

Circuit Court for Baltimore City
Case Nos. 113221020-21

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2526

September Term, 2018

LUKASZ SZKILUK

v.

STATE OF MARYLAND

Nazarian,
Wells,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: August 7, 2019

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Following a jury trial in the Circuit Court for Baltimore City, Lukasz Szkiluk, appellant, was convicted of first-degree murder, first-degree assault, false imprisonment, and two counts of use of a handgun in the commission of a crime of violence. On appeal, he contends that there was insufficient evidence to support his convictions. Specifically, he asserts that the testimony of Judith Holland, the State’s primary witness, was “simply too incredible to be believed” and therefore cannot stand as the basis for his convictions. Because there was sufficient evidence to sustain Mr. Szkiluk’s convictions, we affirm.

At trial, Ms. Holland testified that she had been dating Mr. Szkiluk for approximately seven years, even though she knew that he was married. According to Ms. Holland, she was at Mr. Szkiluk’s residence when he pulled out a gun, choked her, and tied her to his bed. He then stated that he was going to kill his wife. Later that evening, Ms. Holland heard Mr. Szkiluk’s wife enter the residence and began speaking with Mr. Szkiluk. She then heard a loud “pop,” at which point Mr. Szkiluk came back upstairs and told Ms. Holland that he had killed his wife. Mr. Szkiluk briefly untied Ms. Holland and showed her his wife’s body, but he then took her back upstairs, tied her to the bed again, and choked her several more times. Ms. Holland eventually fell asleep and when she awoke, she heard Mr. Szkiluk leave the residence. She was then able to free herself and call 911. When the police arrived, they discovered Mr. Szkiluk’s wife covered in a blanket with a gunshot wound in her torso, which the Deputy Chief Medical Examiner later determined was the cause of her death.

In addition to Ms. Holland’s testimony, the State presented evidence that there were gunshot primer residues on Mr. Szkiluk’s right hand at the time of his arrest. Daniel

Lamont, an expert in firearms examination, also opined that a shell casing recovered from Mr. Szkiluk’s pocket and the bullet recovered from his wife’s torso were fired from a gun that was recovered by the police in his bedroom.

On appeal, Mr. Szkiluk does not contend that Ms. Holland’s testimony, if properly considered, was insufficient to sustain his convictions. Rather, he relies on *Kucharzyk v. State*, 235 Md. 334 (1964) to argue that her testimony was so unreliable that it lacked the probative value necessary to support a finding of guilt beyond a reasonable doubt. We disagree.

In *Kucharzyk* the prosecuting witness, an intellectually disabled 16-year-old boy with an I.Q. of 56, gave contradictory testimony about whether the crime allegedly committed by Kucharzyk had occurred. *Id.* at 336-37. The Court of Appeals reversed the Mr. Kucharzyk’s conviction for assault and battery because of insufficient evidence, holding that, “where a witness testifies to a critical fact and then gives directly contradictory testimony regarding the same critical fact, the fact finder should not be allowed to speculate and select one or the opposite version.” *Id.* at 337-38.

However, “[t]he doctrine set forth in *Kucharzyk* is extremely limited in scope.” *Smith v. State*, 302 Md. 175, 182 (1985); *Vogel v. State*, 76 Md. App. 56, 59-60 (1988) (“Some appreciation of the limited utility of the so-called *Kucharzyk* doctrine may be gathered from the fact that it was never applied pre-*Kucharzyk* in a criminal appeal and it has never been applied post-*Kucharzyk* in a criminal appeal”) (citation omitted). As this Court has previously noted:

Kucharczyk does not apply simply because a witness’s trial testimony is contradicted by other statements which the witness has given out of court or, indeed, in some other trial. Nor does *Kucharczyk* apply where a witness’s trial testimony contradicts itself as to minor or peripheral details but not as to the core issues of the very occurrence of the corpus delicti or of the criminal agency of the defendant. Nor does *Kucharczyk* apply where the testimony of a witness is “equivocal, doubtful and enigmatical” as to surrounding detail. Nor does *Kucharczyk* apply where a witness is forgetful as to even major details or testifies as to what may seem improbable conduct. Nor does *Kucharczyk* apply where a witness is initially hesitant about giving inculpatory testimony but subsequently does inculcate a defendant. Nor does *Kucharczyk* apply where a witness appears initially to have contradicted himself but later explains or resolves the apparent contradi[c]tion. Nor does *Kucharczyk* apply where a State’s witness is contradicted by other State’s witnesses. Nor does *Kucharczyk* apply where a State’s witness is contradicted by defense witnesses. Nor does *Kucharczyk* apply where a witness does contradict himself upon a critical issue but where there is independent corroboration of the inculpatory version.

Bailey v. State, 16 Md. App. 83, 95-97 (1972) (citation omitted).

In challenging the veracity of Ms. Holland’s testimony, Mr. Szkiluk notes that: (1) she did not go to the hospital until the day after the incident, despite testifying that she had been choked multiple times by appellant; (2) she did not recognize the actual ropes that were used to tie her up when the prosecutor showed them to her in court; and (3) her testimony about her location in the house when the police arrived was contradicted by one of the officers who responded to the 911 call. However, none of these inconsistencies rise to the level at issue in *Kucharczyk* as Ms. Holland did not contradict herself on whether a crime occurred or Mr. Szkiluk’s criminal agency. Rather, any contradictions in her testimony concerned “peripheral details,” *see Bailey v. State*, 16 Md. App. 83, 96 (1972), which were ultimately for the jury to resolve. Moreover, we note that Ms. Holland’s testimony was corroborated by other evidence, including: (1) expert testimony that gunshot

primer residues were found on Mr. Szkiluk’s right hand after his arrest; (2) expert testimony that a shell casing found in Mr. Szkiluk’s pocket and a bullet recovered from his wife’s torso were both fired from a gun that the police recovered from his bedroom; and (3) a recorded jail call wherein Mr. Szkiluk admitted being drunk and “playing with a gun” the night of the murder. Because *Kucharczyk* is inapplicable and Ms. Holland’s testimony, if believed, was sufficient to establish every element of each offense for which Mr. Szkiluk was convicted, the court did not err in submitting the case to the jury.

**JUDGMENTS OF THE CIRCUIT
COURT FOR BALTIMORE CITY
AFFIRMED. COSTS TO BE PAID
BY APPELLANT.**