

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2013 KA 1644

STATE OF LOUISIANA

VERSUS

ERIC L. MAURER

Judgment Rendered: MAR 21 2014

On Appeal from the Twenty-First Judicial District Court
In and for the Parish of Tangipahoa
State of Louisiana
No. 1004029

Honorable M. Douglas Hughes, Judge Presiding

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BEFORE: PETTIGREW, McDONALD, AND McCLENDON, JJ.

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McCLENDON, J.

Defendant, Eric L. Maurer, was charged by bill of information with aggravated burglary, a violation of LSA-R.S 14:60. He initially entered a plea of not guilty. Defendant later withdrew that plea and pled not guilty and not guilty by reason of insanity. Following a jury trial, he was found guilty as charged.¹ Defendant filed motions for postverdict judgment of acquittal, new trial, and in arrest of judgment, all of which were denied. Defendant was sentenced to thirty years at hard labor. He now appeals designating three assignments of error. For the following reasons, we affirm the conviction and sentence.

FACTS

On August 13, 2010, defendant had a friend drop him off at the home of the victim, Rube Rogers, a friend of defendant's father who raised defendant and his twin brother from the time they were ten years old.² Defendant entered the victim's home through an unlocked window, walked upstairs, knocked on the victim's door, and identified himself. Once the victim opened the door, defendant kicked him downstairs. Defendant then took money, two credit cards, and the key to the victim's truck. When defendant walked downstairs, he saw the victim by the telephone. He was afraid the victim would "call the law" and identify him, so he hung up the phone, took a knife out of the sink, and "slit his throat." Unbeknownst to defendant, the victim had already placed a call to 911 stating, "home invasion, Eric Maurer, I'm Rube Rogers, quick."

Defendant left in the victim's truck, went to a friend's house, and smoked crack. He changed clothes at a car wash. After going to another location and purchasing more crack, he lost the keys to the victim's truck. He abandoned the truck, went to his ex-girlfriend's home, and stole her vehicle and a cellular phone

¹ Defendant was also tried for second degree murder, a violation of LSA-R.S. 14:30.1, which he was charged with by separate grand jury indictment. He was found guilty as charged and sentenced to life imprisonment without benefit of parole. The district court ordered the two sentences to run concurrently. Defendant appeals his second degree murder conviction in a separate appeal. See State v. Maurer, 13-1643 (La.App. 1 Cir. ___) (unpublished opinion), also rendered this date.

² At the time of the offense, the defendant was thirty-one years old and was not living with the victim.

that was inside another vehicle parked at the home. He later picked up his father, and the two drove to Tennessee where they were apprehended in a hotel room after police tracked a signal from the stolen cellular phone.

On August 16, 2010, defendant admitted to the murder in a recorded interview, wherein he stated he went to the victim's home to rob him and decided to kill the victim so he would be unable to identify him.³ According to defendant, the victim did not fight back and there was no "scuffle" between the two.

ASSIGNMENT OF ERROR NUMBER 1

In his first assignment of error, defendant contends that the district court erred by failing to determine his "competency to proceed after ordering that he undergo a psychiatric evaluation to assess his mental condition at the time of the offense, and his present capacity to proceed to trial."

Following defendant's plea of not guilty and not guilty by reason of insanity on May 5, 2012, the following exchange occurred:

[Court]: So on the Second Degree Murder and the Aggravated Burglary, not guilty by reason of insanity. Now, I need to call the commission. How do I set that up? I order that he do a sanity evaluation and then they take care of hooking that up?

[Defense counsel]: Yes.

[Court]: Alright. I am going to order a sanity commission to evaluate [the defendant] to determine his competency and/or sanity to proceed forward with trial. I think that's all I need to do, isn't it?

[Prosecutor]: Yes, sir.

[Court]: Now, I will set him down the road to status it, about August 14th. They probably won't have it done by then, but they might. And we will go from there. Take your notice, [defendant].

[Defense counsel]: And Your Honor, I'm going to file a written motion so that it's in the record, as well.

Defense counsel filed a "Motion to Enter Plea of Not Guilty by Reason of Insanity" on May 29, 2012. The motion stated that at the time of the alleged offense, defendant was incapable of distinguishing between right and wrong

³ It was not until later that defendant alleged a different motive for killing the victim.

because of a mental disease and/or mental defect. The State filed a motion for examination of defendant based on his plea. The motion requested Dr. David Hale and Dr. Jose Artecona examine the defendant and evaluate his mental condition at the time of the offense. The district court signed an order that provided, in pertinent part: "IT IS ORDERED, that Dr. David Hale and Dr. Jose Artecona examine the defendant, Eric Maurer, pursuant to the Louisiana Code of Criminal Procedure Article 650, et seq., for determination of the defendant's mental condition at the time of the offense."

Dr. Hale indicated in his report that he was "asked by the court to examine [defendant] and write a report giving [his] opinion about [defendant's] sanity at the time when a crime was committed." Similarly, Dr. Artecona stated in his report that, "[p]ursuant to a request by the State, [he] was asked to evaluate [defendant] and to render an opinion as to his mental condition at the time of the alleged offense." Both doctors concluded that defendant was sane at the time of the offense. At trial, Dr. Artecona testified that he was appointed to assess defendant's sanity at the time of the alleged offense and that there were numerous behavioral indicators that defendant did appreciate the wrongfulness of his behavior around the time of his arrest. Defendant called Dr. Sarah Deland to testify at trial. Dr. Deland testified that she was retained by the public defender's office and that, in her opinion, defendant was not unable to distinguish right from wrong at the time of the offense.

Louisiana Code of Criminal Procedure article 642 provides: "The defendant's mental incapacity to proceed may be raised at any time by the defense, the district attorney, or the court." It further provides: "When the question of the defendant's mental incapacity to proceed is raised, there shall be no further steps in the criminal prosecution, except the institution of prosecution, until the defendant is found to have the mental capacity to proceed." LSA-Cr.P. art. 642. Pursuant to LSA-Cr.P. art. 650, "[w]hen a defendant enters a combined plea of 'not guilty and not guilty by reason of insanity,' the court may appoint a sanity commission as provided in Article 644 to make an examination

as to the defendant's mental condition at the time of the offense." Article 650 also provides, "The court may also order the commission to make an examination as to the defendant's present mental capacity to proceed."

The motions filed by defense counsel and the State only requested an evaluation of defendant's sanity at the time of the offense. The order appointing Drs. Hale and Artecona to examine the defendant, the doctors' reports in the record, and the trial transcript did not contain any indication that defendant's competency to proceed was ever reasonably doubted. Despite the district court's statement ordering "a sanity commission to evaluate [defendant] to determine his competency and/or sanity to proceed forward with trial" when defendant entered his not guilty and not guilty by reason of insanity plea, the plain language of the order signed by the court as well as the motions filed by both defendant and the State show that the district court exercised its discretion under Article 650 to appoint a sanity commission only to determine defendant's mental condition at the time of the offense. There is nothing in the record to suggest that defendant's mental incapacity to proceed, triggering Article 642, was raised. Accordingly, this assignment of error has no merit.

ASSIGNMENTS OF ERROR NUMBERS 2 AND 3

In related assignments of error, defendant contends that the district court erred in excluding testimony by his twin brother and Dr. Deland that he and his brother were sexually abused by the victim as children and teenagers. The district court granted the State's motion in limine excluding testimony as to the alleged sexual abuse.⁴ Defendant argues that the district court erred in granting the State's motion and denying his motion for new trial on this basis.

Defendant disclosed the alleged sexual abuse to Drs. Deland and Artecona. In his interview with Dr. Artecona, defendant claimed that on the night of the murder, he went to the victim's home to "collect" money from him. When he arrived, the victim told defendant that he would need to "suck [the

⁴ Thereafter, defendant filed writ applications seeking review of the ruling, which this court, and the Louisiana Supreme Court, denied. **State v. Maurer**, 13-0798 (La.App. 1 Cir. 5/15/13) (unpublished), writ denied, 13-1108 (La. 5/16/13), 117 So.3d 508.

victim's] dick to get money." Defendant asserts that the district court's exclusion of this evidence hampered his ability to present a defense. In his brief, he claims that he was unable to present evidence or argument that the victim's actions on the night of the murder were sufficient to deprive him of his cool thought and calm reflection such that the murder should have been deemed manslaughter.

Louisiana Code of Criminal Procedure article 851 provides: "The motion for a new trial is based on the supposition that injustice has been done the defendant, and, unless such is shown to have been the case the motion shall be denied, no matter upon what allegations it is grounded." It further provides: "The court, on motion of the defendant, shall grant a new trial whenever . . . (2) The court's ruling on a written motion, or an objection made during the proceedings, shows prejudicial error. . . ." LSA-C.Cr.P. art. 851. The district court's decision on a motion for new trial will not be disturbed absent a clear abuse of discretion. **State v. Maize**, 94-0736 (La.App. 1 Cir. 5/5/95), 655 So.2d 500, 517, writ denied, 95-1894 (La. 12/15/95), 664 So.2d 451.

A criminal defendant has the constitutional right to present a defense pursuant to United States Constitution Amendments VI and XIV and Louisiana Constitution Article 1, Section 16. A defendant should therefore be allowed to present evidence on any relevant matter. This right is not without limitation, and unreliable evidence may be barred from criminal trials. **State v. Blank**, 04-0204 (La. 4/11/07), 955 So.2d 90, 130-31, cert. denied, 552 U.S. 994, 128 S.Ct. 494, 169 L.Ed.2d 346 (2007). 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. LSA-C.E. art. 401. All relevant evidence is admissible, except as otherwise provided by positive law. Evidence which is not relevant is not admissible. LSA-C.E. art. 402.

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. LSA-C.E. art. 404A. However, there are several specific exceptions to this

general rule. With respect to evidence of the dangerous character of the victim of a crime, such evidence is admissible (1) when the accused offers appreciable evidence of a hostile demonstration or an overt act on the part of the victim at the time of the offense charged, or (2) when the accused, relying on the defense of self-defense, establishes (a) a history of assaultive behavior between the victim and the accused and (b) a familial or intimate relationship between the victim and the accused. See LSA-C.E. art. 404A(2)(a). The domestic violence exception is not applicable in this case. Thus, in order to introduce any evidence regarding the victim's character, it had to first be shown that the victim made some hostile demonstration or overt act at the time of the offense charged. The term "overt act," as used in prosecutions where the plea of self-defense is involved, means any act of the victim that manifests to the mind of a reasonable person a present intention on his part to kill or do great bodily harm. **State v. Loston**, 03-0977 (La.App. 1 Cir. 2/23/04), 874 So.2d 197, 205-06, writ denied, 04-0792 (La. 9/24/04), 882 So.2d 1167. To meet the "overt act" requirement of Article 404A(2)(a), a defendant must introduce "appreciable evidence" in the record relevantly tending to establish the overt act. Once the defense has introduced such appreciable evidence, the district court cannot exercise its discretion to infringe on the fact-determining function of the jury by disbelieving this defense testimony and denying the accused a defense permitted him by law. A district court's determination that the defendant has not laid a sufficient evidentiary foundation upon which to introduce testimony concerning the victim's dangerous character will not be disturbed absent a finding of clear error. **State v. Felder**, 00-2887 (La.App. 1 Cir. 9/28/01), 809 So.2d 360, 367, writ denied, 01-3027 (La. 10/25/02), 827 So.2d 1173.

Moreover, even where a proper foundation is laid, the admissibility of a victim's character trait depends on the purpose for which the evidence is offered. Once evidence of an overt act on the part of the victim has been presented, evidence of threats and of the victim's dangerous character is admissible for two distinct purposes: (1) to show the defendant's reasonable apprehension of

danger which would justify the conduct; and (2) to help determine who was the aggressor in the conflict. Only evidence of general reputation and not specific acts, is admissible in order to show who the aggressor was in the conflict. Evidence of prior specific acts of the victim against a third party is inadmissible for this purpose. When evidence of a victim's dangerous character is offered to explain a defendant's reasonable apprehension of danger, such evidence may be introduced to show the accused's state of mind only if it is shown that the accused knew of the victim's reputation at the time of the offense. When such a showing is made, some courts have held that evidence is not limited to general reputation, but may also include evidence of specific acts. Other courts have held that, even when offered for this purpose, only specific acts committed against the defendant are admissible. **Loston**, 874 So.2d at 206-07.

Thus, in the instant matter, the threshold question is whether defendant introduced "appreciable evidence" into the record to establish an overt act by the victim at the time the defendant stabbed him. There is no evidence that the victim initiated the physical confrontation with defendant, and defendant did not claim self-defense at trial. In his statement, given on August 16, 2010, only three days after the murder, defendant clearly indicated that the victim did not fight back and there was no "scuffle" between the two. Notably, during his statement, defendant made no mention of any threats on the part of the victim and no mention of any sexual abuse. He told officers that he went to the victim's home on the night of the murder to rob him and that he decided to kill the victim when he saw him by the telephone out of fear that he would identify him to authorities.

After a thorough review of the record, we find the district court did not abuse its discretion in granting the State's motion in limine and excluding evidence of the victim's dangerous character, as the record does not contain any "appreciable evidence" of the prerequisite requirement of a hostile demonstration or overt act by the victim at the time of the offense, which manifests to the mind of a reasonable person a present intention on the victim's part to kill or do great

bodily harm to the accused.⁵ Accordingly, no violation of defendant's constitutional right to present a defense occurred in this case. Thus, the district court did not err in denying defendant's motion for new trial. These assignments of error are without merit.

REVIEW FOR ERROR

Initially, we note that our review for error is pursuant to LSA-C.Cr.P. art. 920, which provides that the only matters to be considered on appeal are errors designated in the assignments of error and "error that is discoverable by a mere inspection of the pleadings and proceedings and without inspection of the evidence." LSA-C.Cr.P. art. 920(2).

The district court did not wait twenty-four hours after denying the motion for new trial before imposing sentence. See LSA-C.Cr.P. art. 873. However, the issue was neither assigned as error, nor were the sentences challenged, nor does defendant cite any prejudice resulting from the court's failure to delay sentencing. Thus, any error that occurred is not reversible. See **State v. Augustine**, 555 So.2d 1331, 1334-35 (La. 1990).

CONVICTION AND SENTENCE AFFIRMED.

⁵ Moreover, defendant failed to proffer the desired testimony of his brother and Dr. Deland for this court's review. Because defendant failed to proffer evidence of the alleged sexual abuse, he has waived any possible error regarding the use of such evidence for a manslaughter defense. LSA-C.E. art. 103A(2); **State v. Dixon**, 620 So.2d 904, 909-10 (La.App. 1 Cir. 1993).