

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 28, 2003

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 03-0725-CR
STATE OF WISCONSIN**

Cir. Ct. No. 01CF000182

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

PAULO C. GONZALEZ,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Eau Claire County: BENJAMIN D. PROCTOR, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Paulo Gonzalez appeals a judgment convicting him of first-degree intentional homicide in the stabbing death of his estranged girlfriend, Ellen Glodowski. The jury rejected his argument that he should be convicted of only second-degree intentional homicide because Glodowski provoked him by threatening to deny him access to their child. The jury also

rejected his insanity plea. Gonzalez argues that the trial court erroneously disallowed evidence at the first phase of the trial regarding the role of children in a Cuban family. He also argues that the court improperly exercised its discretion when it limited counsel's argument regarding sixty-two letters Gonzalez wrote to his attorney and when it would not allow the jurors to see the letters. We reject these arguments and affirm the judgment.

¶2 The parties do not dispute that Gonzalez stabbed Glodowski nineteen times following an argument at her home. Gonzalez told police that he was frequently denied access to his son, he was troubled because his son did not have his last name and Glodowski's family was prejudiced against him. On the day of the killing, he stopped by Glodowski's apartment to see his son. Glodowski asked Gonzalez to take the child for the weekend, but he was unable to do so. An argument ensued in which Glodowski told Gonzalez that he had never done anything for the boy and she threatened to move and not tell him where she and their son would live. Gonzalez became enraged, took the child to another room, picked up a knife and stabbed Glodowski to death. He then changed his clothes and took the child to a mall.

¶3 The trial court prohibited the defense from presenting expert evidence regarding Cuban culture at the guilt phase of the trial. Gonzalez argues that the central role of children in Cuban culture is a factor the jury should understand when determining whether Gonzalez was adequately provoked by Glodowski's threat to deny him access to his son.

¶4 The trial court correctly concluded that the proffered expert testimony was irrelevant to the issue of provocation and potentially misleading to the jury. "Provocation" means something Gonzalez reasonably believed

Glodowski had done that caused him to lose self-control completely at the time he killed her. *See* WIS JI—CRIMINAL 1012 (1989). The jury instruction required the jury to determine what Gonzalez subjectively believed and whether the belief was objectively reasonable. The standard for whether a belief was reasonable is what a person of ordinary intelligence and prudence would have believed in Gonzalez's position under the circumstances existing at the time of the stabbing. *Id.* Gonzalez was allowed to present evidence regarding his belief that Glodowski would interfere with his ability to see their child. He was also allowed to present evidence of his obsessive attachment to the child. Whether that degree of attachment is commonplace in Cuban families is irrelevant. Knowledge of the status of a child in the Cuban family would not assist the jury in determining what Gonzalez believed regarding Glodowski's plans for the child.

¶5 Knowledge of Cuban culture is also irrelevant to the objective component of this defense, whether a person of ordinary intelligence and prudence would have had Gonzalez's beliefs and would have lost self-control for this provocation. The jury was to determine these issues as to an ordinary person, not an ordinary Cuban. *Id.* While the jury is required to consider Gonzalez's position and circumstances, those considerations do not include every aspect of the defendant's personality and background. To expand those considerations to that level would create a totally subjective test. The trial court appropriately allowed Gonzalez to establish his own beliefs and personality traits and properly prohibited inquiry into the generalities of Cuban culture. Those generalities were not only irrelevant to the subjective and objective components that the jury must consider, they would also invite the jury to focus on an inappropriate question, whether Gonzalez's reaction was that of a typical Cuban man.

¶6 In the sanity phase of the trial, the defense presented sixty-two letters Gonzalez wrote to his attorney. The defense contends that these letters demonstrate Gonzalez's delusional thinking. The letters were admitted into evidence because the psychiatric experts considered them as a part of their diagnosis. However, the trial court would not allow defense counsel to utilize the letters in her closing argument except to the extent the doctors had relied on them, and the court refused to send the letters to the jury room during deliberations. The trial court concluded that the letters were hearsay, irrelevant and prejudicial to the State. Gonzalez argues that these limitations on the letters' use denied him his right to present a defense.

¶7 Although the letters are not included in the record on appeal, the tone of the letters and some specific statements were discussed by the expert witnesses and disclosed by counsel in arguments to the trial court. The letters were written in Spanish. English translations were provided. However, one defense expert witness testified that the delusional quality of the letters was somewhat lost in translation.

¶8 We conclude that the trial court properly exercised its discretion when it limited the use of the letters because any other use would be prejudicial to the State and would have minimal probative value. The letters contained statements that do not relate to Gonzalez's defense, but described Gonzalez's depression and loneliness in jail months after the murder. He stated that he would kill himself if he was sent to prison. While some of the sentences could be excised, the jury would be left with fragments of translated letters from which to determine whether they reflect delusional thinking. The expert witnesses utilized the letters in their diagnosis. Because the lay jurors would not be able to discern from the letters whether the murder resulted from a mental disease or defect, the

trial court appropriately used the psychological experts to filter the raw data, allowing the jury to hear all relevant diagnostic information through the experts. This approach properly prevented the jury from considering irrelevant and prejudicial information and from speculating about the diagnostic significance of Gonzalez's statements.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

