

Commonwealth Of Kentucky

Court Of Appeals

NO. 2001-CA-000283-MR

DANIEL REYES-GARCIA

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE MARY C. NOBLE, JUDGE
ACTION NO. 00-CR-00182

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING
** **

BEFORE: GUIDUGLI, MILLER, AND SCHRODER, JUDGES.

SCHRODER, JUDGE: This is an appeal from a judgment convicting appellant of reckless homicide. Appellant argues that the trial court erred when it refused to allow the prior inconsistent statement of a defense witness to be admitted and when it allowed certain irrelevant testimony to be admitted. Upon reviewing these arguments in light of the facts and applicable law, we do not see that the court abused its discretion with regard to these rulings. Hence, we affirm.

This case arose from the stabbing death of Ricky Pitts on December 15, 1999. On that date, Fernando Sierra, Elias Wong, Miguel Campos, Arturo Rodriguez, Freddy Montoya, David de la

Santos, and appellant, Daniel Reyes-Garcia, all of whom were of Hispanic origin, were residing in rooms at the Horseshoe Motel in Lexington. At around 7:00 or 8:00 p.m., all the men except de la Santos, went to Wong's room. At some point Pitts, who had also recently rented a room in the hotel, came into Wong's room with crack cocaine. One of the men present took rocks of cocaine from Pitts without paying for them, although it was in dispute who this person was. Pitts then expressed that he wanted his money for the cocaine. After Pitts left, the men, all except appellant, went to Sierra's room and smoked the crack cocaine. Sierra left the room and encountered Pitts who was disturbed about not being paid for the cocaine. Pitts then pulls Sierra into his (Pitts's) room and closes the door. Campos discovers that Pitts has pulled Sierra into his room and tells the others. Wong then goes into the room to get Sierra and sees that Pitts is holding Sierra by the arm and left shoulder. Wong and two other African-American men in the room tell Pitts to let Sierra go and just then a window breaks. Wong then attempts to pull Sierra out of the room and Pitts finally lets go of Sierra. As the Hispanic men were about to leave, appellant entered the room and stabbed Pitts. Appellant then gave the knife to Wong.

Much of the testimony at trial was confusing, in part, due to the fact that some of the witnesses either spoke very little or no English and certain testimony had to be translated. However, the above stated facts were generally undisputed among the witnesses, although there were some differences in the testimony. Sierra testified that it was Montoya who took the crack from Pitts when they were in Wong's room. Sierra also

testified that when he was pulled into Pitts's room, there was no physical altercation and he was not afraid for his life.

Wong's testimony varied in that he testified that Montoya was the one who took the crack from Pitts. Wong also testified that when he went to the door of Pitts's room when Pitts was holding Sierra, he heard Sierra say that Pitts wanted to beat him up.

Appellant's version of the events was far different from any other account. Appellant stated that on the evening in question, he went to Wong's room where he and his Hispanic friends were smoking crack. Pitts came to the room to sell crack and Wong told him that he wanted crack but that he did not have any money. Whereupon Pitts gave Wong some crack and told him he could pay him when he got the money. Subsequently, Sierra took more crack from Pitts with the assistance of Montoya and Campos, and they all began smoking it. Pitts told them he wanted to be paid for the crack, whereupon Montoya, Sierra, and Campos began hitting Pitts. Appellant claims he then took a screwdriver away from Montoya and asked Pitts to leave. Some minutes later, Pitts returned with an African-American man demanding money for the crack. Appellant contends he then left the room to get cigarettes with de la Santos, and it was during that time that Sierra was pulled into Pitts's room. Appellant went to see what was going on in the room and heard Sierra yelling for help. When the door opened, appellant saw Pitts and Sierra hitting each other. Appellant tried to break up the fight and Pitts hit him. Sierra ran out of the room. Appellant was left fighting with Pitts. Appellant claims he saw Pitts take a pocket knife from

his pocket. When Pitts dropped the knife, appellant grabbed it and stabbed Pitts in self-defense. Pitts died from the knife wound.

Appellant was thereafter indicted for murder. At trial, the jury was instructed on murder, first-degree manslaughter, second-degree manslaughter, and reckless homicide. Appellant was convicted of reckless homicide and sentenced to five years' imprisonment. This appeal followed.

Appellant's first assignment of error is that the trial court erred when it refused to allow appellant to admit the prior inconsistent statement of Sierra. The prior inconsistent statement at issue was Sierra's first statement to police to the effect that three African-American men in Pitts's room were responsible for Pitts's death.

At trial, Sierra admitted lying to police during his first statement to them, but claimed he could not remember the substance of the lie. On cross-examination of Detective Billy Richmond who took that statement from Sierra, appellant attempted to elicit the substance of the prior inconsistent statement. Appellant maintained he wanted to admit this prior inconsistent statement to impeach Sierra's testimony by showing that he was a liar and that he could make up a story on the spot to fit the situation. The trial court denied the admission of the prior inconsistent statement on grounds that appellant freely admitted he lied in the prior statement to police and appellant was not attempting to prove the truth of said statement. Hence, the substance of the prior inconsistent statement would serve no further purpose.

In Jett v. Commonwealth, Ky., 436 S.W.2d 788 (1969), it was held that a prior out-of-court statement may be admitted not only for impeachment purposes, but also as substantive evidence if it is relevant to the merits of the case, as opposed to being a collateral matter. It has also been held that the admission of a contradictory statement is within the trial court's discretion. Wise v. Commonwealth, Ky. App., 600 S.W.2d 470 (1978). In the instant case, appellant claims he sought to admit Sierra's prior statement to show the witness was a liar. As noted by the trial court, the witness accomplished this himself by admitting he lied to police in the prior statement. The prior statement that the two African-American men were responsible for the death of Pitts was inconsistent with both the defense and prosecution theories of the case. Hence, it was not relevant to the merits of the case and would have served only to confuse the issues in this already confusing trial.

Appellant argues that the trial court was required to admit the prior statement under the dictates of Wise v. Commonwealth, Ky. App., 600 S.W.2d 470 (1978) and Commonwealth v. Manning, Ky., 23 S.W.3d 610 (2000). We disagree. Those cases can be distinguished by the fact that the prior statements in those cases were sought by the Commonwealth, not to show that the witnesses were lying, but to prove the truth of those statements. Accordingly, the trial court in the present case did not abuse its discretion in refusing to admit Sierra's prior statement to police.

Appellant's remaining argument is that the trial court erred in admitting evidence that appellant was upset over his

girlfriend on the day in question. During the direct examination of Sierra and Wong, the Commonwealth brought out evidence that appellant was upset with Miguel Campos over his girlfriend on that day. Appellant objected, contending that this evidence was irrelevant since it did not make it any more or less probable that he killed Pitts. See KRE 401. Again, we disagree. Wong testified that appellant was upset with Pitts because he kept approaching the door where appellant and his girlfriend, Jessica, were and asking Jessica to come out. Appellant claimed he killed Pitts in self-defense or in defense of Sierra. If his motive for killing Pitts was because he was angry about Pitts's interest in Jessica, that would negate appellant's claims of self-defense or defense of another. Determinations of relevancy are within the trial court's discretion. Partin v. Commonwealth, Ky., 918 S.W.2d 219 (1996). The trial court did not abuse its discretion in allowing this evidence.

For the reasons stated above, the judgment of the Fayette Circuit Court is affirmed.

ALL CONCUR.

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