

No. 1-09-2805

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SECOND DIVISION
FEBRUARY 15, 2011

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 07 CR 7993
)	
MARTAVIA LAMBERT,)	Honorable
)	Clayton J. Crane,
Defendant-Appellant.)	Judge Presiding.

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Cunningham and Justice Karnezis concurred
in the judgment.

O R D E R

HELD: Judgment on second degree murder conviction affirmed where defendant's failure to preserve alleged trial court error for excluding testimony regarding victim's violent character and prior infliction of injuries did not rise to level of plain error.

Following a bench trial, defendant Martavia Lambert was convicted of second degree murder and sentenced to 13 years'

imprisonment. On appeal, defendant contends that the trial court erred in excluding evidence of the victim's aggressive and violent character which, she claims, was relevant to her theory of self-defense.

At trial, Lillian Tapes, the mother of the victim, Anthony Brown, testified that Brown and defendant had been in a relationship for about three years and had two children together. On March 20, 2007, Tapes received a phone call from defendant's grandmother, Linda Harris, and learned that Brown had died.

Linda Harris corroborated Tapes' testimony regarding the domestic relationship between Brown and defendant, adding that Brown was defendant's husband and that they shared an apartment in Carpentersville, Illinois. Harris also testified that the family would occasionally spend the night at Harris' second floor apartment at 1135 South Independence Boulevard in Chicago. She then described the layout of that apartment where the front door opens onto the kitchen, with a bedroom to the left, and the living room straight ahead. Beyond that, there is a hallway with another bedroom on the left, a bathroom across from it, and a third bedroom next to the back door. Harris testified that when defendant and Brown came over, they would stay in her bedroom near the front door, and she would sleep in another room with the children.

On the night of March 19, 2007, the family stayed at Harris' apartment along with her and five of her grandchildren. Harris and Tapes had been out together that night, and when they returned about 12:30 a.m., defendant and Brown were outside. Tapes called Harris about 20 minutes later to check on things because defendant and Brown often fought. Harris told her everything was fine and then went to sleep.

About 3 a.m., Harris was roused by a noise and went to the front bedroom where defendant and Brown were staying. The two had been fist-fighting, and defendant was sitting on the bed holding her hand to a swollen left eye. Harris went back to her room, but the two began fighting again, prompting Harris to return. This time she saw defendant on the floor, with Brown on top, punching her. He then hit her with a fan, and defendant responded by throwing a lamp at him. Harris called Tapes and asked her to come over. She also told the two to stop fighting and asked Brown to leave. Brown walked out the front door, and one of Harris' grandchildren told her that defendant stabbed Brown in the head with a pair of scissors as he left, which Harris did not see.

Brown returned 15 to 20 minutes later, and the couple began fist-fighting near the front door. He left a second time, and, once again, returned after 15 to 20 minutes. The couple was still arguing and fist-fighting. Brown then backed up towards

the rear door with his hands in the air, saying he was leaving, and defendant grabbed a knife from the kitchen. She told Harris, "you better call the police because I'm gonna kill him." Harris did so and also grabbed the couple's youngest child from between them and put him in another room.

Brown faked going out the back door, then turned around and said "I'm fixing to do you know what to you." He walked towards the front of the apartment, where defendant was located, and said, "come on *** I'm ready to die." Defendant said, "come on," holding the knife up at her shoulder as if it were pointing. Brown did not have any weapons. As Brown swung and kicked at her, defendant put her head down and swung the knife with a throwing motion. Harris saw Brown holding his throat, called the police again, and defendant took Brown to the hospital.

On cross-examination, Harris testified that she had seen defendant and Brown fight often, sometimes with their fists, so she was not surprised to see them fighting that night. The second time she came out of her room, Harris saw the couple fighting in the hallway. Brown was getting the best of the fight, kicking defendant once and hitting her with his fists. This went on for 20 to 30 minutes, and when she came out the third time, she saw Brown hit defendant with the fan in their bedroom. She also stated that when Brown approached defendant just before he was stabbed, he said, "I'm going to beat your ass

and kill you," and that he was hitting her when she stabbed him. Defense counsel asked Harris whether she was aware that Brown had previously broken defendant's leg and shattered her eardrum, but the court sustained the State's objection to this question.

Defendant's sister, Martina Lambert, testified that she is 18 years of age, lives with her grandmother, Linda Harris, and was at Harris' apartment on the night in question. She woke up about 3 a.m. when she heard Harris tell somebody to stop fighting. She then stepped into the hallway and saw Harris between defendant and Brown trying to break up the fight. Martina also saw Brown hit defendant across her head, causing her to fall down at the front door. Defendant then picked up a pair of scissors and stabbed Brown halfway up the right side of his head, just behind his ear. After that, Brown left through the front door.

Two minutes later, Brown knocked on the door and Martina opened it. He came in, went into the bathroom, and closed the door. Defendant came down the hallway with a knife and pushed on the bathroom door, trying to get in, as Brown pushed back on the other side. He then came out of the bathroom and said that he was "not fixing to run from a knife no more," and walked towards the back door. When defendant began walking down the hallway with the knife, Martina went into her bedroom.

From there, Martina heard defendant ask Brown why he had hit her and then heard Brown scream. She came out of her room and saw Brown walking down the hallway while holding his chest and bleeding from the mouth. He had nothing in his hands. Defendant started screaming, and when Brown went out the front door, she followed him. Martina further testified that after Brown returned the second time and the couple was fighting, Harris was on the phone with police. She also heard defendant tell Harris that she was going to kill Brown.

On cross-examination, Martina testified that she was 15 years of age at the time of the stabbing. After Brown initially hit defendant in the head, causing her to fall, he continued to hit her with his fist. While the couple was in their bedroom, Martina saw Brown throw a fan at defendant, which hit her in the head and also hit the baby.

The parties stipulated, in relevant part, that no suitable fingerprints were taken from the scissors, that the fingerprint taken from the knife did not match defendant's fingerprint card, that blood on the box fan, knife, and handle of the scissors matched that of Brown, and that Brown's death was a homicide caused by a stab wound to the chest.

Defendant testified that she was 20 years of age at the time of the stabbing, and is now 22. She married Brown on December 5, 2005, and had two children with him. Brown had physically

assaulted her several times before the stabbing. In one instance, he knocked her down by striking her on the right side of her head. The police came, and she was taken to the hospital with a broken eardrum and a right ankle fracture, which left her in a cast and on crutches for nearly a month. In another instance, at Harris' apartment, the couple fought, and defendant again had to go to the hospital because her right arm was "sprung" and required a sling. There were other fights, and she did not win any of them. Defense counsel inquired as to the general nature of the injuries defendant would suffer when fighting with Brown, but the court sustained the State's objection to this question.

On the night of the stabbing, the couple and their two children were in the front bedroom of Harris' apartment, and defendant and her son Anthony were sitting on the bed. Defendant and Brown were arguing about a young man whom Brown thought defendant had been sleeping with, and Brown was very upset, yelling in defendant's face, cursing at her, and pacing the room in an agitated manner. Brown then hit her about 15 times with his fists. Defendant kicked, trying to get him off of her, and when she stood up, he punched her and knocked her down to the floor. As Brown walked out of the room, speaking angrily, he was provoked when defendant talked back to him. He grabbed a box fan, rushed at her, and hit her in the chest with it. Defendant

then grabbed a pair of scissors off the entertainment center and hit him in the head with them, causing bleeding. Brown left the apartment through the front door, and defendant locked it and went to the bathroom to look at her face.

When Brown returned about five minutes later, Martina let him in. Defendant testified that she was sitting on the bed in the bedroom when she heard Brown say, "[W]here that bitch at, I'm fint [sic] to kill her." She was afraid and, while Brown was in the bathroom, she grabbed a knife from the kitchen to defend herself. She had no intention of using it on her husband, but thought he was going to hurt or kill her.

When she came out of the kitchen, he was walking down the hall towards her, saying "[B]itch, I'm fint [sic] to kill you." Defendant did not know if Brown had a weapon, but was aware that he owned several guns which he kept upstairs in his aunt's home. The couple argued some more, and defendant told Brown to leave. She called Harris to come get him, but upon seeing the knife, Harris began screaming into the phone. Brown said, "[B]itch, that knife don't scare me," and began kicking and punching her. Defendant kicked back. She then put her head down and covered her face while holding the knife up in the air. She realized that she had stabbed Brown when he said, "[G]randma, she stabbed me." She did not intend to stab or kill him, and when she saw him bleeding from his mouth, she tried to help him. She drove

him to the hospital, and on their way out of the building, she dropped the knife in the hallway outside the apartment.

On cross-examination, defendant testified that she is 5'4" tall and 185 pounds, and that Brown was 5'8" tall and 200 pounds. On the night of the stabbing, she never saw Brown with a weapon in his hand, other than the fan. Although she acknowledged that she yelled that night, she said that she was not upset or angry, but rather, was defending herself from his accusations. On her way out of the apartment, she picked up the scissors from the floor of the apartment and dropped them, with the knife, outside.

Defendant also disputed portions of the testimony given by previous witnesses. She testified that she did not punch Brown in the face or throw a lamp at him while they were in the bedroom, and denied that Brown went out the front door two or three times. She also denied trying to get into the bathroom while Brown was inside or telling Harris that she was fixing to kill Brown. Lastly, she testified that she hit Brown with the scissors while they were still in the bedroom and that Brown had never put his hands up that night.

The trial court noted that Harris was the "best witness," then found that the relationship between defendant and Brown involved constant arguing and fighting, which became physical, but that it was absolutely unreasonable for defendant to bring a knife to a fist fight. The court thus found defendant guilty of

second degree murder. On appeal, defendant contends that the court erred in excluding the testimony of her and Harris regarding the types of injuries Brown had previously inflicted upon her.

Initially, we observe that defendant did not raise this issue in her motion for a new trial, as required (*People v. Enoch*, 122 Ill. 2d 176, 186 (1988)), and has thus forfeited it for review. Defendant, citing *People v. Naylor*, 229 Ill. 2d 584, 593 (2008), claims that we may review the issue under the plain error rule.

We note that the plain error doctrine is a narrow and limited exception to the general rule (*People v. Hillier*, 237 Ill. 2d 539, 545 (2010)), and to invoke this exception, defendant must show that the evidence is closely balanced, or the error is so serious that it affected the fairness of defendant's trial and challenged the integrity of the judicial process (*Naylor*, 229 Ill. 2d at 593). Under both prongs, defendant bears the burden of persuasion (*Naylor*, 229 Ill. 2d at 593), and must first show that a clear or obvious error occurred (*Hillier*, 237 Ill. 2d at 545).

In this case, defendant was convicted of second degree murder in that she intentionally or knowingly stabbed Brown with a knife under mitigating circumstances. 720 ILCS 5/9-2 (West 2006). Although she proffered a theory of self-defense,

attempting to establish a reasonable belief that her use of deadly force was necessary (720 ILCS 5/7-1(a) (West 2006)), the trial court found that her belief was unreasonable and entered a conviction of second degree murder. 720 ILCS 5/9-2(a)(2).

Defendant does not contest the trial court's determination that her belief was unreasonable *per se*, but rather, argues that the court erred in excluding witness testimony about the types of prior injuries Brown had inflicted upon her. She claims that since she argued that she acted in self defense, evidence of the victim's aggressive and violent character was relevant to show that he was the aggressor and that her belief in the necessity of deadly force to defend herself was reasonable.

We note, initially, that the determination of the admissibility of evidence lies within the province of the trial court, and that its ruling on issues of relevance and admissibility of evidence will not be reversed on review absent a clear abuse of discretion and manifest prejudice. *People v. Figueroa*, 381 Ill. App. 3d 828, 841 (2008).

In support of her argument that this is such a case, defendant relies on *People v. Lynch*, 104 Ill. 2d 194, 200 (1984), where the supreme court identified two situations in which a defendant may offer testimony of a victim's violent character in support of a theory of self-defense. The first situation is where such testimony is offered to show that defendant's

knowledge of the victim's violent tendencies affected her perception of, and reaction to, his behavior. *Lynch*, 104 Ill. 2d at 200.

Here, defendant cites as error the trial court's exclusion of Harris' testimony regarding whether she knew that Brown had previously broken defendant's leg and shattered her eardrum. She claims that this testimony would have cast light on her own knowledge of Brown's violent tendencies and also established Brown as the aggressor.

Under *Lynch*, 104 Ill. 2d at 200, however, only defendant's knowledge of the victim's violent nature is relevant to her theory of self-defense. Harris' testimony would have thus been irrelevant to establishing defendant's knowledge of Brown's violent tendencies (*Lynch*, 104 Ill. 2d at 200), and the trial court did not err in excluding it.

In the second situation, testimony of a victim's violent character may be offered to support the defendant's version of the facts where there are conflicting accounts of what happened. *Lynch*, 104 Ill. 2d at 200. Where that is the case and a self-defense theory is properly raised, evidence of the victim's aggressive and violent character is relevant to show who was the aggressor. *Lynch*, 104 Ill. 2d at 200.

In this case, we find little evidence that defendant acted in self defense. She clearly was the only one with a weapon and

stabbed Brown while he was hitting and kicking her. Prior to that, they had been engaged in a fist fight which the witnesses all reported to be not uncommon. The record thus shows that defendant became the aggressor with the knife and was not entitled to any further evidence of Brown's violent character to support her theory of self-defense. *Figueroa*, 381 Ill. App. 3d 841-43.

Moreover, Harris testified at length on the incident at bar which she witnessed first-hand, and, from it, the court heard substantial evidence as to the victim's character on the night in question. We thus find no abuse of discretion or manifest prejudice in the trial court's exclusion of Harris' testimony regarding prior injuries that Brown had inflicted upon defendant. *Figueroa*, 381 Ill. App. 3d at 841.

Defendant also contends that the trial court improperly excluded her own testimony when it did not allow her to respond to counsel's question, referring to fights on other occasions: "In general, what were the nature of the types of injuries you would end up with?" We note that this question called for a vague answer in that defendant's response would be a generalization and, therefore, potentially misleading as to the victim's actual behavior on any particular occasion. See *People v. Ward*, 19 Ill. App. 3d 833, 839 (1974).

In any event, the record shows that the trial court heard ample evidence, including testimony from defendant, detailing some of Brown's prior violent acts and the corresponding injuries to her, and also from Harris, who testified to the frequent fights between them. The court found, however, that defendant's use of a knife in this instance was "absolutely unreasonable," and that she was guilty of second degree murder.

In the absence of evidence that this case was closely balanced, or that the alleged error of the court in excluding testimony was so serious as to rise to the level of plain error (*Naylor*, 229 Ill. 2d at 593), we find that defendant has failed to carry her burden of establishing plain error, and honor the procedural default of her claims. *Naylor*, 229 Ill. 2d at 593. We therefore affirm the judgment of the circuit court of Cook County.

Affirmed.