
NO. 34701

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

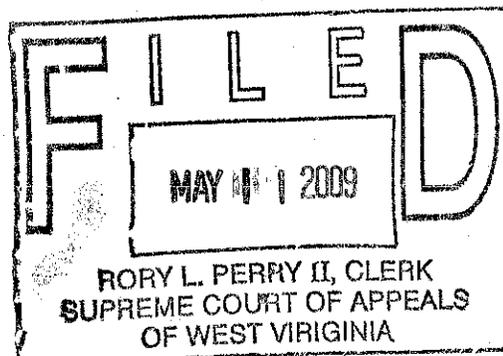
STATE OF WEST VIRGINIA,

Appellee,

v.

CHARLES M. BIEHL,

Appellant.



BRIEF OF APPELLEE STATE OF WEST VIRGINIA

DARRELL V. McGRAW, JR.
ATTORNEY GENERAL

ROBERT D. GOLDBERG
ASSISTANT ATTORNEY GENERAL
State Bar No. 7370
State Capitol, Room 26-E
Charleston, West Virginia 25305
(304) 558-2021

Counsel for Appellee

TABLE OF CONTENTS

	Page
I. KIND OF PROCEEDING AND NATURE OF THE RULING BELOW	1
II. STATEMENT OF FACTS	1
III. ARGUMENT	6
A. THE EVIDENCE SUPPORTING APPELLANT'S CONVICTION WAS SUFFICIENT AS A MATTER OF LAW	6
1. The Standard of Review	6
2. Discussion	6
B. BECAUSE THE ACTS SUPPORTING APPELLANT'S PROPOSED JURY INSTRUCTIONS WERE UNCHARGED, INTRINSIC, "OTHER ACTS" EVIDENCE, THE APPELLANT WAS NOT ENTITLED TO JURY INSTRUCTIONS ON MALICIOUS WOUNDING, UNLAWFUL WOUNDING OR BATTERY	8
1. The Standard of Review	8
2. Discussion	9
IV. CONCLUSION	10

TABLE OF AUTHORITIES

Page

CASES:

Hubshell v. State, 486 A.2d 789 (Md. App. 1985) 7

State v. Guthrie, 194 W. Va. 657, 461 S.E.2d 163 (1995) 6, 7, 8

State v. LaRock, 196 W. Va. 294, 470 S.E.2d 613 (1996) 8, 10

STATUTES:

W. Va. Code § 61-2-1 1, 6

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I.

**KIND OF PROCEEDING AND
NATURE OF THE RULING BELOW**

Appellant Charles M. Biehl, defendant below (hereafter "Appellant"), was convicted of one count of first degree murder, without a recommendation of mercy, pursuant to West Virginia Code § 61-2-1, following a jury trial occurring between January 15, 2008, to January 17, 2008, in the Circuit Court of Jackson County, West Virginia, the Honorable Thomas Evans presiding. By order entered February 20, 2008, the court sentenced the Appellant to life with no possibility of parole. (R. at 406-07.) This appeal is predicated upon this order.

II.

STATEMENT OF FACTS

On January 7, 2007, the Appellant strangled Sharon Farren ("Ms. Farren" or "victim") by wrapping a telephone cord around her neck twice and tightening it until she was dead. The murder

occurred at Ms. Farren's home in Ripley, Jackson County, West Virginia, where the Appellant had been staying for about a week.¹ The morning of January 8, 2007, Bo Hughes, a close friend of the victim, found her lying on her knees in a semi-fetal position with a cord wrapped twice around her neck. This cord came from the victim's living room telephone which had been ripped from the wall upsetting a wicker shelf standing over it. (Tr. at 1137-38, 1316-20.) Jackson County Deputy Brian Varney described the victim as kneeling with her face touching the floor. (Tr. at 1147.) He found a large pool of blood around Ms. Farren's face and blood on the couch next to her. (*Id.*) County Coroner Harold Gibson pronounced the victim dead at 7:58 a.m. (Tr. at 1153.)

State Medical Examiner Dr. Iouri Boiko performed an autopsy on January 9, 2007. (Tr. at 1434.) He opined that the victim's cause of death was asphyxia attributable to ligature and manual strangulation. (Tr. at 1441.) The Appellant also broke the victim's nose and bruised her left eyebrow. (*Id.*) It took at least two minutes for the Appellant to murder Ms. Farren. (Tr. at 1444.) The force used by the Appellant to pull the ligature tighter was so great that it caused a dent in the skin on the victim's neck, and fractured the bone above her esophagus. (Tr. at 1444-45.)

The Appellant, Charles M. Biehl, *aka* "Mike" (Tr. at 1165), *aka* Charlie Ward (Tr. at 1165), stayed with Ms. Farren for about a week. Several people saw the Appellant at the victim's home. Most knew him as "Mike." Mr. Hughes testified that "Mike" had been staying with the victim since January 2 or 3. (Tr. at 1138.) The victim's cousin, Jason Watkins, first met the Appellant on January 1. (Tr. at 1164-65.) He described the Appellant as "scraggly" with black hair and tattoos. (Tr. at 1165.) Mr. Watkins last saw the Appellant and the victim on the day of the murder between 1:00 or 2:00 in the afternoon. (Tr. at 1167.)

¹The Appellant was not present when Mr. Hughes found the body.

Kimberly Shinn, a friend of the victim's neighbor, saw the Appellant walk into Ms. Farren's house between 12:30 and 1:00 p.m. carrying a case of beer. (Tr. at 1171, 1172.) The day of the murder, Elizabeth Watkins, the victim's sister, spoke with Ms. Farren by telephone between 5:30 and 6:30 p.m. (Tr. at 1187.) Ms. Shinn invited her sister and a man who identified himself as Mike Ward² to dinner. The victim told her that she was going to bed early that evening, and requested Ms. Watkins call her the next day. (Tr. at 1187.) Ronald Hatcher testified that he delivered a kitten to the victim between 5:30 and 6:00 that evening. Both Ms. Farren and the Appellant were present. (Tr. at 1201-02.) Mr. Hatcher was the last person to see Ms. Farren alive.

Ripley police officer Jonathan Pinson found the victim's telephone, without its cord, hanging on the living room wall. (Tr. at 1287.) The last incoming call occurred at 6:03 p.m. (Tr. at 1287-88.) The last outgoing call was to the Appellant's aunt in Florida at 6:12 p.m. (Tr. at 1289.) Just before this call the Appellant called his mother, Donna Morris.³ (*Id.*)

Sometime between 7:00 and 7:10 p.m. that evening, Officer Pinson saw the Appellant walking across the Grace Gospel Church's parking lot.⁴ (Tr. at 1290-91.) Hil Mart employee Aleeta Zellmaski saw the Appellant in her store later that same evening.⁵ He asked her and another Hil Mart employee for directions to Maryland.⁶ (Tr. at 1253.)

²She testified that Mike had been staying with her sister for two weeks. (Tr. at 1188.)

³Ms. Morris testified that the Appellant called her at 7:00 p.m. that evening. This testimony did not jibe with the information contained on the victim's caller ID. (Tr. at 1211, 1289-90.)

⁴The Grace Gospel Church was 3/4 of a mile from the victim's home. (Tr. at 1290.)

⁵Hil Mart is located on Route 33, about a mile outside of Ripley. (Tr. at 1245.)

⁶In his statement to the investigating officers, the Appellant claimed he had a sister living in Maryland. He could not recall her last name. (R. at 790.)

Dianna Thurman, a friend of the victim, stayed with her and the Appellant⁷ the night before the murder. (Tr. at 1175-76.) That evening she witnessed an argument between the Appellant and Ms. Farren over beer. (Tr. at 1177.) Ms. Thurman testified that the Appellant “jumped up” at the victim, and “got real mean at her.” (Tr. at 1178.)

Marvin Brown testified that he accompanied the Appellant to Ms. Farren’s home. (Tr. at 1381.) Mr. Brown left after an hour or a few hours. (Tr. at 1260, 1382.) The Appellant did not leave with him. (*Id.*) Mr. Brown hitchhiked to a Go Mart in Charleston where he was picked up by friend Christy Coon.⁸ (Tr. at 1382.) The victim was alive when Mr. Brown left. That evening the Appellant called Mr. Brown’s cell phone between 10 and 15 times. (Tr. at 1383.) On one occasion both the Appellant and Ms. Farren spoke to Mr. Brown and Ms. Coon. (Tr. at 1385.)

On January 10, 2007, the Appellant was picked up at the Union Mission Shelter in Charleston by Deputy Greg Young. (Tr. at 1302.) The Appellant accompanied Deputy Young to the Kanawha County Sheriff’s Department where he gave a four-hour statement.⁹ (R. at 762-838.) This statement was full of inconsistencies, half-truths, and outright lies.

⁷She knew the Appellant as Mike. (Tr. at 1176.)

⁸The State recalled Mr. Brown and Ms. Coon to clear up confusion over the relevant dates. (Tr. at 1379, 1389.) Ms. Coon originally testified that she picked up Mr. Brown between 9:00 and 10:00 p.m. the evening Ms. Farren was murdered. (Tr. at 1266, 1268.) Upon her recall, Ms. Coon testified that Mr. Brown had been at her house a couple of days before Ms. Farren was murdered. (Tr. at 1391.) She told Captain Herbert Faber of the Jackson County Sheriff’s Department that Mr. Brown was at her house the day Ms. Farren was murdered. (Tr. at 1392.)

⁹The Appellant was *Mirandized* before his statement was taken. (R. at 764.) Although the trial court held a suppression hearing, the transcript is not part of the record. The Appellant has not alleged the court’s decision constituted error.

Appellant first said that he stayed with Ms. Farren a couple of nights, and then was asked to leave. (R. at 762.) He claimed that Marvin Brown, who was allegedly having an affair with the victim, was with him, and murdered Ms. Farren because she threw him out of the house “because of some dope or something.” (R. at 766, 785.) He claimed that the victim and Mr. Brown argued like “cats and dogs” the day she was murdered, and that Mr. Brown threw her over her coffee table (R. at 788-90.) Later he claimed that Mr. Brown came in for a couple of seconds, and pushed her. (R. at 794, 807.)

The Appellant falsely claimed that the victim threw him out of her house on New Year’s Day. (R. at 767.) He then told the officers that he stayed four or five days. (R. at 793.) At one point he said the victim threw him out; at another, he claimed he left of his own accord. (R. at 792.) Depending on which part of the Appellant’s statement one reads, Mr. Brown was either present when Appellant left or absent. (R. at 792, 807.) He repeatedly denied being at the victim’s home the day she was murdered until confronted with evidence that he had made several calls from there that day.¹⁰ (R. at 768, 782-83.) Initially, he lied about the times he made these calls. (R. at 786, 788.) He implicated the victim’s ex-husband, saying he beat the victim “like a dog” and had threatened to kill her. (R. at 769, 779.) He mentioned another party who had “had words” with the victim while the Appellant was in the back bedroom. (R. at 773.)

He claimed the victim abused crack cocaine and marijuana. (R. at 773, 775.) Initially, he claimed that Ms. Farren was in “good health” when he left her home. (R. at 774.) He repeatedly denied touching her, at one point blaming Marvin Brown for her injuries (R. at 797, 798, 800, 801, 808, 809.) When confronted about a scar on the knuckle of his ring finger, he first stated that he cut

¹⁰The Appellant also denied making any calls from Farren’s residence. (R. at 779.)

his hand on a car door. (R. at 795.) Later he said that he argued with the victim and hurt it punching a door jamb in her home. (R. at 798, 799, 801, 804) After four hours of lies, the Appellant finally admitted that he had punched the victim in the face. (R. at 827-828, 830.) Although he admitted striking her, the Appellant maintained that she was alive when he left her home.

III.

ARGUMENT

A. THE EVIDENCE SUPPORTING APPELLANT'S CONVICTION WAS SUFFICIENT AS A MATTER OF LAW.

1. The Standard of Review.

The function of an appellate court when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, is sufficient to convince a reasonable person of the defendant's guilt beyond a reasonable doubt. Thus, the relevant inquiry is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proved beyond a reasonable doubt.

Syl. pt. 1, *State v. Guthrie*, 194 W. Va. 657, 461 S.E.2d 163 (1995).

2. Discussion.

The Appellant was convicted of First Degree Murder under West Virginia Code § 61-2-1. To sustain a conviction the State must prove that the Appellant took Ms. Farren's life maliciously and intentionally after a period of premeditation and deliberation. Malice may be inferred by any deliberate and cruel act done by the Appellant without any reasonable provocation or excuse. Premeditation is to think of a matter before executing it. Deliberation means to reflect with a view to making a choice.

The Court in *Guthrie* noted that absent statements by the accused indicating that the killing was by prior calculation and design, the jury must consider the circumstances under which the killing occurred:

Relevant factors include the relationship of the accused and the victim and its condition at the time of the homicide; whether plan or preparation existed either in terms of the type of weapon utilized or the place where the killing occurred; and the presence of a reason or motive to deliberately take life. *No one factor is controlling.* Any one or all taken together may indicate actual reflection on the decision to kill. This is what our statute means by "willful, deliberate and premeditated killing."

194 W. Va. at 676 n.23, 461 S.E.2d at 181-82 n.23 (emphasis added). The Court also identified three categories of evidence which support a finding of first degree murder:

(1) "planning" activity -- facts regarding the defendant's behavior prior to the killing which might indicate a design to take life; (2) facts about the defendant's prior relationship or behavior with the victim which might indicate a motive to kill; and (3) evidence regarding the nature or manner of the killing which indicate a deliberate intention to kill according to a preconceived design.

Id. at 676 n.24, 461 S.E.2d at 182 n.24. In the case at bar, the State introduced sufficient evidence to support submitting the charge of first degree murder to the jury, and to support the jury's verdict finding Appellant guilty of that charge.

In the case at bar the Appellant strangled the victim with a telephone cord ripped from the wall after breaking her nose and bruising her eye. Ms. Farren was found with her face in a pool of her own blood and a telephone cord twice wrapped around her neck. The State medical examiner testified that it would have taken at least two minutes for the Appellant to strangle the life out of the victim. *See Hubshell v. State*, 486 A.2d 789, 793 (Md. App. 1985) (whether the time required to produce death by strangulation is sufficient for the defendant to reflect upon his actions is a factual question reserved for the jury).

The Appellant does not deny that he was in the victim's home at the time of her murder. Appellant points to the absence of his DNA on the telephone cord as proof that he is, as a matter of law, innocent. The weight afforded this evidence constitutes a question of fact, not a matter of law. The trial court instructed the jury on first and second degree murder, voluntary manslaughter, and involuntary manslaughter. (Tr. at 1633.) The jury heard the evidence and chose to convict the Appellant of the more serious charge. It cannot be said that this decision was beyond the pale of reason.

B. BECAUSE THE ACTS SUPPORTING APPELLANT'S PROPOSED JURY INSTRUCTIONS WERE UNCHARGED, INTRINSIC, "OTHER ACTS" EVIDENCE, THE APPELLANT WAS NOT ENTITLED TO JURY INSTRUCTIONS ON MALICIOUS WOUNDING, UNLAWFUL WOUNDING OR BATTERY.

1. The Standard of Review.

A trial court's instructions to the jury must be a correct statement of the law and supported by the evidence. Jury instructions are reviewed by determining whether the charge, reviewed as a whole, sufficiently instructed the jury so they understood the issues involved and were not misled by the law.

Syl. pt. 4, in part, *State v. Guthrie*.

In determining whether the admissibility of 'other bad acts' is governed by rule 404(b) we must first determine if the evidence is 'intrinsic' or 'extrinsic.' 'Other act' evidence is 'intrinsic' when the evidence of the other act and the evidence of the crime charged are 'inextricably intertwined' or both acts are part of a single criminal episode or the other acts were necessary preliminaries to the crime charged. If the proffer fits into the 'intrinsic' category, evidence of other crimes should not be suppressed when those facts come in as *res gestae* - as part and parcel of the proof charged in the indictment.

State v. LaRock, 196 W. Va. 294, 312-13 n.29, 470 S.E.2d 613, 631-32 n.29 (1996) (citations omitted).

2. Discussion.

Charging decisions are left to the sound discretion of the prosecuting attorney. In the case at bar, the Appellant was charged with first degree murder. The Appellee readily concedes that the victim was not killed by the punches which broke her nose and bruised the skin above her eyebrow. The record demonstrates that Ms. Harren was asphyxiated.

In its argument to the trial court the defense stated:

Factually, Mr. Biehl, when we get to the end of this [statement], will admit to hitting Sharon Farren in the nose, which is consistent with the injuries that she suffered. That is the only thing that he admitted to doing, and other than supposition and inference, that is the only evidence that he actually did anything.

(Tr. at 1546.)

Later, the defense argued:

Yes, sir. I'm asking for the lesser included offense, quite frankly, so that if the jury feels like Charles Michael Biehl's got to pay for something and the State has not proved beyond a reasonable doubt that he actually caused her death, and they're torn between, "We can't just let him walk out of here," they'll have someplace to go. That is why I am asking for it, and that is why I'm making the argument.

(Tr. at 1549.)

The Appellant's argument is not grounded in the rules relating to jury instructions involving lesser-included offenses. The trial court instructed the jury on first and second degree murder and voluntary manslaughter. Although the State did not charge the Appellant for the punches, he asked the court to instruct the jury on the elements of battery, malicious wounding, and unlawful wounding. The court is under no duty to instruct a jury on the elements of uncharged conduct. (Tr. at 1570-71.)

Appellant's argument is closely intertwined with his 404(b) claim. The State did not introduced evidence of the punch under Rule 404(b): The evidence was part of the *res gestae*. It is intrinsic evidence, not evidence of prior bad acts. Its inclusion gives the jury a fuller factual context from which to decide. *See State v. LaRock, supra* (intrinsic evidence of prior acts is "integrally connected" to the criminal activity charged in the indictment.).

IV.

CONCLUSION

For the foregoing reasons, the judgment of the Circuit Court of Jackson County should be affirmed by this Honorable Court.

Respectfully submitted,

STATE OF WEST VIRGINIA,
Appellee,

By counsel

DARRELL V. McGRAW, JR.
ATTORNEY GENERAL

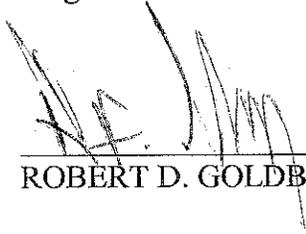


ROBERT D. GOLDBERG, State Bar No. 7370
ASSISTANT ATTORNEY GENERAL
State Capitol, Room 26-E
Charleston, West Virginia 25305
(304) 558-2021

CERTIFICATE OF SERVICE

I, ROBERT D. GOLDBERG, Assistant Attorney General and counsel for the Appellee, do hereby verify that I have served a true copy of the Brief of Appellee upon counsel for the Appellant by depositing said copy in the United States mail, with first-class postage prepaid, on this 11th day of May, 2009, addressed as follows:

To: Teresa Monk, Esq.
Public Defender Corporation
P.O. Box 894
Spencer, West Virginia 25276



ROBERT D. GOLDBERG