

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

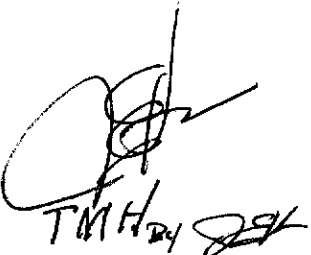
2013 KA 0201

STATE OF LOUISIANA

VERSUS

STACI ALVARADO

DATE OF JUDGMENT: **SEP 30 2013**


T.M.H. by J.S.K.

MRT
SA ON APPEAL FROM THE EIGHTEENTH JUDICIAL DISTRICT COURT
NUMBER 112327, DIVISION "B", PARISH OF WEST BATON ROUGE
STATE OF LOUISIANA

HONORABLE J. ROBIN FREE, JUDGE

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BEFORE: KUHN, HIGGINBOTHAM, AND THERIOT, JJ.

Disposition: CONVICTION AND SENTENCE AFFIRMED.

KUHN, J.,

The defendant, Staci Alvarado, was charged by grand jury indictment with manslaughter, a violation of La. R.S. 14:31. She pled not guilty and, following a jury trial, was found guilty as charged. The trial court sentenced the defendant to thirty years imprisonment at hard labor. The defendant now appeals, designating two assignments of error. We affirm the conviction and sentence.

FACTS

The defendant and her husband, Luis Alvarado, the victim, together with their four children and the defendant's stepfather, Ronald Aultman, lived in a mobile home on Court Street in Port Allen. On the evening of May 5, 2011, the defendant and Luis began arguing. Their quarrel soon turned physical and the defendant and Luis began striking each other. According to the defendant and Aultman, this violent behavior typified their tumultuous relationship. At some point during the brawl, Aultman heard Luis say "call the police." Aultman testified at trial that he took the children across the street so that he could tell a neighbor to call the police because the defendant was stabbing Luis. The neighbor called 911. Officer Dan Cipriano, with the Port Allen City Police Department, was near the defendant's residence when he was radioed that a stabbing was in progress. Within a minute, Officer Cipriano arrived at the scene and went into the mobile home. As he walked through to clear the area, the defendant opened the back bedroom door. The officer ordered the defendant to the ground and handcuffed her. She had blood on her hands. Luis was on the bed with a stab wound to the chest. He died a short time later. A nine inch serrated filet knife was found on the edge of the bed; approximately six inches of the blade had blood on it.

That same night, the defendant was taken to the police station for questioning. Detective Jeremy Thompson, with the Port Allen City Police

Department, interviewed the defendant. Six days later, the defendant provided a second statement to Detective Thompson. In her first statement, the defendant indicated she and Luis had been engaged in a physical altercation, but did not remember stabbing him with a knife. In her second statement, the defendant claimed to have remembered that both she and Luis had a knife and that, after she stabbed him, she dropped the knife and ran for help. Both taped statements were played for the jury. The defendant did not testify at trial.

ASSIGNMENT OF ERROR NO. 1

In her first assignment of error, the defendant argues that the trial court erred in allowing evidence of irrelevant and overly prejudicial acts by her to be admitted. Specifically, the defendant asserts that the first thirteen minutes of her initial video recorded interview with the police, while she was alone in the waiting room in an agitated state, should have been redacted and not shown to the jury because it was irrelevant and, even if relevant, its prejudicial effect outweighed any probative value. In response, the State contends that the defendant's behavior in the interview room goes to the core of her self-defense argument in that it demonstrated her aggressive behavior.

During the thirteen minutes at issue, the defendant is alone in the interview room and being recorded without her knowledge. Clearly upset, she screams and curses about being chained to her chair and uses the "N" word. She continues ranting for several minutes about police being lazy and inept at their jobs and makes threats toward the police. A few police officers come to the door of the interview room at different times to talk to the defendant or to try to calm her down, to no avail. The trial court ultimately allowed the entire recording to be shown to the jury.

Relevant evidence is evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable

or less probable than it would be without the evidence. La. C.E. art. 401. All relevant evidence is admissible except as otherwise provided by positive law, while evidence that is not relevant is not admissible. La. C.E. art. 402. Further, although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading the jury, or by considerations of undue delay, or waste of time. La. C.E. art. 403. Ultimately, questions of relevancy and admissibility of evidence are within the discretion of the trial court. Such determinations regarding relevancy and admissibility should not be overturned absent a clear abuse of discretion. See *State v. Friday*, 10-2309 (La. App. 1st Cir. 6/17/11), 73 So.3d 913, 925, writ denied, 11-1456 (La. 4/20/12), 85 So.3d 1258.

Evidence of a person's character generally is not admissible to prove that the person acted in conformity with his or her character on a particular occasion. La. C.E. art. 404(A); *State v. Kelly*, 05-1913 (La. App. 1st Cir. 5/5/06), 935 So.2d 205, 208. Further, La. C.E. art. 404(B)(1) does not allow other acts into evidence to show bad character, although such acts may be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident. The "acts" at issue herein are the defendant's outbursts, as well as her general behavior, while she waited to be interviewed by a detective. While the trial court concluded that the defendant's tumultuous behavior was relevant on the basis that it went to whether or not she was the aggressor, the court did not specify, in terms of Article 404(B)(1) (or any applicable law), what such behavior might prove, other than that she was the aggressor.

While the trial court seemed conflicted over whether the evidence was overly prejudicial or not, it was convinced that such evidence was relevant. To the trial court, the defendant's behavior in the interview room was merely an ongoing

extension of the behavior exhibited by the defendant when she was at home with Luis two hours before. In its ruling allowing the thirteen minutes into evidence, the trial court stated, “[b]ut within an hour and 45 minutes [of the stabbing] she was still cutting up, that may have some probative value” and “[i]t makes her look like what she is, it makes her look like what she was an hour and 45 minutes after that[.]”

We find the fact that the defendant was shouting, agitated, and/or aggressive two hours after the stabbing has no relevance regarding whether she was the aggressor. Although evidence of a person’s aggressive behavior before a killing might be highly relevant regarding who the aggressor was, a person’s mental state/behavior hours after a killing does not seem relevant for purposes of determining who the aggressor was at the time of the killing. See State v. Taylor, 621 So.2d 141, 151-52 (La. App. 2d Cir. 1993), writ denied, 93-2054 (La. 2/11/94), 634 So.2d 371 (evidence of the defendant’s state-of-mind prior to the killing was found to be relevant).

While the trial court’s ruling on the admissibility of the thirteen minutes of video may be erroneous, we find any such error to be harmless. Louisiana Code of Criminal Procedure article 921 states that “[a] judgment or ruling shall not be reversed by an appellate court because of any error, defect, irregularity, or variance which does not affect substantial rights of the accused.” The test for determining whether an error is harmless is whether the verdict actually rendered in this case “was surely unattributable to the error.” Sullivan v. Louisiana, 508 U.S. 275, 279, 113 S.Ct. 2078, 2081, 124 L.Ed.2d 182 (1993).

In this case, the medical and testimonial evidence clearly established the defendant’s guilt. In her recorded interview two hours after the stabbing, when she was asked if she was aware that she had stabbed Luis, the defendant claimed she did not remember stabbing him with a knife. She stated she could not remember

anything after she hit him with a large bell. In another recorded interview six days later, the defendant stated that she and Luis first started arguing and then began fist-fighting in the living room. The defendant further stated that she grabbed a bell and hit Luis with it twice in the back of the head to stop him from hitting her. At some point, according to the defendant, they were in the bedroom when Luis threw her on the bed. Luis had a filet knife and put the handle to her throat. He then choked her. The fighting subsided, and the defendant went to the kitchen. She grabbed a knife to carry around for protection. She described her knife as having two separate points at the tip. When she went into the bedroom to get her cigarettes, Luis still had the filet knife. The defendant could not remember who made the first move as each stood there with a knife in hand, but she remembered Luis saying, "Ronnie, I need help," after she stabbed him. The defendant stated it was not her intention to stab Luis, and that she thought she had only "pricked" him with the knife.

The police found Luis on the bed, bleeding. The filet knife was on the edge of the bed. DNA test results indicated that Luis's blood was on the blade and the defendant's DNA was on the handle. It was clear from this evidence that the defendant, not Luis, had the filet knife. The knife the defendant claimed she was carrying was found on the kitchen counter, but not taken into evidence because it did not appear to have been used in a stabbing. The filet knife used to kill Luis punctured his heart. According to the autopsy report, it was a penetrating (12 cm) sharp force injury to the "right anterior thorax, right middle lobe, lung, pericardium, aortic and pulmonary roots with right hemopneumothorax and hemopericardium." In giving her side of the story to the police on two separate occasions, the defendant never once suggested that she stabbed Luis because he was coming at her or that she thought he would kill her.

Therefore, the evidence established both that Luis was not armed when he was stabbed by the defendant in the bedroom and that, at the moment the defendant stabbed Luis, she was the aggressor and not acting in self-defense. The State's evidence clearly established the defendant's guilt. As such, the guilty verdict rendered was surely not attributable to the evidence of the first thirteen minutes of the defendant's initial interview. Any error in allowing such evidence to be presented to the jury was harmless beyond a reasonable doubt. See La. C.Cr.P. art. 921; *Sullivan*, 508 U.S. at 279, 113 S.Ct. at 2081.

This assignment of error is without merit.

ASSIGNMENT OF ERROR NO. 2

In her second assignment of error, the defendant argues the trial court erred in allowing into evidence Detective Thompson's testimony wherein he speculated about her state-of-mind.

During the cross-examination of Detective Thompson, defense counsel introduced into evidence the second recorded interview of the defendant, which was played for the jury. On redirect examination, the prosecutor asked, "Seven [sic] days after, she came with this scheme about what took place that night, right?" Detective Thompson replied, "Yes, it seemed it was some kind of self-serving defense that she had come up with." Defense counsel objected on the grounds of speculation. The trial court overruled the objection, stating that the detective could give his opinion based on what he perceived at the time he was looking at these things.

In brief, the defendant suggests that Detective Thompson's statement should have been excluded because the detective offered expert opinion that went to the ultimate issue of the defendant's theory of self-defense. According to the defendant, this testimony was tantamount to an opinion that the defendant was guilty of manslaughter. This assertion is baseless.

Louisiana Code of Evidence Article 704 states:

Testimony in the form of an opinion or inference otherwise admissible is not to be excluded solely because it embraces an ultimate issue to be decided by the trier of fact. However, in a criminal case, an expert witness shall not express an opinion as to the guilt or innocence of the accused.

That portion of Article 704 regarding expert testimony does not apply in this case because Detective Thompson was neither called nor qualified as an expert witness. He testified as a non-expert witness. See *State v. Hubbard*, 97-916 (La. App. 5th Cir. 1/27/98), 708 So.2d 1099, 1106, writ denied, 98-0643 (La. 8/28/98), 723 So.2d 415. The limitations on the testimony of non-expert witnesses are found in La. C.E. art. 701, which states:

If the witness is not testifying as an expert, his testimony in the form of opinions or inferences is limited to those opinions or inferences which are:

- (1) Rationally based on the perception of the witness; and
- (2) Helpful to a clear understanding of his testimony or the determination of a fact in issue.

Generally, a lay witness can only testify to the facts within his knowledge and not to impressions or opinions; however, a witness is permitted to draw reasonable inferences from his personal observations. Where the subject of the testimony is such that any person of experience may make a natural inference from observed facts, a lay witness may testify as to such inferences, provided he also states the observed facts. *Hubbard*, 708 So.2d at 1106.

Detective Thompson was testifying only as a non-expert witness and, as such, he was allowed to make an inference regarding the defendant's veracity from his own observations. Moreover, while we do not find that Detective Thompson's comment embraced the ultimate issue of guilt, based on the plain language of La. C.E. art. 704, general opinion testimony that is otherwise admissible is not to be excluded solely because it embraces an ultimate issue to be decided by the

trier-of-fact. The detective's testimony, rationally based on his perceptions and observations, was admissible. See *State v. Higgins*, 03-1980 (La. 4/1/05), 898 So.2d 1219, 1234, cert. denied, 546 U.S. 883, 126 S.Ct. 182, 163 L.Ed.2d 187 (2005).

This assignment of error is without merit.

CONVICTION AND SENTENCE AFFIRMED.