

[J-5-2002]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	No. 285 CAP
	:	
Appellee	:	
	:	Appeal from the Judgment of Sentence of
	:	Death of the Court of Common Pleas of
v.	:	Allegheny County entered May 6, 1999, at
	:	CC No. 99415431.
	:	
TIMOTHY BOCZKOWSKI,	:	
	:	
Appellant	:	ARGUED: March 4, 2002

CONCURRING OPINION

MR. JUSTICE SAYLOR

DECIDED: March 23, 2004

I join the majority opinion, in all respects but the following.

I have greater difficulty than does the majority with the admission of hearsay evidence concerning Elaine Boczkowski's fear of Appellant in the months leading up to her death. See Majority Opinion, slip op. at 26-27 & n. 23. The question of admissibility implicates an area of this Court's jurisprudence that has been the subject of recent differences, namely, the relevance of a victim's state of mind in a first-degree murder case. Compare, e.g., Commonwealth v. Stallworth, 566 Pa. 349, 364, 781 A.2d 110, 118 (2001) (taking a broad view of relevance concerning a victim's perception of her deteriorated relationship with the accused in a first-degree murder trial), with Commonwealth v. Laich, 566 Pa. 19, 27-29, 777 A.2d 1057, 1061-62 (2001) (reflecting a narrower view concerning the relevance of victim-state-of-mind evidence). See generally Stallworth, 566 Pa. at 383-85, 781 A.2d at 130 (Saylor, J., concurring and

dissenting). I note, however, that, even under the narrower view, evidence concerning a victim's state of mind may be relevant in limited circumstances, including, inter alia, those entailing a defense claim of accidental death. See generally id. at 382-83 & n.4, 781 A.2d at 129 & n.4.

In this case, although early on in the trial defense counsel avoided a direct contention that Maryann Boczkowski died as a result of an accident, from the outset counsel challenged the prosecution as one-sided and unfair, claiming that "we will show you through very competent professional testimony that this case is not a homicide," but rather, that "Maryann had serious health conditions which contributed to and caused her death." N.T., Apr. 15, 1999, at 59-60 (defense opening statement). It became quite apparent from the circumstances of Maryann Bockowski's death, as well as the evidence developed throughout trial, and was ultimately confirmed in defense counsel's closing statement, that counsel's allusion to health problems encompassed alcoholism and associated physical conditions, see N.T., May 6, 1999, at 1907 (defense closing statement), and that the alternative to homicide that he was suggesting was accidental death due to drowning. See, e.g., id. at 1944, 1961. In light of the defense's theory of accidental death, which was shaped from the outset of the case, I agree with the majority that the trial court did not abuse its discretion in discerning relevance of the state-of-mind evidence in the Commonwealth's case-in-chief.¹ Notably, as well, Appellant does not presently challenge the admission of the evidence under Pennsylvania Rule of Evidence 403's requirement that the probative value outweigh potential prejudice. See Pa.R.E. 403. See generally United States v. Brown, 490 F.2d

¹ I acknowledge that the case is particularly close, because the evidence at issue did not relate to the actual victim's state of mind, but to that of Appellant's former wife. I agree, nevertheless, with the majority's assessment concerning the relevance of such evidence in the unique circumstances presented. See Majority Opinion, slip op. at 14-17.

758, (D.C. Cir. 1973) (discussing the risk of prejudice in the admission of victim-state-of-mind evidence); MCCORMICK ON EVIDENCE §276 (5th ed. 1999) (same).

Mr. Justice Nigro joins this concurring opinion.