

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,)	No. 67248-7-I
)	
Respondent,)	
)	
v.)	
)	
VALENTE ALVAREZ-GUERRERO,)	UNPUBLISHED OPINION
)	
Appellant.)	FILED: January 22, 2013
)	

Verellen, J. — Valente Alvarez-Guerrero appeals his conviction for second degree felony murder with a deadly weapon enhancement. He argues that his constitutional right to present a defense was violated when the trial court excluded evidence alleging that the victim was a drug dealer. Finding no error, we affirm.

FACTS

Around 11:00 p.m. on May 27, 2009, Alvarez-Guerrero and his roommate Arturo Guillen-Ramirez got into a physical altercation at their apartment after Alvarez-Guerrero became angry that Guillen-Ramirez and a friend made noise and woke him up. At one point during the fight, Alvarez-Guerrero pushed Guillen-Ramirez off him onto the floor, stood over him, and challenged him to get up and continue to fight. Guillen-Ramirez instead called 911. When law enforcement arrived, Alvarez-Guerrero had disheveled clothing and scratches on his neck, and Guillen-Ramirez had a bloody

mouth and nose. Alvarez-Guerrero was arrested and transported to the precinct. Alvarez-Guerrero informed the officers he was scheduled for surgery for a preexisting hand injury early the next morning. The officers released him around 1:00 a.m. and instructed him twice not to return to the apartment.

At 5:47 a.m., Alvarez-Guerrero called Guillen-Ramirez's sister, Alondra Vasquez, in California. Alvarez-Guerrero told Vasquez that he had gone back to the apartment to pick up some items, that Guillen-Ramirez did not want to give them to him, and that he had gotten into an argument with Guillen-Ramirez and shot him. He asked Vasquez if she knew whether Guillen-Ramirez was alive or dead. Vasquez called her brother and when she did not get an answer, she called the police.

When law enforcement arrived at the apartment at 8:30 a.m., they discovered the body of Guillen-Ramirez lying face down in a pool of blood in the apartment's front doorway. No weapons were found in the vicinity of the body. Guillen-Ramirez had stab wounds to the left chest, the right back, and through his right eye, as well as defensive wounds on his right hand. A medical examiner determined that Guillen-Ramirez died sometime between midnight and 4:00 a.m. Alvarez-Guerrero fled Seattle and was apprehended in Bakersfield, California.

Police found what was characterized by the parties as a "crack pipe" located in the closet of Guillen-Ramirez's room. The pipe was never tested for the presence of drugs and was ultimately discarded. An autopsy revealed Guillen-Ramirez had no alcohol or drugs in his system at the time of his death.

Prior to trial, Alvarez-Guerrero moved to offer testimony from a neighbor, Sandra

Ramirez-Lopez, that Guillen-Ramirez had a reputation as a drug dealer. Alvarez-Guerrero also moved to admit evidence regarding the crack pipe.¹ The trial court excluded any reference to Guillen-Ramirez being a drug dealer or to the crack pipe.

Alvarez-Guerrero testified at trial. He stated that after he was released from the precinct, he went back to the apartment to change clothes before his surgery, where he found that Guillen-Ramirez had packed all his belongings in two garbage bags. Guillen-Ramirez attempted to call the police again, so Alvarez-Guerrero grabbed Guillen-Ramirez's phone and pocketed it. He picked up the bags and attempted to leave, but Guillen-Ramirez hit him in the mouth. Alvarez-Guerrero grabbed a knife from the kitchen drawer and told Guillen-Ramirez not to approach, stating, "I will not take responsibility for what might happen."² Alvarez-Guerrero claimed they grappled over the knife, that Guillen-Ramirez tried to turn the knife on him, and that he "poked" Guillen-Ramirez with the knife to fend him off.³ When Alvarez-Guerrero saw blood on Guillen-Ramirez, he fled the apartment in fear without determining the extent of Guillen-Ramirez's injuries.

The jury was given instructions on justifiable and excusable homicide. Alvarez-Guerrero was found guilty of second degree felony murder with a deadly weapon enhancement and sentenced to 194 months.⁴ Alvarez-Guerrero timely appeals,

¹ Although the pipe was no longer available, there was a photograph of it.

² Report of Proceedings (Feb. 15, 2011) at 123.

³ Id. at 124.

⁴ Alvarez-Guerrero was originally charged with one count of second degree intentional murder and one count of second degree felony murder, both with a deadly weapon enhancement. The jury acquitted on the second degree intentional murder charge, but found him guilty of the second degree felony murder charge as well as the

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arguing

lesser offense of first degree manslaughter. At sentencing, the manslaughter conviction was vacated.

that the trial court violated his constitutional right to present a complete defense when it excluded evidence that Guillen-Ramirez had a reputation in the community for being a drug dealer and that a crack pipe was found in his bedroom.

DISCUSSION

The right to present testimony in one's defense is guaranteed by both the United States and the Washington Constitutions.⁵ However, this right is not absolute; a defendant does not have the right to introduce evidence that is irrelevant or otherwise inadmissible.⁶ The admissibility of evidence rests within the sound discretion of the trial court and this court will not disturb the trial court's decision unless no reasonable person would adopt the trial court's view.⁷ We review de novo a claim that a trial court's evidentiary ruling violated the constitutional right to present a defense.⁸

Generally, evidence of a person's character is inadmissible to prove conformity therewith on a particular occasion.⁹ However, an exception to this rule provides that "[e]vidence of a pertinent trait of character of the victim of the crime offered by an accused" is admissible.¹⁰ When a defendant asserts self-defense, evidence of the

⁵ State v. Hudlow, 99 Wn.2d 1, 14, 659 P.2d 514 (1983). The Sixth Amendment to the United States Constitution provides that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him [and] to have compulsory process for obtaining witnesses in his favor." Similarly, article I, section 22 of the Washington Constitution guarantees that "[i]n criminal prosecutions the accused shall have the right . . . to meet the witnesses against him face to face, [and] to have compulsory process to compel the attendance of witnesses in his own behalf."

⁶ State v. Rehak, 67 Wn. App. 157, 162, 834 P.2d 651 (1992).

⁷ State v. Atsbeha, 142 Wn.2d 904, 913-14, 16 P.3d 626 (2001).

⁸ State v. Jones, 168 Wn.2d 713, 719, 230 P.3d 576 (2010).

⁹ ER 404(a).

victim's violent disposition is a pertinent character trait because it is relevant to the question of whether the victim acted in conformity with his character by provoking the incident as the first aggressor.¹¹ Evidence offered for this purpose is subject to the restrictions set forth in ER 404 and 405. Only the victim's reputation for violence is admissible; specific acts of violence are not.¹²

Evidence regarding the victim's violent character may also be relevant to show the defendant's state of mind; in other words, the reasonableness of his or her belief that the use of force was necessary in self-defense.¹³ Under these circumstances, because the character evidence is used to show state of mind rather than to show the victim acted in conformity therewith, the restrictions of ER 404 and 405 do not apply.¹⁴ Evidence of specific acts is admissible provided the defendant was aware of the acts at the time.¹⁵

The trial court did not err in excluding the evidence in question for either purpose. Evidence of Guillen-Ramirez's reputation in the community for violence would have been admissible to show that Guillen-Ramirez was the first aggressor. But there was no evidence in the record that Guillen-Ramirez had a reputation for violence. The

¹⁰ ER 404(a)(2).

¹¹ State v. Alexander, 52 Wn. App. 897, 900, 765 P.2d 321 (1988); United States v. Keiser, 57 F.3d 847, 853-54 (9th Cir.).

¹² ER 405(a), (b); Alexander, 52 Wn. App. at 901.

¹³ State v. Dyson, 90 Wn. App. 433, 438-39, 952 P.2d 1097 (1997) ("To establish self-defense, a defendant must produce evidence showing that he or she had a good faith belief in the necessity of force and that belief was objectively reasonable.").

¹⁴ Keiser, 57 F.3d at 853.

¹⁵ State v. Walker, 13 Wn. App. 545, 549-50, 536 P.2d 657 (1975).

neighbor through whom Alvarez-Guerrero attempted to offer reputation evidence could not point to any specific acts of violence other than once observing Guillen-Ramirez having a verbal argument with his girlfriend. We cannot infer from the facts of this case that a reputation as a drug dealer necessarily constitutes a reputation for violence. The reputation evidence was properly excluded as irrelevant.

Neither was the evidence relevant to Alvarez-Guerrero's state of mind. There was no evidence that Alvarez-Guerrero knew Guillen-Ramirez committed acts of violence in the course of dealing drugs. Without such evidence, the allegations that Guillen-Ramirez was a drug dealer was not relevant to whether Alvarez-Guerrero had a reasonable fear that Guillen-Ramirez would attack him. The crack pipe was likewise irrelevant given that the autopsy revealed no drugs in Guillen-Ramirez's system. The trial court applied ER 403 and found that any limited relevance of the evidence was outweighed by the risk it would mislead, prejudice, or distract the jury. A trial judge has very broad discretion in balancing the probative value of evidence against its prejudicial effect, and its decision in that regard will not be overturned absent a showing of an abuse of discretion.¹⁶

Finally, the exclusion of the evidence did not violate Alvarez-Guerrero's right to present a defense. The Sixth Amendment is violated if a trial court excludes evidence that constitutes a defendant's entire defense.¹⁷ This was not the case here. Alvarez-Guerrero presented ample evidence in support of his claim of self-defense. He argued that Guillen-Ramirez was bigger and stronger than he was and that he knew Guillen-

¹⁶ State v. Hughes, 106 Wn.2d 176, 201, 721 P.2d 902 (1986).

¹⁷ Jones, 168 Wn.2d at 721.

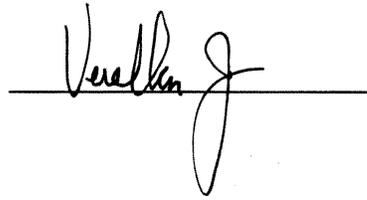
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Ramirez to always carry a knife. He claimed that his injured hand put him at a comparative disadvantage in a physical confrontation with Guillen-Ramirez. He testified

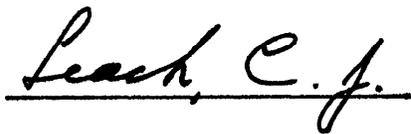
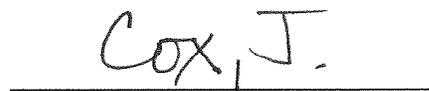
that he had already been beaten up by Guillen-Ramirez several hours earlier. And, most importantly, he described how Guillen-Ramirez grabbed the knife, wrestled him to the ground, and tried to stab him. The purpose for which Alvarez-Guerrero sought to admit allegations of drug dealing was satisfied: the jury was made aware that Guillen-Ramirez caused Alvarez-Guerrero fear.¹⁸

Because the evidence was not relevant to the claim of self-defense, the trial court did not abuse its discretion or violate Alvarez-Guerrero's right to present a defense.

Affirmed.

A handwritten signature in cursive script, appearing to read "Verellen J.", is written above a horizontal line.

WE CONCUR:

A handwritten signature in cursive script, appearing to read "Leach, C. J.", is written above a horizontal line.A handwritten signature in cursive script, appearing to read "Cox, J.", is written above a horizontal line.

¹⁸ Alvarez-Guerrero actually referred several times in his testimony to Guillen-Ramirez's drug use and violence, in violation of the pretrial ruling, until the trial court ordered him to stop.