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RENDERED:OCTOBER 23, 2014
NOT TO BE PUBLISHED

Supreme Court of Kentucky

2013-SC-000264-MR

SIDNEY WILLIAMS — APPELLANT

V.

ON APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE THOMAS L. CLARK, JUDGE
NO. 11-CR-00618

COMMONWEALTH OF KENTUCKY — APPELLEE

MEMORANDUM OPINION OF THE COURT

AFFIRMING

Appellant Sidney Williams was convicted in Fayette Circuit Court of first-degree manslaughter and other crimes based on his killing Victor Martin. On appeal, he claims the trial court erred by excluding evidence of the victim's act of domestic violence despite a self-defense claim, by refusing to instruct the jury on protection of others as a defense, by refusing to exclude Williams's statements after he requested an attorney during custodial interrogation, and by refusing to dismiss the homicide charge under KRS 503.085. This Court finds no reversible error.

I. Background

Williams worked at Aichi Forge in Georgetown. Martin also worked there, and was supervised by Williams for a short time. The men rode to work together some of the time. Martin, however, was fired in July 2010. The men remained acquainted, and Williams offered Martin odd jobs from time to time.

But on August 14, 2010, Williams shot Martin to death. The events leading up to that event were disputed at trial.

Williams laid out a sequence of events suggesting that he acted in self-defense and, he argued, protection of others. He claimed that he had contacted Martin about doing some yard work, and that Martin was due to arrive at his house in Lexington around 6:00 p.m. He testified that Martin had not arrived by 6:20, and that he told his girlfriend, RanNetta Blevins, who was in the house, that he was going to a nearby store for a few minutes.

When he returned, he claimed, he smelled crack cocaine, which he was familiar with because of dealing with family members who had smoked the drug, and he heard his girlfriend yelling "Get off me!" and "Get away from me!" and "Get off me! Get the hell out! Stop touching me!" from inside the house. He testified that he went into the house and to the bedroom, where he found Martin lying on top of Blevins.

Williams claimed that he grabbed Martin by the collar and threw him against the closet door, and then dragged Martin down the hall and began asking him what he was doing. He claimed that Martin had not acted like this before, and that the man normally was a friendly, nice person.

According to Williams, Martin denied having done anything and turned to go to the laundry room. Williams followed him, and Martin turned around with a gun in hand. Williams testified that he did not keep guns in the house because he was a convicted felon.

Williams asked Martin what was going on and whether he was high,[1] and Martin answered that he was having a hard time and needed money. Williams gave Martin his wallet, which had $200 in it. Martin took the money out and put it in his pocket. He then told Williams he needed more money, which he knew Williams had because he got paid well.

This exchange went on for several minutes until Williams came up with a story that he had money hidden in the bathroom. Williams claimed that as they walked down the hall to the bathroom, he wondered if he was going to be shot and believed that Martin would shoot him if he tried anything. In the bathroom, Williams pulled a pillowcase full of sheets out and walked toward Martin with it. As Martin reached for the pillowcase, Williams threw it at him, knocking the gun sideways. A struggle ensued, and the men fought their way down the hall to the kitchen. Eventually, Martin lost hold of the gun, and both men ended up on the floor a few feet apart. Williams saw the gun nearby and grabbed it. He claimed that as he rolled toward Martin, the man got up and rushed him. Williams pulled the trigger and shot Martin in the head.

Williams claimed that at that point, he panicked because he had shot his friend. He did not call the police and instead started cleaning up the blood that was pouring from Martin on to the floor. He also put plastic bags on Martin's head.

Blevins had seen none of this, though she heard some of the struggle from the family room, where she had been watching television. As she came

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[1] A pathologist testified that Martin had cocaine, marijuana, and alcohol in his blood.

down the hallway toward the kitchen, Williams met her, apologized, and told her that he wished she had not been home so that none of the events of that night would have happened. She left the house at that point.

Williams continued cleaning the kitchen and moved Martin's body to the laundry room. As he cleaned, a friend called and Williams asked him to come over for a distraction. The kitchen was clean by the time the friend arrived, around 8:30, and they watched television. Blevins returned to the house around 9:00, and the friend left around 10:30.

The Commonwealth told a much different and simpler story. The Commonwealth offered proof, much of it from interviews with Blevins, that Williams had lured Martin to his home with an offer of yard work so he could actually confront Martin about a burglary. (Williams believed Martin had burglarized his home some time before.) According to the Commonwealth's proof, Blevins was at Williams's house watching television when Martin arrived, and Williams and Martin talked in the kitchen. Blevins heard Williams say something like "We know you broke in here. We got you on tape." Martin asked to see the tape and denied being involved in the burglary. Blevins claimed she did not know a gun was involved until she heard Williams slam it on the table and say, "Tell me the truth. Don't make me use this." Martin again denied being involved. Blevins then heard a gunshot. When she walked to the kitchen, she saw something on the floor. She walked back to the living room and could hear Williams cleaning up. Williams told her that he had not meant for her to be there. Blevins then left to go pay a bill. When she returned, Martin's body was wrapped in a bag in the laundry room.

It is around that point that the two versions of events converged. Williams decided that he needed to get the body out of the house. He placed the body in his truck and enlisted his girlfriend to help dispose of it. They drove out Russell Cave Road and pulled into a secluded driveway around 3:00 or 4:00 a.m. Williams put the body near a tree and took a gas can from the truck. He had Blevins drive away, and then he set the body on fire with the gasoline. He walked away, across I-75 to an apartment complex, and some time later, he called Blevins and asked her to come get him. He disposed of his clothes in a dumpster at the apartment complex and then left with Blevins. He disposed of the gun a few days later.

Martin's body was found early on the morning of August 15. Detective Franz Wolff contacted Williams because he had worked with Martin. Williams denied any knowledge of the killing, and stated that Martin was supposed to have come to his house the night before but had never arrived. The case went cold until March 2011, when Detective Wolff received a tip that Blevins had talked to some coworkers about the killing. He interviewed the coworkers and, later the same day, interviewed Blevins at the police station. Using information from this interview, Detective Wolff got search warrants for Williams's home and truck.

Williams was at home when the search warrant was executed. Swabs from his kitchen found blood matching the victim's. Williams agreed to go to the police station for an interview. At the beginning of the interview, he denied that Martin had come to his house and denied any knowledge of the killing. But he eventually admitted to shooting Martin, though he did not say anything

about Martin attacking Blevins. In fact, he claimed that Blevins had not been home at the time of the shooting. He did tell Detective Wolff that Martin had tried to rob him.

A few days later, Blevins called Detective Wolff for another interview. During that interview, she claimed that Martin had assaulted her. She stated that Martin had knocked her down and was on top of her when Williams walked in.

Williams was indicted for murder, tampering with physical evidence, abuse of a corpse, and being a second-degree persistent felony offender.

At trial, Blevins testified in Williams's favor, claiming she had been assaulted by Martin, though she claimed to have trouble remembering the details of the assault because she had been abusing crack, marijuana, and alcohol at the time. She was impeached extensively with inconsistent statements she had made in police interviews.

Williams testified to the version of events laid out above. When discussing the claimed assault of Blevins by Martin, he said that he had had no intention of disclosing the whole story during his police interview. He also testified that Blevins had been sexually assaulted several times in the past and that he did not want to talk about it but that he had decided to do so at trial because Blevins had already testified about it. He claimed at trial that he had not intended to kill Martin.

The jury was instructed on the full range of homicide offenses and self-protection, along with standard instructions for the other two offenses. The jury found Williams guilty of first-degree manslaughter as a lesser-included

offense of murder, and the rest of the counts as charged. He was sentenced to a PFO-enhanced 35-year sentence for manslaughter and a PFO-enhanced 10-year sentence for tampering, both to run concurrently for a total of 35 years.

Williams now appeals to this Court as a matter of right. *See* Ky. Const. § 110(2)(b).

II. Analysis

A. The trial court's exclusion of evidence of Victor Martin's domestic violence charge was at most a technical error and was harmless.

Prior to trial, the Commonwealth moved to exclude any mention of Victor Martin's criminal history, including a nearly ten-year-old felony conviction, and evidence of a recent incident of domestic violence against Martin's wife that gave rise to a domestic-violence petition and a criminal assault charge. Williams specifically sought to admit evidence that he knew Martin had a pending assault charge at the time of the shooting. He claimed that his knowledge of this charge affected his state of mind, which went to the validity of his self-defense claim.

The trial court sustained the Commonwealth's motion as to the felony conviction and the fact that a domestic-violence petition had been filed. The court also sustained the motion as to the assault charge underlying the petition but stated the matter could be revisited at trial depending on the testimony at trial. The court stated that Williams was free to introduce evidence that Martin was separated from his wife and not working.

On day three of the trial, Williams raised the issue again. He argued that the domestic violence petition alleged that Martin threw his wife on the bed and

choked her. He argued that at least this detail of the assault was admissible under *Saylor v. Commonwealth*, 144 S.W.3d 812 (Ky. 2004), presumably as it related to Martin's assault of Blevins. The Commonwealth argued that the domestic-violence incident was unrelated to Williams, and noted that Williams never stated in his three-hour interview with police that he knew of the incident.

The trial court concluded that the incidents were not significantly similar and that the murder was too far removed from any allegation as to what happened between Blevins and Martin (in Williams's bedroom) to allow a connection to be drawn between them. Based on that reasoning, the court disallowed the proof.

Williams now argues that under *Saylor* and similar cases, he was entitled to testify as to his knowledge of Martin's domestic violence regardless of whether there was a connection to the killing. He argues that his knowledge and any resulting fear were admissible as to his state of mind.

In *Saylor*, we addressed the circumstances under which a defendant claiming self-defense could introduce "evidence tending to show that the victim was a violent person." *Id.* at 815. We held that "such evidence may only be in the form of reputation or opinion, not specific acts of misconduct." *Id.* Use of particular acts by the victim to show a violent propensity would violate KRE 404 and 405. But this rule is not absolute:

> An exception [to this rule] exists ... when evidence of the victim's prior acts of violence, threats, and even hearsay evidence of such acts and threats, is offered to prove that the defendant so feared the victim that he believed it was necessary to use physical force (or deadly physical force) in self-protection, "provided that the

> defendant knew of such acts, threats, or statements at the time of the encounter."

Id. at 815–16 (quoting Robert G. Lawson, *The Kentucky Evidence Law Handbook* § 2.15[4][b], at 104 (4th ed. 2003). Such proof "is not offered to prove the victim's character to show action in conformity therewith but to prove the defendant's state of mind (fear of the victim) at the time he acted in self-defense." *Id.* at 816. *Saylor* is part of a long line of cases allowing the admission of a victim's other acts of violence, if known to the defendant, when self-defense is claimed. *See Commonwealth v. Higgs*, 59 S.W.3d 886, 892 (Ky. 2001); *Baze v. Commonwealth*, 965 S.W.2d 817, 824–25 (Ky. 1997); *Cessna v. Commonwealth*, 465 S.W.2d 283, 284-85 (Ky. 1971); *Fannon v. Commonwealth*, 295 Ky. 817, 175 S.W.2d 531, 533-34 (1943).

To the extent that Williams sought to introduce the victim's act of domestic violence to suggest that he acted in protection of RanNetta Blevins and was fearful for her, his claim must fail. As this Court has noted, "the offered evidence must have some reasonable relationship to the defendant's claim of self-defense." *Baze*, 965 S.W.2d at 824–25. And the proffered evidence "must tend to prove that the defendant had a justifiable fear of the victim at the time of their encounter." *Id.* at 825. The alleged assault of Blevins, as noted by the trial court, was over with and had been for several minutes by the time the shooting occurred. But at that point, if Williams believed he was entitled to use deadly force, it was in self-protection, not protection of others.[2] Thus, his

[2] Protection of others is discussed further below in the portion of the opinion addressing Williams's claim that he was entitled to a jury instruction on protection of others.

knowledge of Martin's assault of his wife was not relevant to his ultimate defense at trial and could not be compared to Martin's alleged assault of Blevins.

To the extent that Williams sought to introduce the evidence to support his claim of self-defense, it is a closer call. Again, the evidence must tend to prove a justifiable fear of the victim and bear a reasonable relationship to the claim of self-defense. It is not at all clear that Williams feared Martin, if at all, because of his knowledge of Martin's prior assault. If anything, and assuming Williams's account is true, his fear arose because Martin had pulled a gun on him and tried to rob him mere moments before.

Moreover, it is not clear that Williams would have had a *justifiable* fear leading him to use deadly force based solely on the prior assault. Many of the cases allowing such evidence have turned on threats made by the victim, *e.g.*, *Cessna*, 465 S.W.2d at 284–85, or multiple instances of violence, *e.g.*, *Wilson v. Commonwealth*, 880 S.W.2d 877, 877 (Ky. App. 1994), or a substantial combination of the two, *e.g.*, *Moorman v. Commonwealth*, 325 S.W.3d 325, 332 (Ky. 2010). The evidence in this case was a single instance of the victim's physical assault of his wife, not threats or violence directed at Williams, or a substantial history of general threats and violence known to Williams.

Nevertheless, our cases have been generally inclusive of this type of evidence, embracing even hearsay or false statements, so long as the defendant knew of them. *See, e.g.*, *Saylor*, 144 S.W.3d at 815–16 (approving hearsay); *Fannon*, 175 S.W.2d at 533–34 ("[I]t is not material that the information was true or false."). Indeed, our predecessor Court went so far as to say that *any*

information that could have an effect on the defendant's state of mind in a self-defense case is admissible:

> It is relevant and competent to prove *any information or knowledge* which came into the possession of the accused which might have induced his or her condition of mind or explain his or her conduct. It is competent to prove *every statement, act and circumstance* made, committed or existing a reasonable time before the crime charged which had been conveyed to the accused or of which he or she had personal knowledge if they tend to affect the mental state of the defendant at the time.

Fannon, 175 S.W.2d at 533–34 (emphasis added).

We are thus forced to conclude, in light of this long history, that the trial court erred in excluding this testimony. The error, however, in light of the circumstances, was a technical one. While nominally relevant, in the sense of having *any* tendency to show Williams's state of mind, the proof had little probative value. As noted above, if Williams had any justifiable fear to support his use of deadly force, it was no doubt due to the fact that Martin had just pulled a gun and tried to rob him, not because knowledge of Martin's assault of his wife flashed through Williams's mind.

In light of the circumstances, this Court concludes that the jury was not swayed by the exclusion of this evidence. *Winstead v. Commonwealth*, 283 S.W.3d 678, 688–89 (Ky. 2009). And to the extent Williams frames his claim as a denial of his right to make a defense and thus a violation of his constitutional right of due process, this Court is convinced that there was "no reasonable possibility," *id.* at 689 n.1, that the exclusion affected the verdict, and thus concludes "beyond a reasonable doubt that the error complained of did not

contribute to the verdict obtained." *Chapman v. California*, 386 U.S. 18, 24 (1967).

B. Williams was not entitled to a jury instruction on protection of another.

Williams also claims that he was entitled to a jury instruction under KRS 503.070 for protection of another person. Specifically, he claims that the evidence at trial supported such an instruction because it showed that he was protecting his girlfriend, RanNetta Blevins, from Martin. When the instruction was requested at trial, the court declined to give it, stating that there was a substantial break in the events between the alleged assault of Blevins and the ultimate shooting.

The defense of protection of another works much like self-protection. Under KRS 503.070, the use of deadly physical force in defense of another person is justifiable when "[t]he defendant believes that such force is necessary to protect a third person against imminent death, serious physical injury, ... sexual intercourse compelled by force or threat, or other felony involving the use of force," KRS 505.070(2)(a), and the person to be protected would have been justified in claiming self-defense, KRS 505.070(2)(b). As with self-protection, the harm the defendant is protecting against must be *imminent*, which "means impending danger." KRS 503.010(3).

Whether a protection-of-another instruction is required depends on the evidence at trial. A trial court is required to instruct the jury on the whole law of the case, RCr 9.54(1); *Holland v. Commonwealth*, 114 S.W.3d 792, 802 (Ky. 2003), but "that duty does not require an instruction on a theory with no

evidentiary foundation," *Houston v. Commonwealth*, 975 S.W.2d 925, 929 (Ky. 1998). Ultimately, the test is, "construing the evidence favorably to the proponent of the instruction, whether the evidence would permit a reasonable juror to make the finding the instruction authorizes." *Springfield v. Commonwealth*, 410 S.W.3d 589, 594 (Ky. 2013).

There was simply no evidence in this case suggesting that Blevins was in imminent danger of harm when Williams finally shot Martin. There was a break of several minutes between the alleged assault of Blevins and the shooting. According to Williams's testimony, he pulled Martin off Blevins and dragged him down the hall where they had a discussion that turned into an attempted robbery by Martin; he then tried to distract Martin with the false claim of money hidden in the bathroom; and he did not shoot Martin until after a struggle over the gun. Williams himself described the struggle and shooting in the kitchen as "something that happened later after [Martin] tried to pull a gun on [him]." No doubt, this evidence supported a self-protection instruction (which was given), but it does not support a protection-of-another instruction.

That this was the case is clear when we look at the second requirement, that the person protected (here, Blevins) would have been justified in exercising self-protection. Even assuming Martin had been trying to sexually assault Blevins when Williams came in (at which point, self-protection, and thus protection of others would have been justified), Blevins would not have been justified in walking from the living room to the kitchen several minutes later and shooting Martin. For her, the danger had passed. So too, then, Williams's need to protect her had passed.

A reasonable juror could not have found that Blevins was in imminent danger. Thus, no protection-of-another instruction was justified.

C. Williams did not invoke his right to counsel.

Williams also claims that his statements to the police should have been suppressed because he had invoked his right to counsel.

When Williams went to the police station to be interrogated, he was read his *Miranda* rights. During the interrogation, he initially denied any responsibility for Martin's death. In an attempt to get Williams to talk, one of the detectives offered him an "out," stating that he believed Williams should not "take" a murder charge and suggesting a lesser crime instead. Williams asked what he should take. The detective suggested second-degree manslaughter, if the circumstances were what he believed them to be, but went on to say that Williams should fight for what he believed he deserved. Williams was silent for a moment and then said, "Being in my shoes, I would have to get me a lawyer. Y'all saying you're going to do this and that, and there's already stuff going on." The detective responded, "I'll tell you this: We're not interested in your side at that point." Williams replied by saying, "I'm pretty sure."

Discussion then followed about what would happen if Williams got a lawyer. The detective eventually stated, "At that point, you're on your own with your attorney." A short time later, he said he believed a lawyer would tell Williams the same things the detectives had been telling him—that the lawyer would tell him "to get up there and tell what happened." Williams responded by saying, "I'm pretty sure if I did have an attorney in here, he would have pretty much told me everything you guys have already told me. But it's still, it's still

out of my hands." The detective replied that he "respect[ed] that" but continued with the interrogation.

The trial court concluded that these statements were not an invocation of the right to counsel sufficient to require the police to stop questioning him. Williams raises the same claim on appeal.

As the U.S. Supreme Court has repeatedly held, "if a suspect requests counsel at any time during [custodial interrogation], he is not subject to further questioning until a lawyer has been made available or the suspect himself reinitiates conversation." *Davis v. United States*, 512 U.S. 452, 458 (1994). Upon invocation of the right, "interrogation must cease until an attorney is present." *Edwards v. Arizona*, 451 U.S. 477, 482 (1981) (quoting *Miranda v. Arizona*, 384 U.S. 436, 474 (1966)). This is sometimes referred to as the "*Edwards* rule." *See, e.g.*, *Davis*, 512 U.S. at 461.

The inquiry under this rule is "whether the accused *actually invoked* his right to counsel." *Id.* at 458 (quoting *Smith v. Illinois*, 469 U.S. 91, 95 (1984)). "But if a suspect makes a reference to an attorney that is ambiguous or equivocal in that a reasonable officer in light of the circumstances would have understood only that the suspect *might* be invoking the right to counsel, ... precedent[] do[es] not require the cessation of questioning." *Id.* at 459. Thus, for the *Edwards* rule to apply, "the suspect must unambiguously request counsel," *id.*, meaning that "he must articulate his desire to have counsel present sufficiently clearly that a reasonable police officer in the circumstances would understand the statement to be a request for an attorney," *id.*

Williams's statements in this case fall well short of this mark. "[A] statement either is such an assertion of the right to counsel or it is not." *Id.* (quoting *Smith*, 469 U.S. at 97–98). Williams's statement the he *would* need to get an attorney if certain circumstances existed (i.e., an offer of a lesser degree of homicide) was conditional and thus was not an assertion of the right to counsel. The detective testified that he took this initial statement ("I would have to get me a lawyer") not as an invocation of the right to counsel but as a statement that Williams might have to get a lawyer in the future. That was a reasonable interpretation of Williams's statement. Indeed, given the circumstances of the statement—in response to a hypothetical lesser charge—it was the only reasonable understanding of the statement.

Williams nevertheless claims his statement was like the one we held to be a clear invocation in *Bradley v. Commonwealth*, 327 S.W.3d 512, 515 (Ky. 2010). In that case, the defendant said: "I need a lawyer or something." *Id.* Williams argues that his statement was not qualitatively different from the one in *Bradley*. But the statement in that case was a clear declarative statement that the defendant needed a lawyer. The only apparent ambiguity arose from the qualification of the statement with the words "or something" at the end, which we held did not "defeat[] the otherwise clear request for counsel." *Id.* at 516.

Unlike the statement in *Bradley*, Williams's initial reference to counsel was couched in conditional language ("would have to get"). Moreover, in the context of the questioning, it is clear that Williams's need for a lawyer would

only arise if the detective's hypothetical scenario played out, that is, if Williams were presented with a lesser homicide charge.

Williams argues that his later comments that a lawyer would tell him the same things the detectives had told him but that it was out of his hands at that point reinforced that he had clearly asked for a lawyer. We do not see how that is the case. As noted above, Williams's initial reference to a lawyer was conditional—his response to a hypothetical question. He simply never asked for counsel.

In light of the circumstances of Williams's statement, this Court agrees with the trial court that Williams did not unambiguously invoke his right to counsel. Suppression of Williams's statements was thus not required.

D. Williams's prosecution did not violate KRS 503.085.

Finally, Williams claims that he was entitled to immunity from prosecution under KRS 503.085 and thus was entitled to have the case dismissed without being prosecuted. We need not examine this claim in detail. Proceeding with a prosecution, despite a claim of self-defense under KRS 503.085, requires only that a court "find[] probable cause to believe that the defendant's use of force was unlawful." *Rodgers v. Commonwealth*, 285 S.W.3d 740, 755 (Ky. 2009). This is satisfied when the defendant "has been tried and convicted by a properly instructed jury in a trial with no reversible error." *Id.* at 756. We will not revisit the probable-cause finding when a jury has determined guilt beyond a reasonable doubt—a much higher standard—and that determination has not been shown to be flawed. Thus, Williams was not entitled to immunity and his prosecution did not violate KRS 503.085.

III. Conclusion

Having found no reversible error, this Court affirms the judgment of the Fayette Circuit Court.

All sitting. All concur.

COUNSEL FOR APPELLANT:

Samuel N. Potter
Department of Public Advocacy
Assistant Public Advocate
100 Fair Oaks Lane, Suite 302
Frankfort, Kentucky 40601

COUNSEL FOR APPELLEE:

Jack Conway
Attorney General

Courtney J. Hightower
Assistant Attorney General
Office of Criminal Appeals
Office of the Attorney General
1024 Capital Center Drive
Frankfort, Kentucky 40601