NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
GLENN HANSEN,	:	No. 2949 EDA 2011
Appellant	:	

Appeal from the Judgment of Sentence, May 25, 2011,
in the Court of Common Pleas of Philadelphia County
Criminal Division at No. CP-51-CR-0009484-2007

BEFORE: FORD ELLIOTT, P.J.E., BENDER AND SHOGAN, JJ.

MEMORANDUM BY FORD ELLIOTT, P.J.E.: Filed: February 7, 2013

This is an appeal from the judgment of sentence entered in the Court of Common Pleas of Philadelphia County on May 25, 2011. The underlying facts that form the origin of this matter occurred from April 7, 2005, when the Philadelphia police discovered appellant's girlfriend, Taneke Daniels, on a Philadelphia street wearing only a t-shirt and screaming from a broken arm to April 24, 2006, when the mummified body of Ms. Daniels was found by construction workers in a shallow grave in a New Jersey state park. Following a jury trial, appellant was found guilty of first degree murder and abuse of a corpse and was sentenced to a mandatory minimum term of life imprisonment along with a consecutive sentence of one to two years. After careful review, we affirm.

The trial court provided a summary of the evidence at trial as follows:

> Philadelphia Police Corporal Rafael Ali testified that in the early evening hours of April 7, 2005, he was called to the Liberty Towers Apartment Building at 1101 N. 63rd Street in Philadelphia to respond to a complaint of "black female naked on the highway." When he arrived he was directed to 66th Street and observed Taneke Daniels walking towards the Liberty Towers. She was wearing a baggy white T-shirt that was hanging off her. The officer approached her and noticed visible bruising on her neck. She was hysterical and was clutching her arm. She said, "He broke my arm." When asked, "Who?" Ms. Daniels said it was Appellant, her boyfriend and that he drove off in a white Pontiac. As Ms. Daniels went upstairs to dress, the officer waited on the street. Appellant drove up in a white Pontiac. The officer noted a scrape on Appellant's neck. Appellant was detained. Ms. Daniels returned. She identified Appellant as her attacker and he was arrested. N.T. 5/18/11, 48-55.
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> Ms. Daniels mother, Gail Daniels testified that she spoke with her daughter daily. Taneke Daniels confided to her mother that Appellant broke her arm. On May 12, 2005, Taneke Daniels went missing. Family and friends looked for Ms. Daniels without result. While she was missing, Appellant's trial for the acts allegedly committed on April 7, 2005 against Taneke Daniels was scheduled to occur. The witness went to court to ask Appellant if he knew where she was. Before she could ask her [sic] question Appellant said, "Did she come home yet?" Ms. Davis [sic] asked him where she was. Appellant had no response and the conversation ended. Appellant's trial was continued because Taneke Daniels did not appear. N.T. 5/18/11, 64-71.
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> Benita Dixon testified that after the assault Appellant offered Ms. Daniels money if she would not testify against him at the upcoming trial. Ms. Daniels agreed and she went to Appellant's house to

accept the bribe money. She never saw Ms. Daniels again. N.T. 5/19/11, 4-19.

Helymah Barry, Taneke Daniels' niece testified that until early 2005, they lived together. On May 11, 2005, Appellant came to pick Ms. Daniels up. Ms. Daniels left with Appellant. She was wearing a pink T-shirt [Footnote 5] and a blue Denim skirt. At approximately 5 a.m. Ms. Daniels called to say that she was on her way home and to leave the front door unlocked. Ms. Daniels never returned. N.T. 5/18/11, 79-82. [Footnote 6]

Fateemah Shmique Daniels, Ms. Barry's sister testified that she called Appellant to ask what happened to her aunt, Taneke Daniels. Appellant would not answer. One day Appellant called her to say her aunt was alive and left a message on his voice mail. He gave her his password and Ms. Shmique Daniels called to hear the message. She heard Taneke Daniels leaving a profane message about Appellant hitting her. Ms. Shmique Daniels laughed to herself because she was with her aunt weeks before her disappearance when she left that message. That call was made from Ms. Shmique Daniels' phone. N.T. 5/18/11, 94-102.

Philadelphia Detective Michael Fuss was assigned to investigate Taneke Daniels' disappearance. On June 1, 2005, he interviewed Appellant. Appellant was "Mirandized" and the interview took place in the presence of Appellant's attorney, Marty Trichon. [Footnote 7]. Appellant told the Detective that on May 12, 2005 shortly after 5 a.m. he was home. Taneke Daniels was also there and asked Appellant to take her home. He said no. He heard her make a phone call saying, "He won't give me a ride, can you come get me?" Shortly thereafter she was picked up in a large white SUV. That was the last time he saw her. He told the detective that one person told him that Ms. Daniels was in Texas. Another person told him that she was selling socks at Front and Snyder. N.T. 5/18/11 154-174.

> Trooper George Deichman of the New Jersey Police testified that on April 25, 2006, almost a year after Taneke Daniels' disappearance, he was called to the Brendan Byrne State Park in the Pine Barrens of Burlington County[,] New Jersey after construction workers discovered unidentified human remains buried in a shallow grave. He went to the grave and saw the mostly skeletonized, decomposed body wrapped in what looked like a painter's tarp. The head had a Walmart bag over it. N.T. 5/18/11, 111-135.
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> Detective Sgt. Geoffrey Nobel of the New Jersey State Police supervised the processing of the grave scene, which was in a remote wooded area and conducted additional investigation into the matter. The body was in an advanced state of decomposition. The body was bound in cloth wrapped in duct tape. A blue denim skirt, a dirty off-white tank top and a belt were found under the body. A Walmart plastic bag was wrapped very tightly around the head. As part of the investigation Detective Nobel also received and analyzed Appellant's cell phone records for the time period around Ms. Daniels' disappearance. The records indicated that shortly before 10 p.m. on the night Ms. Daniels disappeared Appellant's phone was called from the home in South Philadelphia where Ms. Daniels had been staying. An analysis of cell phone tower information disclosed that Appellant's phone was in the area around Liberty Towers when he received the call. Cell phone tower analysis further disclosed that about a half hour later, Appellant's phone was near Ms. Daniels' South Philadelphia home. Later that night the phone returned to Liberty Towers. N.T. 5/19/11, 150-196.
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> . . .
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> New Jersey Detective Bryant Hoar interviewed Appellant on June 8, 2006. Appellant was "Mirandized" and the interview took place in the presence of Appellant's attorney, Marty Trichon.

> Appellant repeated the story he gave to Detective Fuss a year earlier. He also stated that he was home the entire day and night of Ms. Daniels' disappearance. He acknowledged that he had his cell phone with him. Appellant denied ever being in any New Jersey State forest.[Footnote 10] He admitted to being in a car accident in Medford Township[,] New Jersey. N.T. 5/20/12, 74-88.
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> Appellant's sister, Kelly Hansen testified that in the spring of 2005 Appellant asked her to accompany him on a trip to Brendan Byrne State Forest in New Jersey. He said he wanted to put pinecones on a tree. They went more than once. When they arrived the first time Appellant directed his sister where to go. It was springtime. Each time they went to the same spot. Appellant got out, walked up a hill and remained for 15-20 minutes arranging pinecones.[Footnote 11] One time he said, "I'm sorry. I love you." The witness testified that one morning before her first visit to New Jersey, Appellant called her and told her that the decedent was dead in his bed and that he was going to bury her. Later, Appellant admitted to his sister on more than one occasion that he killed the decedent because he believed she was going to put him in jail for abuse charges. Once Appellant told her that he put a bag over her face and smothered her. Another time he said that he put a pillow over her head and smothered her. Appellant said that Ms. Daniels was kicking and screaming for her life. As time went on, Appellant referred to the decedent as "the tree." When she accompanied him the second time to the burial site, Appellant said that the victim's arm was exposed and he needed to put more pinecones to block the stench. Appellant had asked her to bring a shovel. Appellant also told her that after he killed his victim he had sex with the dead body and it felt good. He said that the killing occurred in his apartment. Appellant threatened her not to say anything and told her to tell people that Ms. Daniels went to Texas or Florida. N.T. 5/19/11, 21-79.

[Footnote 5] She further identified the T-shirt as a "wife beater," a [sic] type of tank top.

[Footnote 6] Ms. Barry's sister, Kareemah Zyad also observed these events and corroborated Ms. Barry's version of the events.

[Footnote 7] Appellant was represented by Timothy Tarpey, Esq. at trial. He currently is represented by Lee Mandell, Esq.

[Footnote 10] By way of preserved video testimony, Police Detective Robert Carbone testified that on October 22, 2005 he stopped Appellant not far from the entrance to Brendan Byrne state park and gave him a ticket. N.T. (5/20/11, 96).

[Footnote 11] Detective Nobel testified that he once drove Kelly Hansen from Trevose, Pa. as she directed him to the New Jersey grave site. As she approached the unnamed dirt road leading to the grave site, Ms. Hansen began to weep.

Trial court opinion, 6/1/11 at 3-7.

Appellant timely complied with the trial court's order to file a concise statement of errors complained of on appeal, and raises the following issues for our review:

> I. Should the Defendant be awarded an Arrest of Judgment on the charge of Murder in the First Degree and related offenses where the verdict is not supported by sufficient evidence and where the Commonwealth did not prove the case beyond a reasonable doubt as the Commonwealth did not prove that the Defendant was a perpetrator of the crime in question and moreover did not prove that the Defendant acted with malice nor specific intent to kill?

> II. Should the Defendant be awarded a new trial as the verdict is not supported by the greater weight of the evidence and was based on speculation, conjecture and surmise and where the jury could only have returned a verdict by speculating that the Defendant was the perpetrator of the crime?
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> III. Should the Defendant be awarded a new trial where the Commonwealth did not prove that the homicide occurred in the Commonwealth of Pennsylvania and where the Commonwealth of Pennsylvania thus did not have jurisdiction over the crime?
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> IV. Should the Defendant be awarded a new trial as the result of prosecutorial misconduct where the prosecutor, during closing argument, improperly commented on the Defendant's failure to testify, and the Court's denial of the Defendant's request for mistrial?

Appellant's brief at 3.

In his first argument, appellant contends the evidence was insufficient to prove that he murdered the victim or that he did so with malice or a specific intent to kill. (***Id***. at 11.) In reviewing a claim challenging the sufficiency of the evidence to support the verdict, we:

> view[] all the evidence admitted at trial in the light most favorable to the verdict winner, [and determine if] there is sufficient evidence to enable the fact-finder to find every element of the crime beyond a reasonable doubt. In applying [the above] test, we may not weigh the evidence and substitute our judgment for the fact-finder. In addition, we note that the facts and circumstances established by the Commonwealth need not preclude every possibility of innocence. Any doubts regarding a defendant's guilt may be resolved by the fact-finder unless the evidence is so weak and inconclusive that as a matter of law no probability of fact may be drawn from

> the combined circumstances. The Commonwealth may sustain its burden of proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial evidence. Moreover, in applying the above test, the entire record must be evaluated and all evidence actually received must be considered. Finally, the trier of fact[,] while passing upon the credibility of witnesses and the weight of the evidence produced, is free to believe all, part or none of the evidence.

Commonwealth v. Troy, 832 A.2d 1089, 1092 (Pa. Super. 2003) (citations omitted). "To sustain a conviction for first degree murder, the Commonwealth must prove that a defendant acted with a specific intent to kill, that a human being was unlawfully killed, that the person accused did the killing, and that the killing was deliberate." ***Commonwealth v. Rios***, 546 Pa. 271, 281, 684 A.2d 1025, 1030 (1996), ***cert denied***, 520 U.S. 1231 (1997).

Appellant argues that it would take speculation, conjecture and surmise for a jury to determine that he was the murderer; that he suffocated the victim; that he transported the body and buried the victim in the woods. (Appellant's brief at 14.). Upon review, we believe that the evidence adduced at trial, when viewed in the light most favorable to the Commonwealth as verdict winner, was sufficient to sustain the jury's verdict of first-degree murder. The evidence supports a finding that a human being was unlawfully killed, as the victim, Taneka Daniels, was found buried in a shallow grave with a Wal-mart bag wrapped around her head and the rest of her body wrapped in a tarp. Evidence further supports a finding that the

person accused, appellant, was responsible for the death of the victim and that appellant acted with malice and specific intent to kill.

Here, the jury heard evidence that appellant was facing trial for assaulting Taneke Daniels. He feared that Ms. Daniels would testify against him and put him in jail. Appellant confessed to his sister that he had killed her and explained he brought her to his apartment, smothered her, and had sex with her dead body. Appellant told his sister that he was going to take the body out and bury it. He later enlisted his sister's aid in returning to the graveside on two occasions to cover the site with pinecones to mask the smell of the victim's decaying corpse.

Appellant told the police a false story about a stranger in a white SUV, and also lied about not having left his home that night or the next day. Appellant attempted to convince the victim's family that she was still alive by pretending to have received a voicemail message from her, while knowing that the message had been left on his cell phone long before she disappeared. This circumstantial evidence showed that appellant killed Ms. Daniels with malice and specific intent to kill. ***See Commonwealth v. Johnson***, 604 Pa. 176, 985 A.2d 915 (2009) (the Commonwealth may prove that a killing was intentional solely through circumstantial evidence in prosecution for first-degree murder); ***Commonwealth v. Galvin***, 603 Pa. 625, 985 A.2d 783 (2009) (circumstantial evidence coupled with appellant's attempt to hide the murder sufficient to prove first degree murder);

Commonwealth v. Edmiston, 535 Pa. 210, 634 A.2d 1078 (1993) (taking body to a remote area to hide it demonstrates an intent to kill).

Appellant attempts to rely on our supreme court's decision in ***Commonwealth v. Karkaria***, 533 Pa. 412, 625 A.2d 1167 (1993) regarding the lack of evidence in his case. In ***Karkaria***, a rape prosecution, the Court concluded: "The **total** failure of the Commonwealth to present **any** evidence that a single act of intercourse occurred during the period of April through September 1984 casts serious doubt upon the jury's ability to reasonably conclude that **any** criminal activity occurred during the time period charged." ***Id.*** at 421, 625 A.2d at 1171 (emphasis added). We believe the facts surrounding the case ***sub judice*** are inapposite. Instantly, the victim's body was found in a shallow grave in the woods; clearly, the result of foul play. Appellant was identified by two witnesses as the last person seen with the victim. Appellant had motive to murder the victim because he did not want her to testify against him for assault. Appellant told his sister what he had done and the jury believed her testimony.

Appellant contends because the Commonwealth could not prove beyond a reasonable doubt how the victim died, it follows that the Commonwealth could not prove first degree murder. (Appellant's brief at 12-13.) The medical examiner testified that the victim died as a result of a "homicide by unspecified means." A defense pathologist opined there was not enough evidence to show this was a homicide.

Dr. Ian Hood, the forensic pathologist in the Burlington County Medical Examiner's Office, testified at appellant's trial. (Notes of testimony, 5/20/11 at 25.) Dr. Hood did not conduct the original autopsy at the time Ms. Daniels' body was discovered in April 2006. (***Id***. at 33.) However, he reviewed the notes and photos taken by Dr. Dante Ragasa who performed the autopsy. (***Id***. at 33-34.) He also was able to review the findings and photos taken by Donna Fontana, the forensic anthropologist, assigned to this case. (***Id***. at 35.) Dr. Hood explained that you could not carry out a normal, formal autopsy because of the decomposition of the body. (***Id***. at 36.) He testified that the body was semi-skeletonized, and no organs were recognizable within it. (***Id***. at 36-37.) Dr. Hood stated due to the length of time the body had been buried and allowed to decompose, that only if a bullet or other blade or blunt instrument had done damage to a bone would a pathologist have been able to find evidence of that. (***Id***. at 40.) He pointed out that asphyxia, even in a non-decomposed body, can be very hard to diagnose. (***Id***.) He testified, "If somebody is smothered or compressed, even undecomposed, I cannot always diagnose that. It leaves very little in the way of marks of the body." (***Id***.)

Dr. Hood noted that the body had been wrapped in a tarp and the tarp was being kept around the body with duct tape. (***Id.*** at 41.) Dr. Hood stated this "wasn't somebody who just died out there for some other cause and just sort of decomposed into the Earth. This was clearly a shallow burial

with a body that had been prepared for that burial . . ." (***Id.***) Dr. Hood was specifically asked if he had an opinion as to what the manner of death was. (***Id***. at 44.) He answered, "If I find a young person's body that's clearly been deliberately buried out in the pinelands which, unfortunately includes most of my county, . . . I call them -- homicide by unspecified means." (***Id***.)

Based on the above expert testimony and in light of the fact appellant told his sister he smothered Ms. Daniels, had sex with her corpse, and then buried her body, the jury could certainly conclude that appellant murdered Ms. Daniels.

Next, appellant attacks the weight of the evidence.

> A verdict is against the weight of the evidence "only when the jury's verdict is so contrary to the evidence as to shock one's sense of justice." ***Commonwealth v. Cousar***, 593 Pa. 204, 928 A.2d 1025, 1036 (2007). . . . [A] weight of the evidence claim is addressed to the discretion of the trial judge. It is the province of the jury to assess the credibility of witnesses, and a trial judge will not grant a new trial merely because of a conflict in the testimony or because he would have reached a different conclusion on the same facts, if he had been the trier of fact. . . . This Court's function on review is to determine whether, based upon a review of the record, the trial court abused its discretion rather than to consider the underlying question of weight of the evidence.

Commonwealth v. Vandivner, 599 Pa. 617, 630, 962 A.2d 1170, 1177-1178 (2009).

"In criminal proceedings, the credibility of witnesses and weight of the evidence are determinations that lie solely with the trier of fact." ***Commonwealth v. King***, 959 A.2d 405, 411 (Pa.Super. 2008); ***accord Commonwealth v. Jackson***, 955 A.2d 441, 444 (Pa.Super. 2008) ("It is within the province of the fact-finder to determine the weight to be accorded each witness's testimony and to believe all, part, or none of the evidence introduced at trial."), ***appeal denied***, 600 Pa. 760, 967 A.2d 958 (2009); ***Commonwealth v. Kerrigan***, 920 A.2d 190, 198 (Pa.Super. 2007) ("It is a basic tenet of our judicial system that issues of credibility are left solely to the jury for resolution, and the jury is free to believe all, part, or none of the testimony presented."), ***appeal denied***, 594 Pa. 676, 932 A.2d 1286 (2007).

Appellant baldly asserts in his post-sentence motion that the verdicts were against the weight of the evidence. (***See*** Certified Record, Document D5.) Bald assertions fail to preserve issues for appellate review. ***See Commonwealth v. Hernandez***, 39 A.3d 406, 411 (Pa.Super. 2012) (bald assertion in Rule 1925(b) statement that trial court erred in a certain ruling waives claim on appeal). In any event, as noted by the trial court, the evidence, both direct and circumstantial, clearly, convincingly and beyond a reasonable doubt proved each and every element of both crimes; accordingly, the verdict did not shock one's sense of justice. (Trial court opinion, 6/1/12 at 8.) The jury credited the Commonwealth's evidence

showing that appellant killed the victim inside his apartment, had sex with her dead body, and buried her in New Jersey. In light of the evidence presented by the Commonwealth, the verdict in question was not shocking, and we conclude that the trial court did not abuse its discretion in rejecting appellant's weight-of-the-evidence claim.

In his third argument, appellant claims the evidence did not establish that the crime was perpetrated in the Commonwealth of Pennsylvania but rather in the State of New Jersey. (Appellant's brief at 19.) Appellant points out the body was discovered in New Jersey and the case was investigated by authorities in New Jersey.

The Pennsylvania Crimes Code provides:

> **§ 102. Territorial applicability**
>
> **(a) General rule**. [A] person may be convicted under the law of this Commonwealth of an offense committed by his own conduct or the conduct of another for which he is legally accountable if either:
>
> (1) the conduct which is an element of the offense or the result which is such an element occurs within this Commonwealth.

18 Pa.C.S.A. § 102(a)(1).

The trial court noted that even if it was not demonstrated that the suffocation of Ms. Daniels occurred in Pennsylvania, appellant was still properly convicted as that event did not control jurisdiction. (Trial court opinion, 6/1/12 at 8.) The court explained:

> The motive for this killing was established by the evidence of Appellant's prior assault upon the victim and his fear of going to jail for that crime. That chain of events which resulted in luring the victim to his apartment, demonstrated the necessary elements of malice and premeditation. That conduct occurred in this jurisdiction.

Id. at 8-9.

Accordingly, we find no merit to appellant's argument. ***See Commonwealth v. Passmore***, 857 A.2d 697 (Pa.Super. 2004) (While the murder occurred in Maryland, a requisite element of defendant's second degree murder conviction, namely defendant's kidnapping of victim, was committed in Pennsylvania, and therefore, Pennsylvania court had jurisdiction over defendant who was charged with killing victim during course of kidnapping; defendant plotted, planned, and executed a kidnapping in Pennsylvania that culminated in the victim's murder in Maryland), ***appeal denied***, 582 Pa. 673, 868 A.2d 1199 (2005).

Last, appellant argues the prosecutor committed prosecutorial misconduct in her closing remarks to the jury. Appellant takes issue with the following:

> THE COMMONWEALTH: And I want to say one thing to you now, ladies and gentlemen, because this defendant does not have to testify in this courtroom. He does not have to testify. He does not have to say anything. The burden of proof is squarely on my shoulders, but don't let the defense attorney make you think that there has been some testimony about what the defendant did on that night by saying things like, oh, he's all messed up on drugs so he let her take control, or saying words like that, because

> the defendant didn't take the stand because he didn't want to be cross-examined about those things. So don't make them [the defense team] think what they said to you they somehow have given you evidence of the defendant's state of mind is he's afraid of certain things or he's messed up on drugs at a certain time. You have no evidence of that.

Notes of testimony, 5/23/11 at 86. After the prosecution concluded its closing, the trial court asked counsel to place any objections on the record. Appellant's counsel stated:

> There's one circumstance where [the prosecutor] indicated that [appellant], basically, and his not testifying. She indicated to the people of the jury there that he, basically, had to go on the stand and testify. She said something to the effect of don't let him get away, basically, with not testifying.
>
> Now, there was evidence that was submitted in reference to everything that we said, and by her indicating or even intimating the fact that he would have to testify violates his Fifth Amendment rights, and I would move for a mistrial.

Id. at 115.

The prosecutor responded that she knew she "directly said that he shouldn't be allowed to make them [the jury] think that he had testified and he didn't have the burden to testify." (***Id.*** at 116.) The trial court went on to rule that it would not grant the motion for mistrial, but it would give the following cautionary instruction.

> [I]n her closing argument, [the prosecutor] may have implied that she knows why the defendant chose not to testify in this case. I'm talking about her insinuation that the defendant chose not to testify because he didn't want to be subject to cross examination. She misspoke. The

> defendant has no burden at all in this case. The Commonwealth must prove each and every element of each crime beyond a reasonable doubt. That burden never shifts. In both the federal and state Constitutions to enforce that is the privilege of self-incrimination. I'm telling you that you must reject [the prosecutor's] insinuation as to any reason why the defendant did not testify.

Id. at 116-117.

After hearing the trial court's proposed cautionary instruction, the prosecutor objected to the trial court using the word "insinuation." The prosecutor explained:

> I think what I said was fair response, and I have no objection to your saying the defendant has no duty to testify, because that is true, but counsel, essentially, said several times what -- he's messed up on drugs. You'll hear he said, you know, he's messed up on drugs and he does this. Specifics that the defendant was supposed to be doing and saying that would only have been able to come from testimony. There was no evidence with regard to that. If he said came from other source, that would support that argument except from what the defense -- the defense was implying the defendant had said. And I would suggest he's not allowed to do it. There's a case right on point which says it's fair response to comment on the fact he can't -- ***he doesn't have to testify, but he can't make you think he has and suggests he has said certain things***, and that's all I did. And I would say the word "insinuation" makes it illicit on my part or somehow illegal, and I don't believe it was. I think it was fair response. (emphasis added.)

Id. at 117-118.

The trial court took a recess and when it returned advised counsel that it had read the transcript of the prosecutor's closing remarks, and it was clear that the prosecutor was in the process of making fair comment

concerning argument by the defense counsel. (***Id***. at 121.) The trial court stated: "[The prosecutor] made inadvertent comment concerning the cross examination. In the context of which she argued, it was clear that it was comment concerning [defense counsel's] argument to the jury, so I will give the cautionary that I said, but I will just -- I'm just going to change the word [insinuation] to inadvertent. Okay." (***Id***. at 121.) With that said, the jury entered the courtroom for the trial court's closing charge.

Appellant now argues the court's instruction was inadequate to cure the alleged harm he sustained from the prosecutor's remark and the trial court abused its discretion in denying a mistrial. "A defendant must object to a jury charge at trial, lest his challenge to the charge be precluded on appeal." ***Commonwealth v. Corley***, 638 A.2d 985, 990 (Pa.Super. 1994), ***appeal denied***, 538 Pa. 641, 647 A.2d 896 (1994). In ***Commonwealth v. Page***, 965 A.2d 1212, 1222 (Pa.Super. 2009), this court observed that where an objection is made, then a curative instruction issued, appellant's only challenge is to the adequacy of the curative instruction. Instantly, appellant failed to object to the court's cautionary instruction; hence, this argument is waived. ***Commonwealth v. Sargent***, 385 A.2d 484, 485 n.2 (Pa.Super. 1978) (because appellant did not object to the instruction, any claim in relation to its adequacy is waived.)

Last, we address the trial court's denial of the motion for a mistrial. A prosecutor is allowed fairly wide latitude in advocating for the

Commonwealth, including the right to argue all fair deductions from the evidence, to respond to defense arguments, and to engage in a certain degree of oratorical flair. ***Commonwealth v. Johnson***, 527 Pa. 118, 127, 588 A.2d 1303, 1305 (1991). Comments of the prosecutor in summation will not warrant a new trial unless it is inevitable that they prejudiced the jury, forming in their minds a fixed bias and hostility toward the defendant so that they could not weigh the evidence and render a fair verdict. ***Commonwealth v. Christy***, 540 Pa. 192, ___, 656 A.2d 877, 885 (1995), ***certiorari denied***, 516 U.S. 872 (1995). The decision to grant a mistrial based upon prosecutorial misconduct lies within the sound discretion of the trial court and will not be reversed unless there has been a flagrant abuse of discretion. ***Commonwealth v. La***, 640 A.2d 1336, 1347 (1994), ***appeal denied***, 540 Pa. 597 (1994).

In the instant matter, the prosecutor was responding to defense counsel's closing arguments regarding appellant's alleged drug use at the time Ms. Daniels went missing. The prosecutor was simply stating there was no evidence presented at trial that appellant was on drugs on the night in question. Based on our review of the entire closing arguments and the trial court's cautionary instruction, a mistrial was not warranted. Appellant's motion for mistrial was properly denied by the trial court.

Judgment of sentence affirmed.