

IN THE COURT OF APPEALS OF IOWA

No. 3-992 / 12-1335
Filed January 9, 2014

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JAMAAL J. LESLIE,
Defendant-Appellant.

Appeal from the Iowa District Court for Cerro Gordo County, Rustin Davenport, Judge.

Defendant appeals his conviction for murder in the first degree.

AFFIRMED.

Mark C. Smith, State Appellate Defender, and Rachel C. Regenold, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Kevin Cmelik and Douglas D. Hammerand, Assistant Attorneys General, and Carlyle D. Dalen, County Attorney, for appellee.

Considered by Vogel, P.J., Mullins, J., and Huitink, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2013).

HUITINK, S.J.**I. Background Facts & Proceedings.**

The following facts were presented during the jury trial in this case. Brandon Crawford worked as security, or as a bouncer, at the Island Bar and Grill in Clear Lake, Iowa. Crawford had hobbies of participating in mixed martial arts and performing in rap videos. Crawford belonged to a group known as the Detroit Boys or the D Boys.

On August 5, 2011, there was a fight at the bar, and Crawford made the participants go outside. One of the participants, Deshae Kershaw, started a fight with Crawford, repeatedly punching him in the head. On August 8, 2011, Crawford went to a Casey's convenience store in Mason City. The house next door to the Casey's was owned by Donya Rehm. Crawford saw Kershaw and Jamaal Leslie on the back porch at Rehm's house. Crawford started yelling and screaming at the men. The incident ended when a friend of Crawford's, Tommy Walker, picked Crawford up and took him to his car. Walker testified Crawford never carried a weapon.

The next day, August 9, 2011, Crawford, along with his girlfriend Kaylee Ciaverelli, went to the Casey's convenience store. A friend of Crawford's, DeShawn Muhammad, came up to talk to Crawford. Mohammad was also a member of the D Boys. There were several people on Rehm's back porch again, including Leslie.¹ Crawford became agitated and stated he wanted to fight the people on the porch. Crawford told Mohammad to "go get that thing," or words to

¹ Kershaw was not present during the August 9, 2011 incident.

that effect, which could have referred to a gun.² Leslie, who was armed with a loaded gun, ran off the porch and met Crawford behind the Casey's store. Leslie shot Crawford three times, and Crawford died as a result of the gunshot wounds. Crawford did not have a weapon at the time he was shot.

Leslie was picked up by police officers shortly thereafter. When told he was being detained in regard to a shooting, Leslie stated, "Who got shot, where—where did this happen at?" At the police station, Leslie continued to deny any knowledge of the shooting. It was not until after Leslie was informed Crawford had died that Leslie stated he had shot Crawford in self-defense. A gun, having the same last characteristics as the weapon used in the shooting, was found in the attic of Rehm's house.³

Leslie was charged with murder in the first degree, in violation of Iowa Code section 707.2 (2011). Leslie raised a defense of justification, or self-defense.

Prior to the trial, the State filed a motion in limine, seeking to prevent Leslie from presenting evidence the D Boys had a reputation for being armed and violent, Crawford was in possession of crack cocaine at the time of his death, and Crawford referred to guns in his rap videos. The district court made a written ruling finding evidence of Crawford's drug use was more prejudicial than probative. The court reserved ruling on the issue of the reputation of the D Boys.

² In addition to Leslie, Paul Swann, who was a customer at the Casey's store, testified he heard Crawford tell Muhammad to get something, and he told officers he believed Crawford was talking about a gun.

³ Leslie's good friend, Windsell Lamb, was found hiding in the attic.

The court also determined the probative value of Crawford's rap videos was outweighed by the danger of unfair prejudice.

The jury trial commenced May 30, 2012. Evidence as outlined above was presented at the trial. During the trial, the district court ruled that testimony about the D Boys being violent or carrying guns would be excluded.

Morgan McWilliams, Crawford's former girlfriend, testified she had never seen Crawford carry a gun or heard him talk about guns. McWilliams, who was also a former girlfriend of Leslie, testified Leslie disliked Crawford and he told her he would beat up Crawford if he could. After her testimony, Leslie argued the State had opened the door to permit him to present Crawford's rap videos in order to show Crawford mentioned guns in the videos. The court reserved ruling. On cross-examination, McWilliams testified Crawford had talked about guns in his music. She also stated that Crawford sometimes rapped about things that were personal to his life. The district court determined that the probative value of the rap videos did not outweigh the danger of unfair prejudice and ruled the videos were not admissible.

Leslie testified he believed Crawford had told Mohammad to go get a gun. He stated Crawford was running toward him and he panicked and shot his gun. Leslie stated he then threw down the gun and ran away. He stated he did not immediately tell officers he shot Crawford because he was scared. Leslie agreed his specific intent was to shoot Crawford, but he denied he intended to kill him.

The district court denied Leslie's motion for judgment of acquittal. The jury returned a verdict finding Leslie guilty of murder in the first degree. The court

denied Leslie's motion for a new trial. Leslie was sentenced to life in prison. He now appeals.

II. Sufficiency of the Evidence.

Leslie claims there is not sufficient evidence in the record to support his conviction for first-degree murder. In particular, he claims there is insufficient evidence he acted with malice aforethought, premeditation, deliberation, or intent to kill. He also contends the State did not sufficiently rebut his defense of justification. Leslie asserts he was provoked by Crawford's enraged and menacing behavior and he acted in the heat of passion. Leslie states he was in fear for his life as Crawford ran towards him.

We will review a challenge to the sufficiency of the evidence for the correction of errors at law. *State v. Serrato*, 787 N.W.2d 462, 465 (Iowa 2010). The fact-finder's verdict will be upheld if it is supported by substantial evidence. *State v. Henderson*, 696 N.W.2d 5, 7 (Iowa 2005). Substantial evidence means evidence that could convince a rational fact finder the defendant is guilty beyond a reasonable doubt. *State v. Heuser*, 661 N.W.2d 157, 165-66 (Iowa 2003). In reviewing challenges to the sufficiency of the evidence, we give consideration to all the evidence, not just that supporting the verdict, and view the evidence in the light most favorable to the State. *State v. Lambert*, 612 N.W.2d 810, 813 (Iowa 2000). The jury is free to believe or disbelieve the evidence and to give weight to the evidence as it sees fit. *State v. Thornton*, 498 N.W.2d 670, 673 (Iowa 1993).

A. One of the elements of murder is malice aforethought. Iowa Code § 707.1. "Malice aforethought is a fixed purpose or design to do physical harm to another that exists before the act is committed. It does not have to exist for any

particular length of time.” *State v. Myers*, 653 N.W.2d 574, 579 (Iowa 2002). “Because it is a state of mind, malice aforethought often evades direct evidence.” *Serrato*, 787 N.W.2d at 469. The element of malice aforethought may be inferred by a person’s conduct. *Id.* “The law allows a presumption of malice aforethought from the use of a deadly weapon in the absence of evidence to the contrary.” *State v. Reeves*, 670 N.W.2d 199, 207 (Iowa 2003). This presumption may be rebutted by evidence the killing was accidental, under provocation, or due to mental incapacity. *Id.*

Here, Leslie’s use of a deadly weapon, a firearm, gives rise to a presumption that he acted with malice aforethought. The evidence in this case was not such that the district court would be compelled to hold as a matter of law that the presumption of malice had been rebutted. See *State v. McCollom*, 151 N.W.2d 519, 525 (Iowa 1967). There is sufficient evidence in the record to support the jury’s finding that Leslie acted with malice aforethought.

B. Leslie also claims there is insufficient evidence to show he acted willfully, deliberately, and with premeditation. See Iowa Code § 707.2(1). The use of a deadly weapon, accompanied by an opportunity to deliberate, is evidence to show a person acted with premeditation, deliberation, and an intent to kill. *State v. Blair*, 347 N.W.2d 416, 421 (Iowa 1984). The opportunity to deliberate needs to be present for only a short period of time. *State v. Frazer*, 267 N.W.2d 34, 39 (Iowa 1978).

As noted above, Leslie used a deadly weapon, a firearm, to kill Crawford. He had the opportunity to deliberate before he left the porch at Rehm’s house and went behind the Casey’s store to confront Crawford. We conclude there is

sufficient evidence in the record to support the jury's finding that Leslie acted willfully, deliberately, and with premeditation.

C. Section 704.3 provides, "A person is justified in the use of reasonable force when the person reasonably believes that such force is necessary to defend oneself or another from any imminent use of unlawful force." When a defendant raises a defense of justification, the State has the burden to show a lack of justification by proof beyond a reasonable doubt. *State v. Begey*, 672 N.W.2d 747, 752 (Iowa 2003). In order to meet its burden, the State may prove: (1) the defendant started or continued the incident that resulted in death; (2) an alternative course of action was open to defendant; (3) the defendant did not believe he was in imminent danger of death or injury; (4) defendant did not have reasonable grounds to believe he was in imminent danger; or (5) the defendant's use of force was unreasonable. *Thornton*, 498 N.W.2d at 673.

While the evidence may additionally support a finding that the State proved other methods, on appeal we focus on the method that would require the State to prove beyond a reasonable doubt that an alternative course of action was open to Leslie. Leslie was on the porch at Rehm's house with several other people while Crawford was yelling at them from the parking lot of the Casey's store. Leslie could have remained on the porch or gone inside the house. Instead, armed with a loaded gun, he left the porch, telling Crawford he would meet him outside the view of the Casey's store security cameras. There, behind the Casey's store, Leslie met Crawford, who was unarmed, and shot him three times. We conclude there is sufficient evidence in the record to show the State met its burden to disprove Leslie's defense of justification.

We conclude there is sufficient evidence in the record to support the jury's verdict of first-degree murder.

III. Evidentiary Rulings.

Leslie claims the district court abused its discretion by prohibiting him from presenting evidence the D Boys had a reputation for being armed and violent, Crawford possessed crack cocaine at the time of his death, and Crawford's rap videos contained references to guns. We review evidentiary rulings for an abuse of discretion. *State v. Thompson*, 836 N.W.2d 470, 476 (Iowa 2013). The court abuses its discretion when its ruling is made on grounds or for reasons clearly untenable or to an extent clearly unreasonable. *State v. Richards*, 809 N.W.2d 80, 89 (Iowa 2012).

In general, evidence that is relevant is admissible. Iowa R. Evid. 5.402; *State v. Taylor*, 689 N.W.2d 116, 123 (Iowa 2004). Evidence is relevant when 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." Iowa R. Evid. 5.401; *State v. Reynolds*, 765 N.W.2d 283, 289 (Iowa 2009).

Relevant evidence, however, "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice." Iowa R. Evid. 5.403; *State v. Huston*, 825 N.W.2d 531, 537 (Iowa 2013). A court must first consider the probative value of the proffered evidence. *Huston*, 825 N.W.2d at 537. In determining probative value, the court considers "the strength and force of the evidence to make a consequential fact more or less probable." *State v. Martin*, 704 N.W.2d 665, 671 (Iowa 2005). The court then balances the probative value

against the danger of the evidence having a prejudicial or wrongful effect upon the jury. *Huston*, 825 N.W.2d at 537. Evidence is unfairly prejudicial when it “appeals to the jury’s sympathies, arouses its sense of horror, provokes its instinct to punish, or triggers other mainsprings of human action that may cause a jury to base its decision on something other than the established propositions in the case.” *State v. Rodriguez*, 636 N.W.2d 234, 240 (Iowa 2001).

When a defendant relies on a theory of self-defense, and produces the slightest evidence to support that theory, the character of the victim may be presented. *Begey*, 672 N.W.2d at 752. “Then the violent, quarrelsome, dangerous or turbulent character of the deceased may be shown, both by evidence of his or her reputation in that respect and by witnesses who can testify from an actual knowledge of the victim’s character.” *State v. Jacoby*, 260 N.W.2d 828, 837 (Iowa 1977). “Specific instances of conduct may be used to demonstrate character when character is an essential element of a claimed defense.” *State v. Shearon*, 449 N.W.2d 86, 87 (Iowa Ct. App. 1989) (citing Iowa R. Evid. 5.405(b)); *but see Klaes v. Scholl*, 375 N.W.2d 671, 676 (Iowa 1985) (finding that in general specific instances of conduct to show character are not admissible).

A. Leslie claims the district court should have permitted him to present evidence that the D Boys had a reputation for being armed and violent. He asserts this evidence supported his belief that he needed to defend himself against Crawford. The district court ruled:

I will not allow that testimony [that members of the D Boys were violent]. I find that goes too far. It’s too far a connection from Brandon Crawford’s association with that group and to—essentially

the—the defendant would like to characterize Brandon Crawford as also being violent and carrying guns from that assoc—that loose association with the group, and under 404 and 403 grounds I find that not to be—I do not find that the probative value is—outweighs the unfair prejudice relating to that matter.

The fact Crawford was associated with the D Boys, who may have been armed and violent, would not necessarily show Crawford was armed and/or violent at the time of his interaction with a Leslie. Thus, the evidence was of limited probative value. Additionally, the evidence was prejudicial because it would have painted Crawford as being armed and violent based on his association with the group. See *State v. Nance*, 533 N.W.2d 557, 562 (Iowa 1995) (noting evidence of gang membership and activity is inherently prejudicial). We note that several witnesses testified Crawford did not carry a weapon. We conclude the district court did not abuse its discretion by determining the probative value of the evidence was outweighed by the danger of unfair prejudice.

B. Leslie also contends the district court should have permitted him to present evidence that two small rocks of crack cocaine were found near Crawford's body at the time of his death. He wanted to show that a toxicology report did not show Crawford had ingested crack cocaine.⁴ Leslie argued that if Crawford was involved with drugs, or drug sales, it was more likely he would be armed at the time of his interaction with Leslie.

As the State points out, the mere possession of crack cocaine is not evidence of a violent character. Furthermore, this case does not involve a drug deal, and thus, Crawford's possession of crack cocaine is not relevant. A

⁴ The evidence showed Crawford had marijuana in his system but not crack cocaine.

person's use of illegal drugs is the type of highly prejudicial evidence that should be excluded. See *State v. Liggins*, 524 N.W.2d 181, 188 (Iowa 1994) (finding evidence of drug dealing was inherently prejudicial). We conclude the district court did not abuse its discretion by determining the danger of unfair prejudice outweighed the limited probative value of this evidence.

C. Finally, Leslie contends the district court should have permitted him to present Crawford's rap videos to the jury. He states that Crawford mentions guns in his rap songs and this shows his knowledge of guns. Leslie argues that the content of the rap videos supports his claim Crawford could have been carrying a firearm at the time he encountered Leslie.

The rap videos are a form of artistic expression. See *Holmes v. State*, 306 P.3d 415, 419 (Nev. 2013) (distinguishing between rap lyrics offered to show a propensity for violence and lyrics which incorporate details of a charged offense). Here, Leslie claimed the rap videos were relevant to show Crawford's propensity for violence. See *State v. Hanson*, 731 P.3d 1140, 1144 (Wash. Ct. App. 1987) (finding defendant's fictional writings were not relevant on the issue of his character).

Although McWilliams testified that sometimes Crawford rapped about things that were personal to him, there is certainly no evidence that everything Crawford mentioned in the rap videos reflected his personal life. The rap songs are of very limited probative value to show Crawford's real-life knowledge of guns and do not show whether he was likely to be carrying a gun. Additionally, the presentation of the rap videos would have been unduly prejudicial. See Andrea Dennis, *Poetic (In)Justice? Rap Music Lyrics as Art, Life, & Criminal Evid.*, 31

Colum. J.L. & Arts 1, 29-30 (2007) (“To the extent that individuals associate rap music with crime and criminal behaviors, they negatively perceive defendants who are involved with rap music,” and also noting that rap lyrics frequently contain stereotypical images and themes that have negative associations). We conclude the district court did not abuse its discretion by determining the rap videos were not admissible. See *United States v. Price*, 418 F.3d 771, 783 (5th Cir. 2005) (noting the possible prejudicial value of rap song lyrics).

We also note that McWilliams testified Crawford had mentioned guns in his rap songs. We do not believe Leslie can show he was prejudiced by the district court’s decision to preclude him from showing the rap videos to the jury.

After considering all of the issues raised on appeal, we affirm Leslie’s conviction for first-degree murder.

AFFIRMED.