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RENDERED: FEBRUARY 15, 2018
NOT TO BE PUBLISHED

Supreme Court of Kentucky

2016-SC-000629-MR

CHARLES SHOULDERS — APPELLANT

V.

ON APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE MARY M. SHAW, JUDGE
NOS. 15-CR-001888 & 15-CR-003383

COMMONWEALTH OF KENTUCKY — APPELLEE

MEMORANDUM OPINION OF THE COURT

AFFIRMING

On the evening of July 4, 2015, Appellant, Charles William Shoulders, made a 911 call and reported that he had shot his wife, Juandora, at their residence. Shoulders can be heard on a recording of the 911 call stating, "I just killed my wife," and "I shot her." The couple had begun fighting when Shoulders confronted Juandora with accusations of infidelity.

Shortly after Shoulders made the 911 call, police officers and first-responders arrived at the Shoulders' residence. Upon arrival, a clearly intoxicated Shoulders confronted the first-responders and incoherently yelled profanities at them. Officers found Juandora's lifeless body in the couple's bedroom with a gunshot wound to the head. A firearm was also confiscated from the Shoulders' residence.

Shoulders was subsequently arrested and taken to Louisville Metro Police Department Headquarters. Shoulders was held in the police station's interview room for approximately 110 minutes before he was booked into jail. About six or seven minutes into a recording of his interview room detention, Shoulders can be heard asking, among other things, to have a public defender appointed for him "now." Although he was not appointed counsel at that time, no officers initiated any questioning of Shoulders about his wife's shooting after his request for counsel.

Shoulders requested several times to be taken to jail and complained that the interview room was cold. Officers told Shoulders that he was being kept in the interview room while his arrest paperwork was being processed so he could be transferred to jail, and that the process can take time. Shoulders continued to complain about the slow procedure and alleged that the police were "working" on him by purposefully going slow.

While detained in the interview room, Shoulders resumed his drunken tirade. Rather than remain silent, and without any prompting, he spoke aloud about his deadly fight with Juandora. Shoulders also destroyed tables, chairs, and other police property within the interview room. He even threatened to kill an officer.

On July 15, 2015, a Jefferson County grand jury charged Shoulders with the murder of his wife, criminal mischief, and terroristic threatening. In a separate December 2015 indictment, Shoulders was charged with being a felon in possession of a handgun.

At trial, the prosecution played portions of the interview room recording for the jury. The portions viewed by the jury included, among other incriminating statements, Shoulders calling his wife many derogatory names and stating that the shooting was a fight in which "one died, one didn't." The jury was also shown video evidence that Shoulders urinated on the floor, destroyed police property in the interview room, and threatened to kill an officer therein.

Shoulders sought to suppress the entire recording of his detention in the interview room, arguing that the police deliberately used isolation and cold temperature to coerce him into involuntarily speaking about the shooting. On June 23, 2016, the Jefferson Circuit Court denied the suppression motion, ruling in its order that the police did not question Shoulders or take any action likely to elicit an incriminating response from him. Shoulders did not seek modification or reconsideration of the trial court's order.

Shoulders was convicted of murder, criminal mischief, terroristic threatening, and being a felon in possession of a handgun. Following the jury's recommendation, the trial court sentenced Shoulders to a total of 27 years' imprisonment. Shoulders now appeals his conviction and sentence as a matter of right pursuant to Section 110(2)(b) of the Kentucky Constitution.

Analysis

Shoulders raises two issues on appeal: (1) whether the trial court erred when it denied Shoulders' suppression motion; and (2) whether the prosecutor

improperly introduced KRE 404(a) character evidence, KRE 404(b) prior bad acts evidence, or improper "golden rule" argument during closing statements.

Motion to Suppress Video Recording from Interview Room

"Our review of a trial court's ruling on a motion to suppress 'requires a two-step determination . . . [t]he factual findings by the trial court are reviewed under a clearly erroneous standard, and the application of the law to those facts is conducted under *de novo* review." *Brown v. Commonwealth*, 416 S.W.3d 302, 307 (Ky. 2013) (internal citation omitted). Because the facts are not disputed, we review this issue *de novo*.

We begin by noting that Shoulders admitted during his 911 call that he had shot his wife, and the defense conceded during its opening statements that Shoulders drunkenly shot his wife. Thus, the primary issue at trial was whether Shoulders had the *mens rea* for murder, or a lesser mental state of guilt regarding the deadly shooting.

The video recording of Shoulders destroying the interview room, threatening police officers with violence, and speaking aloud about shooting his wife after accusing her of being unfaithful were all relevant evidence of the crimes charged. KRE 401. Any prejudicial effect was not substantially outweighed by the probative value of this evidence that Shoulders destroyed police property, made terroristic threats to officers, possessed a handgun, and intentionally killed his wife. KRE 403.

If Shoulders was subjected to coercive interrogation in the interview room, then his statements will be suppressed under *Miranda v. Arizona*, 384

U.S. 436 (1966), and its progeny. *See id.* at 478 ("The fundamental import of the privilege while an individual is in custody is not whether he is allowed to talk to the police without the benefit of warnings and counsel, but whether he can be interrogated . . . .). "Interrogation" is an interaction between an accused and the police which is likely to elicit an incriminating response. *Rhode Island v. Innis*, 446 U.S. 291, 300 (1980). Interrogation includes express questioning and its functional equivalent. *Id.* at 300-01.

Because it is undisputed that Shoulders was not subjected to "express questioning" after his request for counsel, *Miranda* safeguards only come into play if the police engaged in express questioning's "functional equivalent." *Id.* The "functional equivalent" of express questioning is defined as "any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect." *Id.* at 301.

The Commonwealth claims that Shoulders was held in the interview room temporarily, until the lead detective returned to the department and completed the necessary arrest and domestic violence paperwork. We agree with the trial court that this temporary detainment in the interview room was not intended to be, and did not have the effect of being, coercive.

However, whether an act is the "functional equivalent" of express questioning "focuses primarily upon the perceptions of the suspect, rather than the intent of the police . . . [a] practice that the police should know is

reasonably likely to evoke an incriminating response from a suspect thus amounts to interrogation." *Id.*

Here, Shoulders' argument that the police should have known that holding him in a cold interview room while intoxicated was reasonably likely to elicit incriminating statements from him is without merit. He was in no way physically, psychologically or otherwise coerced by the police. He was not subject to any express questioning. Nor was he subject to its functional equivalent. Holding Shoulders in the interview room temporarily was not "a practice that the police should [have] know[n] [was] reasonably likely to evoke an incriminating response." *Innis*, 446 U.S. at 301.

Shoulders voluntarily confessed to shooting his wife during the 911 call and in the interview room. Video footage of Shoulders speaking about the shooting, defacing police property, and threatening an officer is relevant to the crime's charged. Therefore, we find that the trial court did not err in denying Shoulders' suppression motion.

KRE 404(a) and KRE 404(b)

Next, Shoulders argues that the prosecutor introduced evidence of Shoulders' character traits and prior bad acts that was inadmissible under KRE 404(a)-(b). "KRE 404(b) has always been interpreted as *exclusionary* in nature." *Bell v. Commonwealth*, 875 S.W.2d 476, 481 (Ky. 1992) (original emphasis). To that end, Shoulders' character traits under KRE 404(a) and evidence of his prior bad acts under KRE 404(b) are admissible "only if probative of an issue independent of character or criminal disposition, and only

if its probative value on that issue outweighs the unfair prejudice with respect to character." *Billings v. Commonwealth*, 843 S.W.2d 890, 892 (Ky. 1992); KRE 404(b)(1).

Here, the prosecutor provided KRE 404(c) notice of intent to introduce testimonial evidence: (1) from Shoulders that he had pointed the gun at Juandora on another occasion, and (2) from Juandora's granddaughter and her sister Renee that Shoulders had previously threatened Juandora with violence. The trial court permitted that testimonial evidence, provided the prosecutor approach the bench before presenting further KRE 404(b) evidence. During closing argument, the prosecutor referred to Shoulders' treatment of the first-responders and officers at the police station, stating that Shoulders was demonstrably a "mean drunk" and a "nasty drunk."

Two minutes after referring to Shoulders' 911 call, his interaction with first-responders, and the interview room recording of him, the prosecutor then stated:

> You know what I can't help but think? What must that man be like behind closed doors? Can you imagine what it was like when it was just him and Juandora? I thought it was interesting that Juandora's sister Renee told you she didn't like to be around him when he was drinking. With good reason.

(emphasis added).

Defense counsel objected to the statement, claiming, among other things, that it implied "maybe this isn't the only time this has happened . . . ." The trial court instructed the prosecutor to refrain from such open-ended statements, whereby the prosecutor resumed her closing argument alternatively by stating

that "[o]n this night he was a mean, nasty drunk . . . ." Defense counsel made no further objections.

The prosecutor's assertions that Shoulders is a "mean, nasty drunk" were made in reference to specific instances of drunken delinquency Shoulders committed the night of the charged crime, including his treatment of first-responders and the interview room recording of his wild behavior. They were not generalized statements of his propensity for drunken violence. Further, in response to the objection, the prosecutor rephrased her closing to specify that Shoulders was a "mean, nasty drunk" on the night in question.

Likewise, the prosecutor's request that the jury imagine what Shoulders must "be like behind closed doors . . . when it was just him and Juandora" does not fall within the definition of evidence of prior bad acts excluded under KRE 404(b). Rather, the prosecution properly introduced character evidence by calling character witnesses to testify about Shoulders' bad reputation and give their opinion about his character trait of drunken violence toward Juandora. Additionally, Shoulders' interview room admission that he had previously pointed a gun at Juandora also went towards queries about his intent to shoot Juandora. The prosecutor's subsequent challenged statement merely invited the jury to apply the admissible evidence of Shoulders' violent nature and did not introduce further KRE 404(b) evidence. Thus, Shoulders' KRE 404(b) argument is without merit.

"Golden Rule" Argument

Lastly, Shoulders claims that the prosecutor's closing argument was an impermissible "golden rule" argument under *Lycans v. Commonwealth*, 562 S.W.2d 303, 305 (Ky. 1978). Shoulders failed to preserve the "golden rule" issue on appeal. Thus, we will review for palpable error. RCr 10.26; *McCleery v. Commonwealth*, 410 S.W.3d 597, 606 (Ky. 2013).

A "golden rule" argument in a criminal case "urges the jurors collectively or singularly to place themselves or members of their families or friends in the place of the person who has been offended and to render a verdict as if they or either of them or a member of their families or friends was similarly situated." *Lycans*, 562 S.W.2d at 305. Notably, a "golden rule" argument that "cajole[s] or coerce[s] a jury to reach a verdict" is erroneous. *Id.* at 306.

During closing argument, the prosecutor asked the jury to imagine what Juandora's life was like "behind closed doors" with an inebriated Shoulders. Here, the prosecutor did not ask the jury to put themselves in the victim's place, but only to imagine her life with Shoulders. In contrast, the challenged statements in *Lycans* asked the jury to place themselves in the victim's shoes, after the prosecutor recounted the charged crime in graphic detail.

The "golden rule" argument is confined to the *Lycans* definition. The prosecutor asking the jury to "imagine what the victim's personal life was like" was not the same as asking the jurors to "imagine how you would feel or react if you were in the victim's place." Thus, Shoulders' "golden rule" argument is

meritless. Thus, we find no error in the trial court's decision to overrule Shoulders' meritless objection to the prosecutor's closing argument.

Conclusion

For the reasons stated herein, we hereby affirm the decisions of the Jefferson Circuit Court.

All sitting. All concur.

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