IN THE COURT OF COMMON PLEAS OF BEAVER COUNTY
PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA	:	
	:	
vs.	:	No. 580 - 2012
	:	
GREGORY SCOTT HOPKINS	:	

OPINION AND ORDER

JUDY REINSTEIN
CLERK OF COURTS
BEAVER CO. PENNSYLVANIA
2012 NOV -5 A 8:

H. KNAFELC, J. **November 5th, 2012**

Before the Court is a Motion to Preclude Expert Report and Testimony filed on behalf of the Defendant in this matter. The Defendant has been charged with one count of general homicide stemming from an incident that occurred on or around September 1, 1979, on which date Catherine Janet Walsh was killed. He was charged and arrested in January of 2012. It is not disputed that the Commonwealth's case against the Defendant rests upon DNA evidence derived from seminal fluid found at the scene of the victim's demise. The Commonwealth asserts and will seek to prove at trial that the Defendant was engaged in an intimate relationship with the victim, and had been at the victim's residence on occasions prior to September 1, 1979. Further, the Commonwealth will seek to prove that when the body of the victim was found, she was discovered face down in her bed with her arms bound behind her back, and had a white rope tied around her wrists; a blue kerchief was tied around her neck. Moreover, the Commonwealth will seek to demonstrate that in accordance with the autopsy report, the manner of death was strangulation. Also, the Commonwealth will seek to prove that pursuant to lab results, the Defendant's DNA matches the DNA found on the victim's blue nightgown, the white bathrobe rope tied around her wrists, and the bed sheet that covered the victim's body.

> "Expert testimony is permitted as an aid to the jury when the subject matter is distinctly related to a science, skill, or occupation beyond the knowledge or experience of the average layman." Commonwealth v. Auker, 545 Pa. 521, 681 A.2d 1305, 1317 (1996). The average layperson is generally unacquainted with the physical processes accompanying ligature strangulation; therefore, this was a proper subject for [the medical expert] to explain.

Commonwealth v. Lopez, 578 Pa. 545, 554, 854 A.2d 465, 470 (2004). Our Supreme Court has further opined:

> In Pennsylvania, expert testimony is sufficient to support a finding when given with a reasonable degree of medical certainty. *See* Commonwealth v. Baez, 554 Pa. 66, 720 A.2d 711, 727 (1998). "The expert has to testify ... that in his professional opinion the result in question came from the cause alleged. A less direct expression of opinion falls below the required standard of proof and does not constitute legally competent evidence." *Menarde v. Philadelphia Transp. Co.*, 376 Pa. 497, 103 A.2d 681, 684 (1954). In analyzing a challenge to a medical expert's testimony, experts are not required to use "magic words." *Baez*, 720 A.2d at 727. "Instead, we look to the substance of their testimony to determine whether it meets the requisite standard." *Id.* Furthermore, an appellate court will not reverse a trial court's determination that a witness is qualified to testify as an expert unless we find an abuse of discretion. *Commonwealth v. Arroyo*, 555 Pa. 125, 723 A.2d 162, 171 (1999).

Commonwealth v. Davido, 582 Pa. 52, 69 - 70, 868 A.2d 431, 441 (2005), *rearg. denied,* 582 Pa. 437, 872 A.2d 1125 (2005).[2]

Moreover, "[i]n order to sustain a finding of first-degree murder, the evidence must establish that a human being was unlawfully killed, that the appellant did the killing, and that the killing was done in an intentional, deliberate, and premeditated way." Id. at 60, 868 A.2d at 435.

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[2] In Davido, the Appellant asserted that the medical examiner, Dr. Ross, failed to establish the basis for the conclusion that the victim died due to "hundreds of g's of forces," to her skull, as Dr. Ross never testified as to how he calculated the force applied to her skull. The Supreme Court concluded that the expert's conclusions were based upon a reasonable degree of medical certainty, as he testified specifically based upon his firsthand observations that the victim suffered a "shearing" injury going directly to the center of her brain, as indicated by bleeding and swelling. As such, the Supreme Court concluded that his testimony was not speculative. Id. at 70 – 71, 868 A.2d at 442.

(quoting Commonwealth v. Mitchell, 528 Pa. 546, 599 A.2d 624, 626 (1991); *see* 18 Pa.C.S. §§ 2501(a), 2502(a)). In this matter, the linchpin issue is the identity of the Defendant as the individual who killed the victim. The Commonwealth's case against the Defendant as the perpetrator is based upon the DNA evidence found on the victim's nightgown, the soft rope tied around the decedent's wrists, and the flat bed sheet. Dr. Wecht's report sets forth that given the fact that the DNA deposited by the Defendant was found only on the bed sheet, the back of the Defendant's nightgown, and on the rope tied around the decedent's wrists, "[i]t is extremely unlikely" that he deposited seminal fluid in those locations during sexual encounters with the victim on the two or three previous occasions which occurred three weeks to a month prior to the date of the decedent's death. He further posits that the location of the Defendant's seminal fluid on the items "place [the Defendant] on the bed on top of the decedent's back at / around the time of [the victim's] demise." Dr. Wecht thus concludes that "it is [his] professional conclusion" that the decedent died due to "strangulation during sexual activity hours before her body was discovered by her parents." Further, he opines that the DNA derived from the Defendant's seminal fluid would have been placed in the locations where it was found around the time of the decedent's death "based upon the locations where it was identified."

The report does not set forth any scientific manner upon which Dr. Wecht bases his conclusion that the Defendant was on top of the decedent's back around the time of her demise. Further, the report does not set forth the scientific method or means by which Dr. Wecht reaches the conclusion that because the DNA was found only on the bed sheet, the rope tie, and the nightgown, it is unlikely that the Defendant's seminal fluid was placed there during sexual relations that occurred three weeks to a month earlier. As such, Dr. Wecht does not state a precise scientific basis for his conclusions, and Dr. Wecht's assertions are not set forth or posited

in a sufficiently specific manner. Furthermore, we conclude that Dr. Wecht's statement that "it is extremely unlikely" that the seminal fluid was placed in certain locations several weeks earlier, given the locations where the fluid was found, is too vague and imprecise to meet the standard for competent expert medical testimony in accordance with Pennsylvania law. Therefore, the opinions set forth in his report are speculative in nature and are thus not admissible. Moreover, we conclude that the question regarding whether it is unlikely that the seminal fluid was placed in the locations where the fluid was found at a time several weeks earlier does not necessitate the use of scientific, technical or specialized knowledge beyond that possessed by a layperson.[3] Thus, Dr. Wecht's expert report, and his testimony derived therefrom, is inadmissible.

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[3] Pennsylvania Rule of Evidence 702 states as follows:

> If scientific, technical or other specialized knowledge beyond that possessed by a layperson will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education may testify thereto in the form of an opinion or otherwise.

Pa.R.E. 702.

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AND NOW, to wit, after an argument and hearing regarding the Motion to Preclude the Expert Report and Testimony filed on behalf of the Defendant, IT IS HEREBY ORDERED AND DECREED that said Motion is GRANTED. The expert report provided by Dr. Cyril Wecht, M.D., J.D. to the Commonwealth in regard to this matter, and any testimony from Dr. Wecht derived therefrom, are hereby precluded from being entered into evidence by the Commonwealth at trial.

BY THE COURT
2012 NOV -5 P 3:46
HARRY E. KNAFELC
JUDGE

BY THE COURT:

J.

2012 NOV -7 A 8:11
JUDY R ENSLEN
CLERK OF COURTS
BEAVER CO. PENNSYLVANIA