

INTRODUCTION

We, the members of the Twenty-Sixth Statewide Investigating Grand Jury, have received and reviewed evidence pertaining to an investigation of the murder of Dr. John Yelenic. This investigation was conducted pursuant to Notice of Submission of Investigation Number 19 and, by this Presentment, this Grand Jury hereby makes the following findings of fact and recommendation of charges:

FINDINGS OF FACT

In May, 2007, the Twenty-Sixth Statewide Investigating Grand Jury began receiving testimony regarding the murder of Dr. John Yelenic.

Pennsylvania State Police Corporal Randall Gardner testified that on Thursday, April 13, 2006, at approximately 3:25 p.m., the body of John J. Yelenic, D.M.D., was discovered in the living room of his home located at 233 South Spring St., within the Borough of Blairsville, Indiana County, PA. Dr. Yelenic was a white male approximately six foot two inches tall, he weighed approximately 225 pounds. The initial responding investigators observed that the living room and adjacent foyer were extremely bloody. Blood smears, in addition to pools of blood, indicated that a struggle had taken place. A glass side light window which is situated beside the front door of the residence was found by investigators to be broken. Blood was observed on and around the broken window. Broken glass was also observed on the floor of the foyer area of the residence as well as on the floor of the front porch of the residence. The associated curtain and two curtain rods were observed to be bent, twisted, off its mounting hooks and blood soaked. The curtain itself was on the floor in the foyer. The victim's body was found in the living room area of the residence near another large pool of suspected blood. Suspected blood was observed on the walls and furniture within the residence located in the foyer, hallway and living room.

Cpl. Gardner further testified that because of the obvious indications of a struggle, it would be reasonable to conclude that there was physical contact between the victim and his assailant that could lead to the transfer of evidence from the actor to the scene and/or victim as well as from the scene and/or victim to the actor. The force used could have possibly resulted in injury to the actor. The victim was barefoot. Several bloody shoe prints/impressions were discovered at the scene, beginning near the victim's final resting place in the living room area of the residence and continuing from the living room, through the dining room and kitchen and out of the residence through a rear

door. The bloody shoe prints/impressions were photographed and/or collected. Photographs and CD images of the bloody shoeprints/impressions, along with evidence found inside the victim's residence with bloody shoeprints/impressions, were sent to an FBI lab for testing in August and September, 2006. A Report of Examination from the FBI laboratory indicates that these bloody shoe prints/impressions "most closely correspond with laboratory reference materials for an ASICS 'Gel Creed' or 'Gel Creed Plus' shoes." The FBI examiners further consulted with a Mr. Brice Newton of the ASICS America Corporation and determined the impressions measure between size 10 through 12 ½ men's shoe.

The victim was pronounced dead at the scene by the Indiana County Coroner's Office at approximately 4:10 p.m.

On Friday, April 14, 2006, an autopsy was performed on the body of John Yelenic by Dr. Cyril H. Wecht. The final opinion reached by Dr. Wecht in his report was the following: "This autopsy illustrates an instance of death in a 39 year old white male due to exsanguination (blood loss) as a result of multiple, extensive lacerated wounds of the scalp, face, neck, trunk, and right arm. Deep wounds through the thyroid and cricoid cartilages are noted with bleeding into the tracheobronchial tree. No significant ante mortem disease processes are noted. The manner of death is homicide." Most of the lacerated wounds, according to Dr. Wecht, were consistent with slashing knife wounds.

Biological samples were also taken from the victim at the time of autopsy, which included fingernail clippings and a blood sample.

Cpl. Gardner testified about interviews conducted by Pennsylvania State Police Investigators of the individuals residing near the Dr. Yelenic's residence. According to Gardner, five neighbors recalled hearing unusual noises in the early morning hours of April 13, 2006 coming from the vicinity of the victim's residence and described variously as males arguing, blood curdling screams or noises like pig squeals. Some neighbors were awakened by dog barking. These five neighborhood witnesses approximated the time that they heard this disturbance as between 1 a.m. and 2 a.m. on April 13, 2006.

On December 31, 1997, John Yelenic married Michele Magyar-Kamler. The couple adopted a child, J.J. Yelenic, on March 17, 2000. The two separated on March 6, 2002. Michele Yelenic

filed a Complaint in Divorce against the victim on June 10, 2003. Michele Yelenic and/or their juvenile, adoptive son would be the beneficiary to the victim's estate and life insurance benefits that amount to more than 1 million dollars.

The divorce proceedings between John and Michele Yelenic had become extremely heated, involving the police on more than one occasion. The victim was forced to spend countless hours of time and thousands of dollars in legal expenses defending against allegations that he physically and sexually abused his adoptive son. All of these allegations were subsequently determined to be unfounded. Michele Yelenic made increasing demands for money from Dr. Yelenic. It was learned through the victims' attorney, Effie Alexander, Esq., that the victim had always given into the financial demands of Michele Yelenic throughout their separation. It was only in the last days of the victim's life that he had begun to resist his ex-wife's financial demands. According to Alexander, this infuriated Michele Yelenic.

According to the employees at the Victim's dental practice, Michele Yelenic called the victim at the practice continuously and demanded money. Within days of the murder and for the first time, the victim refused to take Michele Yelenic's calls.

Georgette Johnson testified that she worked as a receptionist for Dr. Yelenic, beginning in 2004. Johnson testified that Michele Yelenic called frequently, asking to speak to Dr. Yelenic. Dr. Yelenic always took those calls prior to April, 2006. On April 3 or 4, 2006, Dr. Yelenic refused to take a call from Michele Yelenic. Michele Yelenic told Johnson that she wanted money from an escrow account to pay some bills for J.J. Yelenic. Still refusing to take the call, Dr. Yelenic had Johnson tell Michele Yelenic to get in touch with her lawyer and that if she signed the divorce papers, he would give her the money. Michele Yelenic continued to insist to Johnson that she needed money from Dr. Yelenic, that she would have to get food stamps for their son, and that she intended to go "to the media" with her complaint. The divorce settlement would have decreased Michele Yelenic's monthly support check from the victim by approximately \$2,500. The support would have changed from approximately \$3,800.00 to approximately \$1,300.00 per month. Nevertheless, in the event of Dr. Yelenic's death, J.J. Yelenic would become the sole beneficiary of Dr. Yelenic's estate. Michele Yelenic would then be J.J. Yelenic's sole remaining parent and caretaker.

Michele Yelenic testified that Kevin Foley moved into her residence at 10 Susan Drive, Indiana, PA, at the end of 2004. Her three children, including J.J. Yelenic, lived with them from that time.

Kevin Foley is a Pennsylvania State Trooper stationed at Pennsylvania State Police Barracks in Hollidaysburg. At the time of this incident, Foley had been assigned to the Criminal Investigation Unit at the Pennsylvania State Police Barracks in Indiana. Duties associated with that assignment would include the investigation and prosecution of criminal acts ranging from Criminal Mischief to Criminal Homicide.

According to Cpl. Gardner, Foley has received training and education in the law enforcement field. Foley has been a United States Army Military Policeman, holds a Bachelor of Arts Degree in Criminology from the University of South Florida, and has completed the Pennsylvania Municipal Police Officers Training Academy (Act 120). Foley enlisted in the Pennsylvania State Police in 1994 and has received continued law enforcement training. Some of the training Foley has completed as a Pennsylvania State Police Trooper includes the following, Interview and Interrogation, Testifying in Court, Crime Scene Protection and Evidence Collection, Advanced Crime Scene Investigation, Search and Seizure, along with numerous other training classes. Foley was also a designated Department Physical Fitness Coordinator since 2001 and received associated training in that field as well. Foley has therefore attended training and has been exposed to procedures involving the detection, collection and preservation of evidence.

Kevin Foley's enmity towards Dr. Yelenic was often exhibited and passionately stated. Trooper Deana Kirkland testified that she was working with Kevin Foley on March 28 or 29, 2006, just two weeks before the Yelenic murder. They were on a prisoner transport, driving to Westmoreland County, and Foley said he "wished that Dr. Yelenic would die or be killed in a car accident." Kirkland cautioned Foley that his comment was inappropriate. According to Kirkland, Foley replied, "I know, but I'm so frustrated, you know, with everything." Kirkland testified that Foley told her he "prayed" that Yelenic would die. Kirkland said this was not the first time Foley told her he prayed for Yelenic's death. In a previous conversation at the barracks, according to Kirkland, Foley said he told his mother that he prayed that Yelenic "would just die." When Kirkland suggested he shouldn't say that, Foley responded, "I just can't help it."

Pennsylvania State Police Trooper Daniel Zenisek worked with Kevin Foley at the Indiana barracks. According to Zenisek, Foley's expressions of ill-will toward Dr. Yelenic were "pretty much a daily thing." Zenisek testified, "He (Foley) never said a good thing (about Yelenic). It was just every day, this and that, you know, he is this, he is that. He is a child molester, a piece of shit. It got to the point where, hey, Kevin how you doing, I hate this guy, you know."

On one occasion, Foley was disparaging Yelenic in the PSP patrol room. According to Zenisek, Foley "said he would like to kill the cocksucker" and asked Zenisek if he would like to help. At the time, Zenisek said he did not take the comment seriously; however, he added, "He (Foley) had an extremely deep hatred for the man (Yelenic)."

Pennsylvania State Police troopers who worked with Foley testified that he habitually played with knives. Trooper James Fry testified that Foley "seemed to enjoy the knife. . . I mean, it was not uncommon to see him walking up the hall to you, you know, and he just had that knife out, flicking it open, you know, open/close, open/close, open/close, open/close. Even at roll call, he sits over there and open/close, open/close, open/close. It wasn't uncommon." Fry recalled an incident where Foley was, as usual, "flicking that knife around" and cut Fry's pants in the groin area. Fry testified, "He like, come up, flicked it open, and like slashed it back and forth. But I mean, it caught me right in the groin, and I jumped back."

Trooper Daniel Zenisek corroborated Fry's testimony about Foley's fascination with knives. Zenisek testified, "He (Foley) would just pull it out, flip it around, screw with his fingernails. He was always fiddling it. I don't know if it was a nervous habit or what, but he was always fiddling with it . . . Just always playing with that knife, liked to play with that knife."

Both Fry and Zenisek noticed that after Dr. Yelenic was murdered, Foley stopped playing with his knife. Fry recalled Foley playing with his knife as late as April, 2006, but "after the homicide, I never once recall seeing him with the knife, with the knife out, or playing with the knife." Zenisek testified, likewise, that he never saw Foley playing with a knife after Yelenic's body was found.

Evidence collected by the Grand Jury also established that Foley, who repeatedly expressed his hatred of Dr. Yelenic, drove near the victim's house near the time the murder occurred. Foley played in an ice hockey game at the Center Ice Arena located off S.R. 22 in Salem Township near

Delmont, PA, on April 12, 2006. He arrived at the hockey arena at approximately 10:30 p.m. He played in the hockey game and left the arena at approximately midnight. A number of other participants in the hockey game were interviewed by Pennsylvania State Police Investigators and did not observe Foley with any injuries. None of the other participants at the game knew of anyone receiving any injuries during the game.

At the time of Dr. Yelenic's murder, Foley owned and operated a two-tone red Ford Explorer with tan-colored trim which outlined the vehicles wheel wells and the bottom of the vehicle. Foley resided just outside of Indiana Borough in Indiana County. The most expedient route of travel from the Center Ice Arena to Indiana would be to travel east on S.R. 22 after leaving The Center Ice Arena and then travel north on S.R. 119 to Indiana. S.R. 22 travels through the municipality of New Alexandria, PA. Surveillance video from a business in New Alexandria, PA depicts a vehicle resembling that owned by Foley at the time traveling east on S.R. 22 at approximately 12:18 a.m. on April 13th. Surveillance video of a business in Blairsville borough located at the corners of Walnut and Market Streets depicts a vehicle resembling the Ford Explorer owned by Foley traveling north on Walnut Street and then turning east onto Market Street at approximately 1:48 a.m. on April 13, 2006. This is within the period of time when Dr. Yelenic's neighbors heard the disturbance coming from the vicinity of the victim's residence.

The vehicle depicted on the surveillance video from the Blairsville business would have been traveling from a location in the vicinity of the victim's residence as described above. The path the vehicle depicted on the surveillance video from the Blairsville business was traveling, was in the direction of S.R. 119.

Foley was observed to have an injury above his left eye after the murder of Dr. Yelenic. Blairsville police officer Jill Gaston accompanied the Indiana County Deputy Coroner to Foley's home the night of April 13, 2006. Officer Gaston testified, "Above his (Foley's) left eye was, approximately, a one-inch long gash that was red and swollen, and then there was another little scratch below the left eye." She described Foley's wound as "fairly fresh." Foley's fellow troopers also observed this injury to Foley's face the day Dr. Yelenic's body was discovered. Trooper Deana Kirkland, who worked with Foley on a daily basis, testified that she did not see any injury to Foley's face on April 12, 2006. On April 13, 2006, however, she saw an abrasion above Foley's left

eyebrow. Trooper Robert Worcester, who played hockey with Foley on April 12, 2006, testified he saw no injury to Foley when they left, separately, after the game. The next day, Worcester noticed a one to two inch scratch on Foley's face. Worcester testified, "It was above, I believe, his left eye. It was like a half-moon, half-circle, maybe like above the nose over the eyebrow."

A search of the Foley/Yelenic residence was conducted by Pennsylvania State Police investigators on October 11, 2006. A hockey equipment gear bag was seized in that search and secured in the secure evidence holding facility located at the Pennsylvania State Police Barracks in Greensburg PA.

Kevin Foley was served a Pennsylvania Investigating Grand Jury subpoena on June 8, 2007, requiring him to produce any and all hockey equipment bags in Foley's possession at the time of Dr. Yelenic's murder. Foley's response, through his legal counsel, was that the Pennsylvania State Police already had his hockey bag.

A co-worker of Kevin Foley's who is stationed at the Pennsylvania State Police Indiana Barracks has been interviewed regarding the hockey bag of Kevin Foley. This individual advised that he used to play hockey and has since quit playing due to time constraints. He advised that when he quit playing hockey Foley approached him and asked if he could purchase his hockey equipment. This individual agreed and did sell most of his hockey equipment to Kevin Foley, including a hockey equipment bag. This individual also indicated that he could absolutely recognize the bag he sold to Kevin Foley because of the individual additions he had made to the bag. On May 10, 2007 this individual was shown the hockey bag secured in evidence at the Pennsylvania State Police barracks in Greensburg. This individual, without hesitation, indicated that the bag in evidence was not the bag he had sold Kevin Foley.

Pennsylvania State Police Corporal Gardner learned through his investigation that Foley was an avid runner and wore ASICS running shoes. Additionally, it has been discovered through investigation that Kevin Foley purchased running shoes directly from ASICS for himself and others, taking advantage of a discount offered by ASICS to individuals in law enforcement. Pennsylvania State Police Investigators also discovered that an order was placed to ASICS by Kevin Foley on August 12, 2003 for a pair of Gel-Creed TN217 running shoes, size 10. That particular style of ASICS had been discontinued. In accordance with ASICS company policy, a pair of ASICS Gel-

Creed Plus TN327, size 10 running shoes, were shipped to Kevin Foley on 08/18/03 from the ASICS Company.

Pennsylvania State Police Trooper Allison Jacobs testified that she is a friend and co-worker of Kevin Foley's. They shared an interest in running and trained together. She testified that Foley wore ASICS running shoes.

Pennsylvania State Police Trooper Daniel Zenisek testified that Foley always wore ASICS. "Everybody gets to know each other's habits, who liked Ford trucks, what kind of beer they drink," according to Zenisek. "[H]e wore ASICS suits and sneakers." Zenisek testified that he knew Foley from 1996 and that "[p]retty much that time I knew him to wear ASICS." After the murder of Dr. Yelenic, however, Zenisek noticed that Foley began wearing NIKE running shoes.

Pennsylvania State Police investigators submitted the fingernail clippings obtained from the victim at the time of autopsy to The Federal Bureau of Investigation Laboratory Division for DNA analysis. A Report of Examination, filed by FBI DNA analyst Jerrilyn M. Conway on September 11, 2007 explaining her findings, was read to the Grand Jury. In particular, Conway found that an examination of the right fingernail yielded the presence of DNA from more than one individual. The DNA profiles of Dr. Yelenic and Kevin Foley could not be excluded as potential contributors to this mixture. Based on the applicable typing results, the probability of selecting an unrelated individual at random from a general population is approximately 1 in 42,000 from the African-American population, 1 in 13,000 in the Caucasian population, 1 in 16,000 from the Southeastern-Hispanic population, and 1 in 28,000 from the Southwestern-Hispanic population. Importantly, the DNA profiles from Dr. Yelenic and Kevin Foley can account for all of the typing results obtained from the specimen examined from Dr. Yelenic's right fingernail.

The victims' divorce attorney, Effie Alexander, Esq., informed investigators that the victim had offered to pay her money to fund an investigation in the event that he was found dead. He had expressed to his attorney that he was sure that his estranged wife, Michele Yelenic was going to have her boyfriend, Kevin Foley, kill him. The victim wanted his attorney to investigate his murder due to the fact that Michele Yelenic's boyfriend, Kevin Foley, was a Pennsylvania State Trooper. The victim felt that because of Kevin Foley's influence, his murder would be covered up.