

**IMPORTANT NOTICE**  
**NOT TO BE PUBLISHED OPINION**

***THIS OPINION IS DESIGNATED "NOT TO BE PUBLISHED." PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, CR 76.28 (4) (c), THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS AUTHORITY IN ANY OTHER CASE IN ANY COURT OF THIS STATE.***

**Supreme Court of Kentucky** **FINAL**

2005-SC-0169-MR

DATE 10-12-06 EWA/Grouth, D.C.

FREDERICK ROBB

APPELLANT

APPEAL FROM PIKE CIRCUIT COURT  
HONORABLE EDDIE COLEMAN, JUDGE  
2004-CR-00161

V.

COMMONWEALTH OF KENTUCKY

APPELLEE

**MEMORANDUM OPINION OF THE COURT**

Affirming

On January 6, 2005, a jury of the Pike Circuit Court convicted Appellant of first-degree manslaughter. For this crime, Appellant was sentenced to a total of twenty (20) years imprisonment. Appellant now appeals to this Court as a matter of right. Ky. Const. § 110(2)(b). For the reasons set forth herein, we affirm Appellant's convictions.

The crime for which Appellant was convicted stemmed from the shooting death of William Stover, Appellant's close friend of many years. Appellant and Stover grew up together and continued to see each other several times each week as adults. Appellant contended that Stover had a history of altercations with both him and his mother involving Stover's desire for painkillers lawfully prescribed to the mother.

On May 17, 2004, Stover arrived at Appellant's home and asked if he wanted to smoke some marijuana with him. Appellant could not participate at that time but allowed Stover to return later that night to "party." At approximately 1:00 a.m. on May 18, 2004, the Kentucky State Police received a call from Appellant informing them that he had just shot his best friend.

During the thirty (30) minute 9-1-1 telephone call, Appellant stated that he shot Stover with a .357 magnum, that Stover made him smoke a little "crystal meth," that Stover had also smoked approximately two and a half grams of methamphetamines, and that Stover had refused to leave and had become forceful despite Appellant's warnings that he had a gun.

When officers arrived at Appellant's home, they photographed the scene and read Appellant his Miranda rights. Appellant refused to sign any waiver of his rights and indicated that he did not think he wanted to talk. The police accepted this and asked no questions. He, however, began to talk to the officers about the incident, and despite several breaks in the discussion, repeatedly provided unsolicited statements about the events of the evening to the officers. The entire conversation was recorded and admitted at trial.

An autopsy concluded that Stover had a high level of alcohol in his system but no presence of drugs. Stover's body had no evidence of bruises or abrasions indicative of a struggle prior to death. Appellant also lacked any bruises or indications that he had been in a fight or struggle with anyone, and there was no evidence of a struggle or fight in the home. The autopsy additionally revealed that Stover's body had "stippling" in the area of the wound, which is indicative of a close range firing of a weapon. There was no evidence, however, that Stover had possessed any kind of weapon.

Appellant was subsequently charged and convicted of first degree manslaughter. At trial, Appellant claimed that Stover had attacked him and that he acted in self defense. Appellant now appeals to this Court, alleging several errors which he claims entitle him to a new trial. For the reasons set forth herein, we affirm.

Appellant first claims error in the trial court's refusal to suppress the audio recording of his conversation with police which he alleges violated his state and federal rights (1) to remain silent and (2) to not incriminate himself. Appellant argues that the Commonwealth failed to show by a preponderance of the evidence that Appellant's statements were freely and voluntarily given. Upon review of the totality of the circumstances, we disagree.

A confession is involuntary only if there is police coercion or overreaching which overbore the accused's will and caused the confession. See Colorado v. Connelly, 479 U.S. 157, 165-66, 107 S.Ct. 515, 93 L.Ed.2d 473 (1986), see also Commonwealth v. Cooper, 899 S.W.2d 75 (Ky. 1995) (requiring "coercive police conduct" to suppress a statement as involuntary). Appellant argues that he had unequivocally invoked his right to remain silent by answering "no" when asked by an officer whether he was going to talk to them. The trial judge, however, correctly held that Appellant waived his equivocal invocation when he kept talking despite the lack of any solicitations from the officers.

In addition, the Commonwealth correctly points out that the comments on the tape are cumulative to those on the 9-1-1 tape, which were not challenged by Appellant. Therefore, if there is any error at all, it is harmless, and thus Appellant is not entitled to any relief. See Arizona v. Fulminante, 499 U.S. 279, 111 S.Ct. 1246, 113 L.Ed.2d 302 (1991), see also Talbott v. Commonwealth, 968 S.W.2d 76, 83-84 (Ky. 1998).

Appellant next argues that it was reversible error for the trial court to allow into evidence photographs of Stover's body from the crime scene. Appellant claims that the photographs were not relevant to the Commonwealth's case since he admits to shooting Stover. He claims that such photographs were overly prejudicial in that they were admitted for the sole purpose of arousing the passions of the jury and appalling them. We disagree.

The photographs in this case were relevant to illustrate: (1) the fact that there were no bruises or indications of a struggle or fight on the hands or body of Stover; (2) the "stippling" effect on the body of the victim from a close range shot; and (3) the location of the body in conjunction with the holes in the walls where the slug passed. The photographs demonstrate the Commonwealth's position refuting any claim of self defense or struggle prior to the shooting.

Appellant also challenges whether the probative value of the photographs was outweighed by undue prejudice. Adkins v. Commonwealth, 96 S.W.3d 779, 794 (Ky. 2003). We review such determinations by the trial court under an abuse of discretion standard. Id. at 795.

The trial court personally examined the photographs mentioned above and expressly found that they were not gruesome or overly prejudicial. We do not find a detail sufficient to overcome the probative value of the photographs, and thus, find no abuse of discretion on the part of the trial court.

In his final argument, Appellant alleges that the trial court erred in sustaining the Commonwealth's objection to the introduction of four prior violent criminal offenses of Stover. Appellant argues that since he claimed self defense, he had the right under Kentucky law to use such evidence for the purpose of explaining his fear of Stover.

Although Appellant is correct in this assertion, he must as a prerequisite introduce some proof that he knew of any such acts *at the time* of the murder. Saylor v. Commonwealth, 144 S.W.3d 812 (Ky. 2004) (emphasis added). Appellant failed to introduce any such proof during avowal on the above mentioned offenses.

A decision to allow evidence is within the sound discretion of the trial court and will not be reversed absent an abuse of discretion. Commonwealth v. King, 950 S.W.2d 807 (Ky. 1997). The trial judge allowed Appellant to introduce testimony of other prior violent acts by Stover where Appellant could show knowledge of the act at the time of the murder. Therefore, there is no evidence that the trial court abused its discretion in not allowing the testimony of the above mentioned offenses.

For the reasons set forth herein, the judgment of the Pike Circuit Court is affirmed.

All concur.

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