

[Cite as *State v. Lamotte*, 2017-Ohio-783.]

STATE OF OHIO, BELMONT COUNTY
IN THE COURT OF APPEALS
SEVENTH DISTRICT

STATE OF OHIO)	
)	
PLAINTIFF-APPELLEE)	
)	CASE NO. 15 BE 0068
VS.)	
)	OPINION
MICHAEL C. LAMOTTE)	
)	
DEFENDANT-APPELLANT)	

CHARACTER OF PROCEEDINGS: Criminal Appeal from the Court of
Common Pleas of Belmont County, Ohio
Case No. 14 CR 259

JUDGMENT: Affirmed.

APPEARANCES:
For Plaintiff-Appellee Attorney Daniel P. Fry
Belmont County Prosecutor
Attorney J. Flanagan
Assistant Prosecutor
147-A West Main Street
St. Clairsville, Ohio 49350

For Defendant-Appellant Attorney Zachary Zilai
409 Walnut Street
P.O. Box 279
Martins Ferry, Ohio 43935

JUDGES:
Hon. Mary DeGenaro
Hon. Cheryl L. Waite
Hon. Carol Ann Robb

Dated: March 1, 2017

[Cite as *State v. Lamotte*, 2017-Ohio-783.]
DeGENARO, J.

{¶1} Defendant-Appellant, Michael C. Lamotte, appeals the trial court's judgment contending it was error to admit a 911 recording into evidence during his jury trial. As Lamotte's argument is meritless, the judgment of the trial court is affirmed.

{¶2} After receiving a phone call from her father Michael Lamotte, Catherine Lamotte called 911 and stated that Michael had shot her mother, Beverly. A Belmont County Sherriff's Deputy responded to the call. He arrived to the residence and saw a woman lying on the front porch wrapped in a comforter, stiff, cold, and unconscious. The body was later identified as Beverly.

{¶3} The deputy encountered Lamotte who appeared to be in a disoriented state and did not want to leave the house. Lamotte was eventually tackled and taken into custody. After an investigation it was determined that Beverly suffered three gunshot wounds: one to the temple, one to the side of the face, and one to the back right shoulder. Lamotte was indicted for Aggravated Murder and a firearm specification.

{¶4} During Lamotte's jury trial the State called Brian Minder to testify as the custodian of the 911 records. Over the objection of defense counsel, the audio recording of Catherine stating that her father had shot her mother Beverly was played for the jury. The recording was played again during the cross-examination of Catherine.

{¶5} Lamotte was convicted by a jury of murder and a firearm specification and sentenced to 18 years to life.

{¶6} In his sole assignment of error, Lamotte asserts:

THE TRIAL COURT COMMITTED ERROR IN ALLOWING THE
ADMISSION OF THE RECORDING OF THE 911 CALL MADE BY THE
DAUGHTER OF THE DEFENDANT.

{¶7} Lamotte contends that pursuant to Evid.R. 403(A) the probative value of the recording was substantially outweighed by the danger of unfair prejudice. The

State counters that the trial court has broad discretion and it did not err because the 911 recording was substantially more probative than prejudicial.

{¶8} Evid.R. 403 provides for the exclusion of relevant evidence due to prejudice, confusion, or undue delay. "The admission of evidence lies within the broad discretion of a trial court, and a reviewing court should not disturb evidentiary decisions in the absence of an abuse of discretion that has created material prejudice." *State v. Lett*, 7th Dist. No 08 MA 194, 2009-Ohio-5268, ¶ 12 (internal citations omitted). "An abuse of discretion means an error in judgment involving a decision that is unreasonable based upon the record; that the appellate court merely may have reached a different result is not enough." *Downie v. Montgomery*, 7th Dist. No. 12 CO 43, 2013-Ohio-5552, ¶ 50.

{¶9} The trial court did not err in admitting the 911 recording. The tape of Catherine's call has the "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." Evid.R. 401. Therefore, it was relevant. Though prejudicial to Lamotte with respect to his criminal liability, it was not unfairly so as contemplated by the evidence rule. Nor did it confuse the issues or mislead the jury. The State asserts this was the only time the jury was able to hear Lamotte identified as the shooter. Further, Minder, the custodian of the 911, records and Catherine were both subject to cross-examination that could have exposed any weaknesses the evidence may have had.

{¶10} Lamotte compares this case to *State v. Main*, 5th Dist. No CA 9562, 1994 WL 477751 (Aug. 22, 1994). In that case our sister district determined the trial court committed error when a tape recording of the defendant was admitted into evidence. However, as the State aptly points out, Lamotte was not the 911 caller in the present matter; Catherine was, and she was subject to cross-examination. Thus, *Main* is inapposite to this appeal.

{¶11} As the trial court has broad discretion in admitting evidence and the recording was more probative than prejudicial, the trial court did not err in admitting

the 911 recording. Accordingly, Lamotte's assignment of error is meritless and the judgment of the trial court is affirmed.

Waite, J., concurs.

Robb, P. J., concurs.