention was drawn outside when she heard screaming. She indicated it was a female voice yelling "help, help, call the police, call the police." (N.T. 46). She went to the window, looked out and in the dim light of that early morning, saw two shadowy figures entering an alleyway. One was chasing the other. She saw the first figure being chased stop, turn around and strike towards her pursuer in a scratching or clawing motion. (N.T. 47). She could not identify either person nor could she state, from that distance, what their gender was. She believed that one was a female based on the voice she heard.

After they disappeared in the alleyway, she returned to her bed. She looked out the window a few minutes later and saw a single figure walking away from the area where the two had been heading. She also indicated that she did not call the police nor go down there because occurrences like that were not unusual. The area that she was looking into was often frequented by prostitutes and drug dealers.

Corey Ribovic, who lived in an apartment building near the same alleyway, testified that at approximately noon on August 29th, he went on his balcony to smoke a cigarette when he observed what appeared to be a mannequin lying at the edge of his apartment complex's parking lot. He called the police and later learned that, in fact, what he observed was the body of the victim.

When the police arrived, they found the woman's naked body lying face down. She had a ligature around her neck. Her clothes were burned and her body had burns in her genital region. An empty bottle of alcohol lay nearby and appeared to have only recently been left there. The crime scene was preserved, including the victim's body, which was taken to the Medical Examiner's Office for autopsy. Prior to the autopsy, evidence was retrieved from the victim's body. Swabs were taken from her vagina, rectum and inside her mouth. Her fingernails were clipped and any material under them was preserved. The ligature was taken off her neck and preserved. All of these materials were subjected to DNA analysis. The cause of death, according to the pathologist, Todd Lukasevic, M.D., was strangulation.

Trial Court Opinion, 1/27/14, at 4-5.

The DNA samples were entered into a database that led investigators to Appellant. When his DNA matched that recovered from the victim, who was a homeless prostitute, Appellant was arrested and charged with her murder and rape. Following a jury trial that began on July 11, 2012, Appellant was convicted of first-degree murder and abuse of corpse, and not

guilty of rape and involuntary deviate sexual intercourse ("IDSI"). The trial court ordered preparation of a presentence report, and thereafter, on September 24, 2012, imposed a mandatory life sentence without parole for first-degree murder, with a concurrent term of incarceration of one to two years for abuse of corpse.

Trial counsel, a member of the Allegheny County Office of the Public Defender, sought to withdraw, and she was permitted to do so. The trial court appointed conflict counsel to represent Appellant on post-sentence motions and direct appeal. New counsel filed post-sentence motions on September 26, 2012, which were denied by operation of law on April 23, 2013. Counsel filed a notice of appeal on May 23, 2013, and both Appellant and the trial court complied with Pa.R.A.P. 1925. On January 14, 2014, the trial court permitted conflict counsel to withdraw, and on February 3, 2014, appointed present counsel to represent Appellant.

Appellant raises the following five issues on appeal:

I. Insufficient Evidence of Postmortem Abuse. A conviction for abuse of corpse requires proof of treating "a corpse" in a way that one "knows would outrage ordinary family sensibilities." If the Commonwealth's experts cannot opine on the ultimate issue of whether a corpse's injuries were inflicted before or after death, is there insufficient evidence for the jury to convict for the charge?

II. Erroneous Jury Instruction: Consciousness of Guilt. The language of Suggested Criminal Jury Instruction 3.15 connotes and presupposes direct and definitive evidence of the defendant's conduct in order to instruct on consciousness of

guilt. Where the court instructed the jury “that there was an act or act of attempting to destroy evidence,” but there was no direct and definitive evidence linking Appellant to such destructive acts, was the consciousness-of-guilt instruction improper for the jury’s deliberations?

III. Failure to Give Written Instruction on Beyond-A-Reasonable-Doubt Standard. Juries in a criminal case must be given a positive instruction fully and accurately defining “reasonable doubt.” The standard of proof “beyond a reasonable doubt” is a requirement of due process. Given the standard’s apparent importance and Appellant’s reliance upon it as the “ultimate defense,” did the trial court err by not providing the jury a written instruction on the definition of reasonable doubt?

IV. Postponement to Assess Competency for Trial. A person charged with a crime is incompetent to stand trial if he cannot understand the nature or object of the proceedings against him or participate in his own defense. Where Appellant acted irrationally at the start of trial, evidenced his lack of understanding of the proceedings, and indicated that his depression caused a disturbance in his thinking, did the trial court err in proceeding to trial without the benefit of a behavior-clinic evaluation to assess Appellant’s competency?

V. First-Degree Murder Conviction Sustained on Inferior Evidence. A verdict is against the weight of the evidence if it is so contrary to the evidence to shock one’s conscience or sense of justice. Where Appellant admitted contact with the victim but denied any involvement in her death, and the only link of Appellant to the instrument of the victim’s death was based on inferior “touch DNA” evidence, was a first-degree murder conviction based on such evidence so unconscionable that it was against the weight of the evidence?

Appellant’s Brief at 5–7 (*verbatim*).^[1]

¹ Issues in the Pa.R.A.P. 1925(b) statement concerning Appellant’s right to represent himself and his request for a postponement to prepare for trial have been abandoned; counsel asserts that “both issues were waived by Appellant’s choice to proceed with counsel at trial.” Appellant’s Brief at

We explain the relevant standards of review. Appellant challenges the sufficiency of the evidence supporting his conviction for abuse of corpse and the weight of the evidence supporting his conviction for first-degree murder. In reviewing the sufficiency of the evidence, we must determine whether the evidence admitted at trial and all reasonable inferences drawn therefrom, viewed in the light most favorable to the Commonwealth as verdict winner, were sufficient to prove every element of the offense beyond a reasonable doubt. **Commonwealth v. James**, 46 A.3d 776, 779 (Pa. Super. 2012). It is within the province of the fact-finder to determine the weight to be accorded to each witness's testimony and to believe all, part, or none of the evidence. **Commonwealth v. Cousar**, 928 A.2d 1025 (Pa. 2007); **Commonwealth v. Moreno**, 14 A.3d 133 (Pa. Super. 2011). The Commonwealth may sustain its burden of proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial evidence. **Commonwealth v. Hansley**, 24 A.3d 410 (Pa. Super. 2011). Moreover, as an appellate court, we may not re-weigh the evidence and substitute our judgment for that of the fact-finder. **Commonwealth v. Ratsamy**, 934 A.2d 1233 (Pa. 2007); **Commonwealth v. Brown**, 23 A.3d 544 (Pa. Super. 2011). Any doubts regarding a defendant's guilt may be

5 n.1. Counsel further acknowledges abandonment of the issue alleging that the conviction for abuse of corpse was against the weight of the evidence. **Id.** at 7 n.2.

resolved by the fact-finder unless the evidence is so inconclusive that as a matter of law no probability of fact may be drawn from the circumstances.

Moreno, 14 A.3d at 133.

An allegation that the verdict is against the weight of the evidence is addressed to the discretion of the trial court. **Commonwealth v. Ramtahal**, 33 A.3d 602 (Pa. 2011). “An appellate court, therefore, reviews the exercise of discretion, not the underlying question whether the verdict is against the weight of the evidence.” **Id.** at 609. “A new trial should not be granted because of a mere conflict in the testimony or because the judge on the same facts would have arrived at a different conclusion.” **Commonwealth v. Clay**, 64 A.3d 1049, 1055 (Pa. 2013). Instead, a new trial should be granted “only in truly extraordinary circumstances” **Commonwealth v. Edwards**, 903 A.2d 1139, 1149 (Pa. 2006).

The trial court will award a new trial only when the jury’s verdict is so contrary to the evidence as to shock one’s sense of justice. **Commonwealth v. Diggs**, 949 A.2d 873 (Pa. 2008). “In determining whether this standard has been met, appellate review is limited to whether the trial judge’s discretion was properly exercised, and relief will be granted only where the facts and inferences of record disclose a palpable abuse of discretion.” **Id.** at 879. Thus, “the trial court’s denial of a motion for a new

trial based on a weight of the evidence claim is the least assailable of its rulings.” **Commonwealth v. Rivera**, 983 A.2d 1211, 1225 (Pa. 2009).

Appellant also challenges the trial court’s jury instructions. In reviewing a jury charge, we determine “whether the trial court committed a clear abuse of discretion or an error of law which controlled the outcome of the case.” **Commonwealth v. Brown**, 911 A.2d 576, 582–583 (Pa. Super. 2006). We must view the charge as a whole; the trial court is free to use its own form of expression in creating the charge. **Commonwealth v. Hamilton**, 766 A.2d 874, 878 (Pa. Super. 2001). “[Our] key inquiry is whether the instruction on a particular issue adequately, accurately and clearly presents the law to the jury, and is sufficient to guide the jury in its deliberations.” **Id.** Moreover,

[i]t is well-settled that “the trial court has wide discretion in fashioning jury instructions. The trial court is not required to give every charge that is requested by the parties[,] and its refusal to give a requested charge does not require reversal unless the appellant was prejudiced by that refusal.”

Commonwealth v. Scott, 73 A.3d 599, 602 (Pa. Super. 2013) (quoting **Brown**, 911 A.2d at 583).

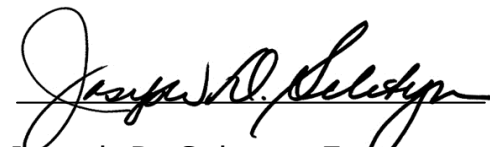
Appellant also suggests the trial court should have ordered a competency evaluation. A defendant is presumed competent, and it is his burden to show otherwise. **Commonwealth v. Stevenson**, 64 A.3d 715, 720 (Pa. Super. 2013). Moreover, the determination of competency falls

within the sound discretion of the trial court, which we accord great deference. **Commonwealth v. Sanchez**, 907 A.2d 477, 490 (Pa. 2006); **accord Commonwealth v. Chopak**, 615 A.2d 696, 700 (Pa. 1992) (explaining that the sensitive nature of the competency issue requires that a trial judge's conclusions be afforded great deference because the judge had the opportunity to personally observe a defendant's behavior). **Sanchez**, 907 A.2d at 490.

We have reviewed the complete record, including the notes of testimony, the arguments of the parties, and the relevant law. We conclude that the trial court has perceptively and thoroughly addressed each of the arguments raised by Appellant, and we rely on its opinion to affirm the judgment of sentence.²

Judgment of sentence affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/23/2014

² In the event of further proceedings in this matter, the parties are directed to attach a copy of the opinion.

IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL DISTRICT
ALLEGHENY COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA, CRIMINAL DIVISION

v.

CC No.: 201115286

NATHAN HENRY WILLIAMS,

Defendant.

OPINION OF THE COURT

Honorable Jeffrey A.
Manning, P.J.
Court of Common Pleas
Room 325 Courthouse
436 Grant Street
Pittsburgh, PA 15219

Counsel of Record:

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For the Commonwealth:

Office of the District Attorney
of Allegheny County
400 Allegheny County
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Pittsburgh, PA 15219

IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL DISTRICT
ALLEGHENY COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA, CRIMINAL DIVISION

v.

CC No.: 201115286

NATHAN HENRY WILLIAMS,

Defendant.

OPINION OF THE COURT

Manning, J.

The defendant, Nathan Henry Williams, was charged by criminal information with one count each of Criminal Homicide; Rape; Involuntary Deviate Sexual Intercourse; and Abuse of a Corpse. He proceeded to jury trial on July 11, 2012. On July 16, 2012, the jury returned verdicts of guilty as to the Criminal Homicide – Murder of the First Degree and Abuse of a Corpse counts and not guilty on the Rape and IDSI charges. On September 24, 2012, the defendant was sentenced to a term of life imprisonment without the possibility of parole on the Homicide count and not less than one (1) nor more than two (2) years on the Abuse of a Corpse count, concurrent with the life sentence. The defendant filed a timely Notice of Appeal and, in the

Concise Statement of Matters Complained of on Appeal, identified the following claims he intends to raise¹:

1. The evidence was insufficient as to the count of Abuse of a Corpse because counsel failed to prove beyond a reasonable doubt that the burns on the victim were sustained after her death;
2. The verdicts of guilty as to Criminal Homicide and Abuse of a Corpse were against the weight of the evidence because:
 - a. The only evidence that connected the defendant to the death of the victim was touch DNA on the instrument of her death and touch DNA is scientifically considered to be inferior in DNA evidence; and
 - b. The verdict as to the Abuse of a Corpse count was against the weight of the evidence as the Commonwealth failed to establish that the burns were inflicted after the victim's death.
3. The Court erred in denying trial counsel's request for a psychiatric evaluation of the defendant on the first day of trial;
4. The Court erred in denying the defendant's request to represent himself;
5. The Court erred in denying the defendant's request for a postponement; and
6. The Court erred in instructing the jury as to the consciousness of guilt based upon the evidence concerning the burning of the victim.

¹ Defendant's counsel requested, and was granted leave, to withdraw from representing the defendant in this appeal and new counsel has been appointed.

The facts introduced at trial established that on August 28, 2011, at approximately 6:00 a.m., Devola Hatten was in her bedroom on Colwell Street when her attention was drawn outside when she heard screaming. She indicated it was a female voice yelling "help, help, call the police, call the police." (N.T. 46). She went to the window, looked out and in the dim light of that early morning, saw two shadowy figures entering an alleyway. One was chasing the other. She saw the first figure being chased stop, turn around and strike towards her pursuer in a scratching or clawing motion. (N.T. 47). She could not identify either person nor could she state, from that distance, what their gender was. She believed that one was a female based on the voice she heard.

After they disappeared in the alleyway, she returned to her bed. She looked out the window a few minutes later and saw a single figure walking away from the area where the two had been heading. She also indicated that she did not call the police nor go down there because occurrences like that were not unusual. The area that she was looking into was often frequented by prostitutes and drug dealers.

Corey Ribovic, who lived in an apartment building near the same alleyway, testified that at approximately noon on August 29th, he went on his balcony to smoke a cigarette when he observed what appeared

to be a mannequin lying at the edge of his apartment complex's parking lot. He called the police and later learned that, in fact, what he observed was the body of the victim.

When the police arrived, they found the woman's naked body lying face down. She had a ligature around her neck. Her clothes were burned and her body had burns in her genital region. An empty bottle of alcohol lay nearby and appeared to have only recently been left there. The crime scene was preserved, including the victim's body, which was taken to the Medical Examiner's Office for autopsy. Prior to the autopsy, evidence was retrieved from the victim's body. Swabs were taken from her vagina, rectum and inside her mouth. Her fingernails were clipped and any material under them was preserved. The ligature was taken off her neck and preserved. All of these materials were subjected to DNA analysis. The cause of death, according to the pathologist, Todd Lukasevic, M.D., was strangulation.

A DNA profile obtained from the victim was submitted to a national database and matched, to nearly a statistical certainty, a sample identified as having been provided by the defendant. A buccal swab was then obtained directly from the defendant. The DNA profile from this sample matched the samples taken from material present in the

defendant's vagina, rectum and under her left fingernail to the same nearly statistical certainty.

The ligature around the victim's neck was also tested and produced two samples, one from the middle of the ligature and one from the end of it. Because it was touch DNA², there was less of a sample to test. The probability that the defendant was the person whose DNA was on the sample from the middle of the ligature was 1 in 142,000 in the Caucasian population; 1 in 609,000 in the African-American population and 1 in 580,000 in the Hispanic population. (N.T. 349). The probability that the sample from the end of the ligature, which provided significantly more material to be tested, was 1 in 56 million in the Caucasian population; 1 in 64 billion in the African-American population and 1 in 2.5 billion among the Hispanic population. (N.T. 352).

Based on the DNA results, the defendant was arrested on November 9, 2011 by Detectives Hal Bolin and James McGee. He was taken to the Homicide Division, placed in an interview room and advised why he had been arrested. He was then presented with a pre-interrogation warning form and read its contents. The form advised him of his rights under the Miranda decision. (N.T. 371-374). After

² DNA that is transferred to an object by touch.

being advised of these rights, the defendant agreed to speak with the detectives and signed the form indicating this agreement. (N.T. 374).

Initially, he was asked if he knew the victim or had any contact with prostitutes in the past. He denied knowing her or having anything to do with prostitutes. When shown a photograph of her, he again denied knowing her. When told that his DNA had been recovered from the victim's vagina, he then remembered picking her up. (N.T. 376). He then explained that he was walking home from work on August 20, 2011 at about 8:00 or 9:00 p.m. on Fifth Avenue. An older white male stopped him and asked him where he could find a prostitute. He said that he could and, according to the defendant, this unknown person told him that if he found him one, he would pay for the defendant to have sex with her as well. (N.T. 377). The defendant claimed that they came upon the victim and the man spoke briefly with her, waived the defendant over and the three of them proceeded to the alleyway. The defendant said that while the victim was providing with other man with oral sex, he had vaginal sex with her from behind. He said that he climaxed and then left the victim in the company of the other man. (N.T. 381). The defendant said that he wiped himself on the victim's shirt before leaving. Later in the interview, when asked to provide a description of the man he claimed

was with him, he said that he was in his "late 20's to early 30's", which was inconsistent with his initial description. (N.T. 387).

The Court will address the defendant's claims in the order in which they are raised. First, the defendant contends that the evidence as insufficient to establish his guilt as to Abuse of a Corpse. The defendant rests his argument on the testimony of Dr. Lukasevic who stated that he could not offer an opinion, within a reasonable degree of medical certainty, that the burns were inflicted after the victim's death. This claim is without merit.

The crime of Abuse of a Corpse is defined as follows: "Except as authorized by law, a person who treats a corpse in a way that he knows would outrage ordinary family sensibilities commits a misdemeanor in the second degree." 18 Pa. C.S.A § 5510. Obviously, one of the elements of this offense is that there is a corpse. Injuries inflicted prior to death would not constitute Abuse of a Corpse. Here, however, there was sufficient evidence presented to allow the jury to conclude that the defendant was guilty of this offense.

First of all, there was damage to the body beyond the burns. The victim was left, naked and burned, in a filthy alleyway. According to the evidence, when her body was discovered she was covered with flies and there appeared to be maggots present. The Court is satisfied

that leaving the victim's body exposed to the elements constituted treatment that would outrage an ordinary family's sensibilities. The Superior Court found the evidence sufficient to prove this offense in Commonwealth v. Smith, 567 A.2d 1070 (1989) where the victim's body was concealed and allowed to decompose. Similarly, in Commonwealth v. Blount, evidence that the defendant shot the victims and had their bodies dumped in an alleyway, where they were found four days later in a state of decomposition, was sufficient to allow the jury to convict the defendant of Abuse of a Corpse. 647 A.2d 199 (Pa. 1994).

Even if leaving the body exposed were not enough, there was enough circumstantial evidence to allow the jury to conclude that the defendant inflicted the burns after the victim had died. There were burns on the body consistent with an attempt to destroy the biological evidence that might be left in a rape. The areas burned, the victim's groin area, would be where such materials would likely be deposited. There were burns to the ligature around the victim's neck; consistent with those occurring after the victim had been strangled. The expert on fires, Michael Burns, testified that the burns were consistent with a flammable liquid being poured on the victim and then set afire. (N.T.

160). The inference that the victim was burned after her death was a reasonable one to draw from the evidence.

The defendant next claims that the verdict was against the weight of the evidence as to both counts. He claims that the verdict was against the weight of the evidence as to the Abuse of the Corpse for the same reasons as he offered in support of his challenge to the sufficiency of the evidence. For the same reasons this Court rejected the challenge to the sufficiency of the evidence, this claim must likewise be rejected. The jury heard enough evidence to allow it to conclude that the defendant treated the victim's body in a manner that would outrage the sensibilities of her family; either by leaving it exposed to the elements or by inflicting the burns. The verdict of guilty on that count was consistent with the evidence and did not shock this Court's sense of justice.

Turning to the Homicide count, the defendant contends that the evidence was insufficient because "the only evidence that connects the defendant to the death of the victim is his touch DNA on the instrument of her death". That, however, was not the "only evidence". In addition, the presence of the defendant's DNA on other parts of her body, as well as the defendant's admission to being present with her that night, constituted additional evidence. The defendant's changing

explanations also was evidence that the jury was free to consider reaching a verdict. A verdict is said to be against the weight of the evidence when the verdict is so contrary to the evidence as to shock one's sense of justice. Commonwealth v. Bagley, 780 A2d 605, 619 (Pa. Super.2001). It was the jury's province to weigh the evidence and determine if the Commonwealth met its burden of proof. In doing so, the jury was free to believe some, all or none of the evidence and to draw whatever reasonable inferences from that evidence were appropriate. It cannot be said that the verdict was against the weight of the evidence in this matter because reasonable inferences arising from that evidence certainly supported the jury's conclusion that the defendant killed the victim in this matter by strangling her.

The defendant's DNA placed him with the victim shortly before her death. His claim that he left another person with the victim is contradicted by the eyewitness testimony of Devola Hatten who saw two people go back in the alley and one emerge a short time later. Finally, the defendant's touch DNA on the instrument of her death, when combined with all the other evidence, certainly supported the jury's determination that it was the defendant who strangled her.

The defendant also claims that the Court erred in not ordering a psychiatric evaluation of the defendant based on his conduct the first

day of trial. Defense counsel, after a lengthy discussion among counsel, the defendant and the Court regarding whether the defendant wanted to represent himself at trial, asked the Court if it "...would consider a 48 hour or a Behavior Clinic evaluation to aid in making this decisions in what we are going to do?" (N.T. 21). A behavior clinic evaluation^{§ 19 1243} ordered to help a defendant determine if he wishes to proceed to trial with court appointed counsel or waive the right to counsel and represent himself; it is ordered to determine whether a defendant has "...sufficient ability at the pertinent time to consult with his lawyers with a reasonable degree of rational understanding, and have a rational as well as a factual understanding of the proceedings against him." Commonwealth v. Hughes, 555 A.2d 1264 (Pa. 1989).

Nothing about the defendant's actions on July 11, 2012 called into question his ability to consult with his attorney or to understand, rationally and factually, the proceedings against him. His responses to questions during the colloquy and his other statements, made it abundantly clear that he understood exactly what was happening in his case. He understood that he was going to trial and was doing anything he could to avoid that happening. Nothing he said or did suggested that he would not be able to consult with his attorney if he proceeded with counsel. He may have refused to do so, but was

certainly able to do so. Moreover, he clearly understood what he would have to do if he chose to represent himself. He understood that so well that when he realized he was going to trial one way or the other, he chose to have counsel represent him. The only reference to his mental state was his claim that he was taking anti-depressants. (N.T. 14). Beyond that, there was nothing to warrant an evaluation. It was clear that the defendant fully understood the proceedings and was simply trying to delay the matter.

The defendant next complains that the Court erred in not providing him with a postponement to prepare his defense. This request was made after the defendant had been granted the right to represent himself. He thought better of that choice and elected to have counsel represent him. Counsel did not renew the request for additional time. Accordingly, the request for a postponement was waived when counsel resumed her representation and did not renew the request. In addition, the defendant has not indicated how he was prejudiced; how the denial of the postponement affected his trial in an adverse way.

The defendant's final two claims concern this Court's jury instructions. First, the defendant contends the Court should have given the jury a written instruction of its charge on reasonable doubt.

This is contrary to the rules. Pa. Rule of Criminal Procedure 646 (b) states:

The trial judge may permit the members of the jury to have for use during deliberations written copies of the portion of the Judge's charge on the elements of the offenses, lesser included offenses, and any defense upon which the jury has been instructed.

Accordingly, the only instructions that a jury is permitted to have in written form are those that provide the elements of the offenses, the elements of any lesser included offenses, and the elements of any defense upon which a jury has been instructed by the Court orally. It would have been error for this Court to provide the jury with written instructions outside the scope of what the rule permitted.

Finally, the defendant claims the Court erred in instructing the jury that they could consider attempts to destroy evidence as evidence of the defendant's consciousness of guilt. This instruction was proper. The victim suffered burns in and around her genital region. If the jury found, as a fact, that these burns were inflicted by the defendant, they were free to consider that an attempt to destroy evidence by the defendant. An attempt to destroy evidence can be evidence of consciousness of guilt. Commonwealth v. Gonzalez, 858 A.2d 1219 (Pa. Super. 2004) (evidence that defendant set fire to van with the victim still inside was evidence of an attempt to destroy evidence).

[A]ctions subsequent to the killing in attempting to destroy or dispose of evidence could have been interpreted by the jury as evidencing consciousness of guilt. Indeed, evidence of disposal of a victim's body is analogous to evidence of an accused's flight or concealment, and this Court has long recognized the relevance and admissibility of the latter types of evidence which advance an inference of guilt.

Commonwealth v. Colson, 490 A.2d 811, 823-824 (Pa. 1985).

As the evidence of the defendant's consciousness of guilt was admissible, it was proper for the Court to instruct the jury to consider it.

For the reasons set forth above, the judgment of sentence should be affirmed.

BY THE COURT:

Date: _____, P.J.