STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED February 16, 2012
v	No. 300454 Wayne Circuit Court
QUIANA KENISHA LOVETT, Defendant-Appellant.	LC No. 10-004540-FC

Before: STEPHENS, P.J., and WHITBECK and BECKERING, JJ.

PER CURIAM.

Following a jury trial, defendant Quiana Kenisha Lovett was convicted of second-degree murder, MCL 750.317, and sentenced to 16 to 30 years' imprisonment. She appeals as of right. We affirm.

Defendant's conviction arises from the February 20, 2010, fatal stabbing of her fiancé, Brian Woods, in their Detroit home. Evidence indicated that the couple was hosting a small gathering at their home when an argument erupted between Woods, his brother, and defendant. Woods asked everyone to leave his home, including his brother, who warned Woods to "watch out" because defendant had a knife in her hand. Thereafter, defendant and Woods argued about defendant's demeanor toward Woods's brother. According to defendant, the argument progressed to a physical altercation. Defendant testified that Woods choked her to the point that she could hardly breathe and that she grabbed a kitchen knife and stabbed him once in the chest in self-defense. A few hours after the incident, defendant gave a statement to the police in which she admitted to getting mad and stabbing Woods, but she did not mention that Woods had choked her or was physically aggressive in any manner.

I. PRIOR ACTS EVIDENCE

Defendant argues that the trial court erred by admitting evidence of prior acts of domestic violence under MCL 768.27b without first determining whether the evidence satisfied the more probative than prejudicial balancing test of MRE 403.

A trial court's decision to admit evidence is generally reviewed for an abuse of discretion. *People v McDaniel*, 469 Mich 409, 412; 670 NW2d 659 (2003). If there is an underlying question of law, such as whether admissibility is precluded by a rule of evidence, that question is reviewed de novo. *Id*. In a criminal case, if a preserved nonconstitutional error is found, reversal is not required unless the defendant establishes that "it is more probable than not that the error was outcome determinative." *People v Lukity*, 460 Mich 484, 495-496; 596 NW2d 607 (1999).

MCL 768.27b(1) provides that "in a criminal action in which the defendant is accused of an offense involving domestic violence, evidence of the defendant's commission of other acts of domestic violence is admissible for any purpose for which it is relevant, if not otherwise excluded under Michigan rule of evidence 403." Under MRE 403, relevant evidence may be excluded if its probative value is substantially outweighed by unfair prejudice. *People v Cameron*, 291 Mich App 599, 610; 806 NW2d 371 (2011). MRE 403 is not intended to exclude "damaging" evidence as any relevant evidence will be damaging to some extent. *People v Mills*, 450 Mich 61, 75; 537 NW2d 909 (1995), mod 450 Mich 1212 (1995). Instead, under the balancing test of MRE 403, this Court must first decide if the prior-bad-acts evidence was unfairly prejudicial and then "'weigh the probativeness or relevance of the evidence' against the unfair prejudice" to determine whether any prejudicial effect substantially outweighed the probative value of the evidence. *Cameron*, 291 Mich App at 611.

Unfair prejudice exists where there is "a danger that marginally probative evidence will be given undue or pre-emptive weight by the jury" or "it would be inequitable to allow the proponent of the evidence to use it." *Mills*, 450 Mich at 75-76; see also *People v McGuffey*, 251 Mich App 155, 163; 649 NW2d 801 (2002). In the second situation, the unfair prejudice language "refers to the tendency of the proposed evidence to adversely affect the objecting party's position by injecting considerations extraneous to the merits of the lawsuit, e.g., the jury's bias, sympathy, anger, or shock." *Cameron*, 291 Mich App at 611 (citation omitted).

Defendant has not demonstrated that she was unfairly prejudiced by the evidence. While the evidence was damaging, as is most evidence presented against a criminal defendant, it was by no means inflammatory. It did not interfere with the jury's ability to rationally weigh the evidence. The prosecutor focused on the proper purpose for which the evidence was admissible. Moreover, in its final instructions, the trial court gave a cautionary instruction to the jury concerning the proper use of the evidence, thereby limiting any potential for unfair prejudice. See *id.* at 612.

Further, any prejudicial effect of the evidence did not substantially outweigh the probative value of the evidence. "A trial court admits relevant evidence to provide the trier of fact with as much useful information as possible." *Id.* Evidence is relevant if it has "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." MRE 401. Defendant's prior acts of domestic violence meet the minimum threshold for relevancy. See *People v Crawford*, 458 Mich 376, 390; 582 NW2d 785 (1998). The evidence assisted the jury in weighing and assessing the credibility of defendant's self-defense claim. The prior acts of domestic violence were probative of whether defendant's account of the stabbing was reliable and credible, particularly her claim that she reacted only because Woods was in the midst of

strangling her. Defendant's pursuit of Woods with knives in the past—without any physical provocation—tended to shed light on her claim that she "just reached for something to get him off." This Court has recognized that "prior-bad-acts evidence of domestic violence can be admitted at trial because 'a full and complete picture of defendant's history . . . tend[s] to shed light on the likelihood that a given crime was committed.'" *Cameron*, 291 Mich at 610 (citation omitted).

For these reasons, the prior bad acts were relevant, and any prejudicial effect of the evidence did not substantially outweigh its probative value under MRE 403. Although the trial court erred by failing to specifically analyze the evidence under MRE 403 before admitting it, the error was harmless because the evidence was admissible under a proper MRE 403 analysis.

II. ADMISSION OF DEFENDANT'S CUSTODIAL STATEMENT

Defendant argues that the trial court erred in admitting her custodial statement because it was given shortly after a traumatic incident while she was still intoxicated and, therefore, was not knowingly, intelligently, and voluntarily made. We disagree.

Statements of an accused made during a custodial interrogation are inadmissible unless the accused voluntarily, knowingly, and intelligently waives his or her Fifth Amendment rights. *Miranda v Arizona*, 384 US 436, 444; 86 S Ct 1602; 16 L Ed 2d 694 (1966); *People v Abraham*, 234 Mich App 640, 644; 599 NW2d 736 (1999). Whether a defendant's statement was knowing, intelligent, and voluntary is a question of law that a court evaluates under the totality of the circumstances. *People v Tierney*, 266 Mich App 687, 707; 703 NW2d 204 (2005). The state bears the burden of proving by a preponderance of the evidence that the suspect properly waived his or her rights. See *id.* We defer to the trial court's assessment of the weight of the evidence and the credibility of the witnesses, and we will not disturb the trial court's findings of fact unless they are clearly erroneous. *People v Howard*, 226 Mich App 528, 543; 575 NW2d 16 (1997). A finding is clearly erroneous if it leaves the reviewing court with a definite and firm conviction that a mistake has been made. *People v Givans*, 227 Mich App 113, 119; 575 NW2d 84 (1997).

A *Miranda*-waiver analysis is bifurcated as this Court considers (1) whether the waiver was voluntary and (2) whether the waiver was knowing and intelligent. *People v Daoud*, 462 Mich 621, 639; 614 NW2d 152 (2000); see also *Tierney*, 266 Mich App at 707. "While the voluntariness prong is determined solely by examining police conduct, a statement made pursuant to police questioning may be suppressed in the absence of police coercion if the defendant was incapable of knowingly and intelligently waiving his constitutional rights." *People v Howard*, 226 Mich App 528, 538; 575 NW2d 16 (1997). In *People v Cipriano*, 431 Mich 315, 334; 429 NW2d 781 (1988), our Supreme Court set forth the following nonexhaustive list of factors that a trial court should consider in determining whether a statement is voluntary:

> The age of the accused; his lack of education or his intelligence level; the extent of his previous experience with the police; the repeated and prolonged nature of the questioning; the length of the detention of the accused before he gave the statement in question; the lack of any advice to the accused of his constitutional rights; whether there was an unnecessary delay in bringing him before a magistrate before he gave the confession; whether the accused was injured, intoxicated or drugged, or in ill health when he gave the statement; whether the accused was deprived of food, sleep, or medical attention; whether the accused was physically abused; and whether the suspect was threatened with abuse.

No single factor is conclusive. *Id.*; *People v Fike*, 228 Mich App 178, 181-182; 577 NW2d 903 (1998). To establish that a waiver was knowing and intelligent, "the state must present evidence sufficient to demonstrate that the accused understood that he did not have to speak, that he had the right to the presence of counsel, and that the state could use what he said in a later trial against him." *Tierney*, 266 Mich App at 709 (quotation omitted). A defendant need not understand the ramifications and consequences of waiving his right, as the test is not whether it was wise or smart for the defendant to admit culpability. *Id*. at 709-710. Rather, he "need only know of his available options and make a rational decision, not necessarily the best decision." *Id*. at 710.

Defendant did not testify about the circumstances surrounding her statement. After viewing a video recording of defendant's interview and also hearing testimony from the officer who conducted the interview, which the trial court found was credible, the trial court found that defendant knowingly, intelligently, and voluntarily waived her rights. Giving deference to the trial court's determination that the officer's testimony was credible, *Howard*, 226 Mich App at 543, defendant has not demonstrated that the trial court's findings are clearly erroneous.

Although defendant had an unspecified amount of alcohol at least two hours before the interview, the officer testified that there was no indication that defendant lacked the capacity to understand the warnings given. The officer explained that defendant's gait appeared normal, she did not smell of alcohol, and her speech flowed normally. After the officer recited defendant's constitutional rights, defendant clearly reread each right back out loud. Defendant initialed each right at the appropriate place and signed the form indicating that she understood her rights. The 32-year-old defendant also asked relevant questions, appeared to fully understand the officer's questions during the interview, gave appropriate answers to the questions, and never expressed any misunderstanding or unwillingness to answer questions. When the officer questioned defendant about the circumstances of the incident, she coherently articulated a detailed account of her actions at the time of the incident, including the color of the knife. Viewing the totality of the circumstances, we find no clear error in the trial court's determination that defendant knowingly and intelligently waived her Fifth Amendment rights.

With regard to the voluntariness of defendant's statement, the interview was conducted approximately three hours after the stabbing and lasted less than 1-1/2 hours. There is no evidence that defendant was threatened, abused, or promised anything in exchange for her statement. There is likewise no evidence that she was deprived of food or drink. Although defendant had earlier consumed alcohol, there is no indication that she was intoxicated to a

degree that she was not operating of her own free will. Defendant was 32 years old and could read and write, and there is no indication that she had any learning disabilities or psychological problems. Viewing the totality of the circumstances, we are not convinced that a mistake was made in denying defendant's motion to suppress her statement.

Affirmed.

/s/ Cynthia Diane Stephens
/s/ William C. Whitbeck
/s/ Jane M. Beckering