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IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

WAYMON TK MILLEDGE SWILLEY, III,	)	
Appellant,	)	
v.	)	Case No. 2D19-65
STATE OF FLORIDA,	)	
Appellee.	)	

Opinion filed May 6, 2020.

Appeal from the Circuit Court for Pinellas County; Michael F. Andrews, Judge.

Howard L. Dimmig, II, Public Defender, and Ama N. Appiah, Special Assistant Public Defender, Bartow, for Appellant.

Ashley Moody, Attorney General, Tallahassee, and C. Todd Chapman, Assistant Attorney General, Tampa, for Appellee.

KHOUZAM, Chief Judge.

Waymon Swilley was charged with second-degree murder by stabbing his neighbor in the neck during an argument. He admitted to the stabbing but argued that he acted in self-defense. After a lengthy trial, the jury found him guilty as charged and

he was sentenced to life imprisonment. Swilley raises eight arguments on appeal, six of which are without merit. However, because two pieces of evidence indicating his state of mind and the validity of his self-defense theory were improperly excluded, we reverse the murder conviction and remand for a new trial.

Swilley used to be friends with his neighbor, Adrian Johnson, and the two often spent time together before their relationship turned hostile. One day, Johnson angrily approached Swilley to confront him over a recent insult. The resulting altercation culminated in Swilley pulling out a knife and fatally stabbing Johnson in the neck. At trial, Swilley adopted a self-defense theory, arguing that he stabbed Johnson out of fear for his life. He claimed that Johnson was a much bigger man who continued to threateningly invade Swilley's personal space despite repeated warnings to stop. He also smelled alcohol on Johnson's breath and knew from past observation that Johnson became aggressive when drinking alcohol. Furthermore, Swilley claimed that Johnson carried a knife on his person, and Swilley knew this because he had seen Johnson with it on previous occasions while relaxing on a porch or in a truck.

Before trial, the State filed a motion in limine to prohibit Swilley from introducing, among other things, a toxicology report indicating that Johnson had a blood-alcohol content (BAC) of about .07 and a knife found in Johnson's pants pocket. The trial court ultimately granted the motion, finding that a .07 BAC was too low to be relevant and that the knife in Johnson's shorts was not probative evidence for a self-defense claim because it was never drawn or visible to Swilley.

"Trial court decisions relating to the admission of evidence are reviewed for an abuse of discretion." Graham v. State, 207 So. 3d 135, 142 (Fla. 2016)

(citing San Martin v. State, 717 So. 2d 462, 470–71 (Fla. 1998)). A trial court decision is an abuse of discretion when it is "arbitrary, fanciful, or unreasonable." Id. (quoting Johnson v. State, 40 So. 3d 883, 886 (Fla. 4th DCA 2010)). Conversely, "[i]f reasonable men could differ as to the propriety of the action taken by the court, then the action is not unreasonable and there can be no finding of an abuse of discretion." Id. (quoting Canakaris v. Canakaris, 382 So. 2d 1197, 1203 (Fla. 1980)).

Despite this deference to the evidentiary decisions of the trial court, "[a] homicide defendant is afforded wide latitude in the introduction of evidence supporting his self-defense theory." Warren v. State, 577 So. 2d 682, 684 (Fla. 1st DCA 1991) (citing Borders v. State, 433 So. 2d 1325 (Fla. 3d DCA 1983)). Furthermore:

> "Where there is even the slightest evidence of an overt act by the victim which may be reasonably regarded as placing the accused apparently in imminent danger of losing his life or sustaining great bodily harm, all doubts as to the admissibility of evidence bearing on his theory of self-defense must be resolved in favor of the accused."

Id. (citing Quintana v. State, 452 So. 2d 98, 100 (Fla. 1st DCA 1984)). Thus, "[i]t is error to exclude testimony which bears directly on the defendant's state of mind, the relationship between the victim and defendant, and the victim's reputation for violence when under the influence of alcohol." Id.

In Arias v. State, 20 So. 3d 980 (Fla. 3d DCA 2009), the Third District considered a situation similar to Swilley's case. Arias, a security guard, was having an illegally parked car towed out of his apartment complex when the car owner came out to the parking lot. Id. at 981. A verbal altercation ensued, and the car owner threatened to kill Arias. Arias drew a gun, hoping to scare the car owner away. Instead of fleeing, however, the car owner ripped off his shirt and charged at Arias, pounding his chest and

telling Arias to shoot him. Arias then shot and killed the car owner. When he was charged with first-degree murder, Arias claimed self-defense. To support his self-defense theory, he testified that the car owner looked and acted intoxicated and under the influence of cocaine. Id. at 982. He also sought to introduce toxicology results indicating that the car owner had cocaine in his system and a BAC of .21. However, the trial court granted the State's motion in limine to exclude the toxicology report. On appeal, the Third District reversed, holding that "so long as the defendant takes the stand and testifies to his observation of the intoxication of the victim, the toxicology results are admissible." Id. at 983. And because the defendant took the stand and testified that the victim appeared intoxicated, the toxicology evidence was admissible "to confirm the defendant's perception that the victim was, in fact, intoxicated." Id. at 984 (quoting Diaz v. State, 747 So. 2d 1021, 1024 (Fla. 3d DCA 1999)).

Similarly, and in support of his own self-defense theory, Swilley testified that Johnson was aggressive when drinking and smelled like alcohol during the incident leading to his death. The toxicology report indicated that Johnson had a BAC of about .07, a finding that might have supported Swilley's allegation. The trial judge excluded this evidence, finding that a .07 BAC was too low to be relevant. But far from being inconsequential, a .07 BAC is just below the threshold for a DUI conviction. See § 316.193(1)(b), Fla. Stat. (2017). And even if the trial court was right in doubting what a .07 BAC could prove, any doubt should have been resolved in Swilley's favor. See Warren, 577 So. 2d at 684.

Like the toxicology report, testimony about the knife found on Johnson's person should also have been admitted. The Third District's decision in Munoz v. State,

45 So. 3d 954 (Fla. 3d DCA 2010) is illustrative on this point. In that case, Munoz appealed from a manslaughter conviction, arguing that he should have been allowed to testify about the victim's reputation for carrying firearms. Id. at 956. While the Third District affirmed for other reasons, the court agreed that "whether [the victim] routinely carried a firearm was relevant to his claim of self-defense." Id. at 957. Such evidence of the victim's character demonstrated the reasonableness of the defendant's fear and the need to react with force, provided the defendant knew about this routine or character trait before the killing. Id.

Consistent with the analysis in Munoz, Swilley was allowed to testify about Johnson's routine or "character" of carrying a knife, but through evidence of specific acts by Johnson in the past instead of through reputation evidence. More specifically, Swilley testified that he often spent time with Johnson when they used to be friends and frequently saw Johnson carrying the knife after work or relaxing on a porch. But this was not the only character evidence of Johnson's routine available to Swilley. At first blush, the knife found in Johnson's pants pocket seems to have no bearing on Swilley's fear during their argument because Johnson never drew or otherwise revealed it before Swilley stabbed him. But under these specific facts, third-party testimony about the knife serves a very narrow and specific purpose like that of the toxicology report: corroboration. Just as the toxicology report lends credibility to Swilley's claim that Johnson had been drinking, so too does the knife in Johnson's pants lend credibility to Swilley's claim that Johnson frequently carried such a weapon. This corroborative evidence was therefore relevant to Swilley's self-defense claim. See Reddick v. State, 443 So. 2d 482, 483-84 (Fla. 2d DCA 1984) (holding that third-party testimony

corroborating defendant's testimony about murder-victim's past acts was relevant to defendant's self-defense claim because it boosted his credibility). And "[w]here evidence tends in any way, even indirectly, to establish a reasonable doubt of defendant's guilt, it is error to deny its admission." Campbell v. State, 2 So. 3d 291, 295 (Fla. 4th DCA 2007) (citing Wagner v. State, 921 So. 2d 38 (Fla. 4th DCA 2006)).

In light of these considerations, we conclude that it was improper for the victim's toxicology report and third-party testimony about his knife to be excluded, compelling us to reverse and remand for a new trial.

Reversed, remanded for new trial.

LaROSE, J., and CASE, JAMES R., ASSOCIATE SENIOR JUDGE, Concur.