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NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2016-CA-001493-MR

MATTHEW PATRICK DONAGHY

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE PAMELA R. GOODWINE, JUDGE
ACTION NO. 15-CR-00202

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: KRAMER, J. LAMBERT, AND TAYLOR, JUDGES.

KRAMER, JUDGE: Matthew Patrick Donaghy appeals the Fayette Circuit Court's judgment convicting him of second-degree manslaughter and sentencing him to ten years of imprisonment. After a careful review of the record, we affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

Matthew Patrick Donaghy was indicted on the charge of murder after killing his boyfriend, Todd Schumacher, with whom he resided. During one pretrial hearing, Matthew testified that Todd had cheated on him during their relationship and contracted HIV, and in turn, Todd infected Matthew with HIV. Approximately four months before Todd's death, Matthew tried to talk to Todd about this, in efforts to "get closure about the whole HIV thing." Todd became angry with Matthew and physically aggressive toward him. However, immediately after acting this way toward Matthew, Todd was affectionate with Todd's dog. Matthew attested that he did not understand how Todd could be so cruel toward a human being after all the things Todd had done to him and then be so affectionate toward the dog. Matthew testified that this bothered him throughout the following day. So, Matthew attempted to put the dog in the oven. Matthew "was in the process" of putting the dog in the oven when the dog got burned. Matthew realized this was not normal behavior, so he hospitalized himself for a few days.¹

Prior to the jury trial, the defense moved *in limine* "to prohibit argument, reference, use or admissibility of [Matthew's] alleged prior bad act of

¹ Matthew was charged in a separate case concerning the dog incident, but that case was not final at the time of the hearing in this case in which Matthew testified that he had attempted to put the dog in the oven.

abuse of an animal and the victim's missing pet.”² The Commonwealth responded to the motion *in limine*, arguing as follows:

While the Commonwealth is generally in agreement with the arguments made by counsel for Defendant pursuant to KRS^[3] 503.055, it is apparent that much of the testimony and evidence in the eventual trial of this matter will concern the issues of self-defense, initial aggressor, amount of defensive force used, and so forth regarding the struggle that ended with the victim's death. It seems likely that this information will be expanded to include the history between Defendant and victim, as well as domestic violence complaints made by and/or against both parties. Accordingly, it seems premature at this point to rule one way or the other on this matter. The Commonwealth suggests that the initial step in other homicide cases when the surviving party claims justification based on self-defense has been a hearing to determine whether there is probable cause to proceed or if the suspect should have been immune from prosecution. *See, e.g.*, KRS 503.085; *Commonwealth v. Lemons*, [437 S.W.3d 708 (Ky. 2014)].

During a hearing on the motion *in limine*, the circuit court ruled that if the defense chose to introduce evidence of Todd's history of domestic violence toward Matthew (*i.e.*, before the events of the night in question), then the Commonwealth would be permitted to introduce evidence concerning the dog incident because the dog was a pet and a part of the relationship between Todd and Matthew.

Therefore, the court left the choice up to the defense as to whether it wanted to

² The dog went missing four days before Todd's death. To our knowledge, there are no allegations that Matthew was involved in the dog's disappearance.

³ Kentucky Revised Statute.

introduce evidence of Todd's prior acts of domestic violence before the night in question.⁴

During trial, Darren Tiadoro,⁵ a friend of Todd's, testified that he saw Todd at a local bar on the night in question. Todd was very sad because his beloved dog had been missing for four days.

Todd's sister, Amy Schumacher, testified that in the days before his death, Todd was not feeling well. He was also distraught about his missing dog. Amy and her girlfriend, Virginia Husha,⁶ testified at trial. Their testimony revealed that they had gone to Todd's house to check on him on the day his body was discovered. While Amy was knocking on the front door of the house, Virginia saw a person look out the window at the top of the door over Amy's head and that person appeared to be Matthew. They knocked on the front door and the back door, but nobody answered. They went to the carport door, through which they could see splatters of blood inside. Amy and Virginia broke into the house through

⁴ During pretrial proceedings in this case, the defense alleged that Todd had committed domestic violence against two of his prior boyfriends, as well as against Matthew. Matthew testified during one pretrial hearing that when he and Todd had arguments, Todd initially would break things around the house and slam walls. If Matthew went into a room and locked the door, Todd would kick the door down or tear the door off the hinges. Matthew attested that Todd's violence escalated to being physically abusive toward Matthew, including hitting him in the face, slamming him to the ground, and throwing him into walls. These things happened when Matthew tried to talk to Todd about the fact that Todd had given him HIV. The defense also alleged that a domestic violence order had been entered against Todd during one of his prior relationships.

⁵ Phonetic spelling of the witness's name.

⁶ Phonetic spelling of the name.

the back door. There was “blood everywhere’ in the kitchen. They went to the bedroom and saw the following written in blood on the bedroom wall: “Please send to heaven Todd + Matt.” Todd was lying naked on the floor “with chunks of flesh taken out of his body.” Virginia felt Todd’s neck for a pulse and concluded that he was dead. Matthew was lying on the bed and fidgeting with something silver in his hand. Virginia realized it was a knife. She knocked it out of his hand. It landed on the bed, and she used her shoe to kick it off onto the floor. Virginia called 911 while Amy unlocked the front door.

The audio recording of the 911 call was played for the jury. During it, Virginia can be heard telling the operator the address of Todd’s house, that Todd was dead, that it looked like he had been stabbed, that his boyfriend was covered in blood, that his boyfriend had a knife, and that it looked like his boyfriend was “not going to make it.”

A paramedic testified that the paramedics bandaged a laceration on Matthew’s arm. The only other complaint that Matthew made to paramedics was that he had chest pain. Matthew told them that someone had kicked him in the chest.

During interviews with various officers, Matthew initially told them that another man had come into their house and stabbed Todd. Detective Rob Wilson of the Lexington Police Department testified that he spoke with Matthew

while he was in the hospital's emergency room. After Matthew initially told him about the stranger who had come to their house and stabbed Todd, and Detective Wilson told Matthew that his story did not add up with the evidence, Matthew asked to speak with an attorney. Detective Wilson stepped out of the curtained-off area of the emergency room where Matthew was being treated. Less than a minute later, Matthew asked to speak with him again. Matthew told Detective Wilson that Todd had given him HIV. Matthew said that he killed Todd. He explained that Todd attacked him, and then Todd walked away. Matthew grabbed a kitchen knife in case Todd came at him again because he wanted to be able to defend himself. When Todd came toward him again, Matthew stabbed him. There was then a struggle between the two of them for control of the knife, and Matthew managed to get the knife back. He told Detective Wilson that he stabbed Todd about five more times.

Dr. John Hunsaker conducted the autopsy. He attested that Todd died due to the amount of blood that he lost. Dr. Hunsaker testified that the autopsy revealed two cuts to the top of Todd's head; nineteen cuts to the back of his torso; at least fourteen cuts to the front of his chest; at least fourteen cuts to his right arm and hand; approximately fifteen cuts to his left shoulder, arm, and hand; and at least four cuts to his lower extremities. This is a total of at least sixty-eight cuts to Todd's body.

Matthew also testified at trial. He stated that Todd was his boyfriend and that they were living together at the time of Todd's death. They had dated for approximately two years, since the time that Matthew was eighteen years old and Todd was about thirty-eight years old. On the evening of the events in question, Todd was at a local bar when Matthew called him around 5:00 p.m. and told him that he wanted to end the relationship. Todd came home intoxicated sometime between 10:00 p.m. that evening and 1:00 a.m. the next morning. Todd got a bottle of tequila and made himself a drink. Todd also took an Ambien pill. Matthew went to bed in the back bedroom, and Todd lay down on the couch. Matthew awakened about an hour later. He went out and lay down on the couch with Todd, who was asleep. Matthew woke up when Todd hit or kicked him in the chest in efforts to shove him off the couch. Todd was angry that Matthew had lain down with him after Matthew had decided to end their relationship.

As Todd was getting angrier, he began balling up his fists. Matthew thought that he should get his cellular telephone at that point, in case something happened. Matthew ran over to the entryway between the living room and kitchen, and Todd ran to meet him. Todd pushed Matthew against the threshold of the entryway. Todd began strangling Matthew and asking if he was still going to leave him. Matthew began hitting Todd's arm in efforts to get him to loosen his grip because he felt as though he was going to become unconscious. After

approximately thirty seconds of strangling Matthew, Todd moved one hand from Matthew's throat to Matthew's forehead. Todd asked Matthew if he knew how easy it would be for him to break Matthew's neck. Todd let go and walked away. Matthew went and retrieved a knife from the kitchen in case Todd came back to strangle him again.

Matthew attested that when he turned back around after retrieving the knife, Todd had turned back and was standing in the living room. Matthew began waving the knife to keep Todd away. As he waved the knife, he slashed at Todd. Todd tried to get the knife away from Matthew, but Matthew pressed his finger into one of the cuts on Todd's arm or hand, which caused Todd to release his grip on the knife. Todd then hit Matthew in the nose. As soon as Todd hit him in the nose, Matthew stabbed Todd in the side. Todd bent down and grabbed Matthew around the waist in efforts to tackle him, but Matthew kept stabbing him on the shoulders and the head.

After it was apparent that Todd was dead, Matthew retrieved Todd's Ambien pills, swallowed a handful of them in an attempted suicide, and lay down on the couch. A while later, Matthew woke up and began vomiting, resulting in most of the pills being expelled from his stomach. He researched on the computer how many pills it would take to kill him. Matthew then decided to go to the bedroom and cut his wrists in an attempted suicide. He dragged Todd's body to

the bedroom with him because he wanted to put Todd on the bed, lie next to him, slit his wrists, and then bleed out, but Todd was too heavy to lift onto the bed. He placed Todd's body at the end of the bed on the floor and Matthew lay down at the end of the bed and began cutting his wrist. At some point, he wrote on the wall: "Please send Todd and Matt to heaven." He used a serrated knife to cut his own wrist, but he did not kill himself. Matthew attested that he had gone into "survival mode" during the altercation with Todd. In efforts to keep himself safe, he went too far.

The jury found Matthew guilty of the amended charge of second-degree manslaughter. He was sentenced to serve ten years of imprisonment.

Matthew now appeals. He contends that the circuit court violated his right to present a meaningful defense when the court ruled that if he presented evidence of Todd's prior domestic abuse upon Matthew and others in efforts to show why Matthew knew he had to act in self-defense, then the prosecution could present evidence of Matthew's prior bad act regarding the dog.

II. ANALYSIS

We review a trial court's evidentiary ruling for an abuse of discretion. *Woodard v. Commonwealth*, 147 S.W.3d 63, 67 (Ky. 2004). "The test for abuse of discretion is whether the trial judge's decision was arbitrary, unreasonable, unfair,

or unsupported by sound legal principles.” *Id.* (Internal quotation marks and citation omitted.)

The defense sought to introduce evidence of Todd’s history of domestic violence to show that Matthew used physical force against him in self-protection. The Commonwealth states in its brief that it does not dispute that “prior acts of violence by the victim directed at the defendant may be admissible to show the defendant feared the deceased. . . . [Matthew] was free to introduce testimony about the domestic abuse Todd allegedly inflicted upon [Matthew].” However, if Matthew chose to introduce such evidence, the Commonwealth argues that it was permitted to “dispute the evidence or put it in context” by introducing evidence about the dog incident. Therefore, we need only address whether evidence concerning the dog incident was admissible if Matthew chose to introduce evidence of Todd’s prior domestic abuse against him.

The Commonwealth asserts that if Matthew introduced evidence about Todd’s ongoing abuse toward him, this would “open the door to hear all the evidence that might factor into [Matthew’s] fear of the victim and would be relevant on a self-defense claim as to who was the initial aggressor, who did or did not withdraw from the fray, and the amount of force used.” The Commonwealth contends that the circuit court properly reasoned that Matthew would testify regarding Todd’s behavior both before and after the dog incident, and that it was

only fair to introduce evidence of why Todd may have acted that way, *i.e.*, due to what Matthew had done to Todd's dog. Therefore, the Commonwealth states that the trial court ruled that the evidence concerning the dog incident was inextricably intertwined with the evidence about Todd's abusive behavior.

Pursuant to KRE⁷ 404(b),

Other crimes, wrongs, or acts. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible:

- (1) If offered for some other purpose, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident; or
- (2) If so inextricably intertwined with other evidence essential to the case that separation of the two (2) could not be accomplished without serious adverse effect on the offering party.

“[T]he key to understanding [the exception set forth in KRE 404(b)(2)] is the word ‘inextricably.’ The exception relates only to evidence that must come in because it is so interwoven with evidence of the crime charged that its introduction is unavoidable.” *Funk v. Commonwealth*, 842 S.W.2d 476, 480 (Ky. 1992) (citation omitted).

⁷ Kentucky Rule of Evidence.

If Matthew had introduced evidence of Todd's prior acts of domestic violence toward him to show why he feared Todd and why he felt that he needed to act in self-defense, it would have been proper for the Commonwealth to present evidence concerning the dog incident. As the circuit court found, the dog incident was inextricably intertwined with the evidence of Todd's prior domestic violence toward Matthew—Todd's prior domestic violence occurred around the time of the dog incident, and he may have acted violently toward Matthew because of what Matthew had done to his dog. Thus, the dog incident might help put Todd's prior domestic violence toward Matthew in context, and it helps tell the whole story of Matthew's relationship with Todd in the months leading to Todd's death, including the story of the crime charged.

Matthew contended that he needed to be able to introduce evidence of Todd's prior domestic violence acts toward him to show why he feared Todd and why he felt that he needed to act in self-defense at the time of Todd's death. Some of those prior domestic violence acts by Todd occurred around the time that Matthew attempted to put Todd's dog in an oven, resulting in the dog being burned. Matthew's actions toward the dog may have provoked Todd to get angry and react violently at that time. Thus, the dog incident evidence was inextricably intertwined with the evidence of Todd's prior acts of domestic violence toward Matthew, which Matthew wished to introduce in his defense. Consequently, the

circuit court did not abuse its discretion in finding that evidence of the dog incident was inextricably intertwined with the evidence of Todd's prior acts of domestic violence toward Matthew. The court, therefore, properly held that if Matthew chose to introduce evidence of Todd's prior domestic violence toward him, then the Commonwealth could introduce evidence about the dog incident.

Accordingly, the judgment of the Fayette Circuit Court is affirmed.

ALL CONCUR.

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