Appendix A

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Court of Criminal Appeals

State of Alabama
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Montgomery, AL 36130-1555

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Presiding Judge
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MEMORANDUM

CR-11-1440 Choctaw Circuit Court CC-11-89

John Harry Steele v. State of Alabama

BURKE, Judge.

John Harry Steele appeals his conviction of murder, in violation of § 13A-6-2, Ala. Code 1975, and sentence to 40 years' imprisonment. He was also ordered to pay $11,309 in restitution, and $50 to the Alabama Crime Victims Compensation Commission.

Patsy Allen, the executive director of the 911 service for Choctaw County, testified that she copied the 911 call made in the present case to a disc which was kept in the regular course of business. The disc was played to the jury. In the call, it was reported that Steele had stabbed a man that the caller knew as "B.J."

Mary Leddon testified that she was Steele's common law wife. She stated that, although she did not know if he had ever divorced his prior wife, Leddon had been living with Steele for 16 years and they had two sons together. On the day of the offense, Steele, their two sons, and William Aston ("B.J.") were present at her home. B.J.'s aunt was Leddon's best friend. She testified that B.J. was outside grilling while Steele was inside asleep. When Steele awoke, he walked outside to B.J. and demanded to know why B.J. had woken him up. B.J. denied doing so and an argument ensued. Leddon testified that she tried to explain to Steele that their youngest son had awakened him; then Steele tried to end the disagreement. However, B.J. "would not drop it." (R. 51.) The prosecutor showed the witness her statement given on the night of the offense to the police wherein she had stated that they both continued to argue. She admitted that she was present at trial to support Steele and that she hoped that he would be aquitted.

Leddon testified that Steele then walked into the house followed by herself and then B.J. Steele retrieved a Bowie knife. She attempted to persuade Steele to put the knife away, but the argument continued. She testified that Steele and she both asked B.J. to go outside; however, that allegation was not contained in her prior statement. In the statement, she indicated that she attempted to get between the two men. She testified that she did get between them and tried to persuade them to calm down. Steele pushed her out of the way and she fell against the couch. She then saw the two men standing against each other[1] and then B.J. backed away. He looked toward Leddon and stated, "John [Steele] did it." (R. 58.) B.J. walked outside and she saw blood on the floor.

Leddon went to get a towel and called 911 and called her mother. She went outside and used the towel to apply pressure to B.J.'s wound. She stated that when she rolled B.J. over, he was still alive and gasping for air.

On cross-examination, Leddon testified that the men had been drinking prior to the offense; this was not included in her statement. She also claimed that B.J. began beating

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[1]She testified that B.J. was standing up against Steele.

himself on the chest after Steele walked inside. She acknowledged that this allegation was also not in her prior statement, but claimed that she remembered it later. She also stated that, upon seeing the knife in Steele's hand, B.J. stated that he was not afraid of the knife or Steele. According to Leddon's testimony at trial, Steele attempted to administer C.P.R. after B.J. was stabbed; this was not in her prior statement.

On re-direct examination, Leddon admitted that she had hand-written her prior statement and included all that she thought was important. She further admitted that B.J. never had a weapon of any kind.

Dr. Eugene Hart, a forensic pathologist with the Alabama Department of Forensic Sciences, testified that he performed the autopsy on B.J. He stated that the manner of death was homicide and that it was caused by a stab wound to the chest. He testified that the stab wound indicated that considerable force was used. On cross-examination, Dr. Hart testified that alcohol was found in the victim's bodily fluids, as well as muscle relaxers and the break-down of marijuana and cocaine.[2]

Sergeant Charles Breland, of the Choctaw County Sheriff's Department, testified that he responded to the scene of the offense. He found B.J. lying on his back and Steele sitting cross-legged near B.J.'s head. The knife was stuck in the ground near the body. Steele stated to Sergeant Breland that "I hate it. I wish it hadn't happened." (R. 109.) Breland then asked Steele, "[D]id you do this?" (R. 109.) He responded affirmatively.

Steele did not present any witnesses in his defense.

I.

Steele argues that the trial court erred in granting the State's motion in limine to exclude evidence of the toxicology report. He submits in brief that "for some unexplained reason," a copy of the report is not contained in the record.

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[2]Dr. Hart testified that these breakdowns or metabolites were inactive.

(Steele's brief, at 18.) However, it is Steele's duty to provide a complete record. Gamble v. State, 791 So. 2d 409, 418 (Ala. Crim. App. 2000). Moreover, he did not file a motion to supplement the record with this Court.

There was, however, a pretrial discussion concerning the State's motion in limine. During the hearing, the State argued that the report would have been admissible if Steele had intended to present an expert who could properly introduce and testify concerning the report.[3] Because Steele did not indicate during discovery that he intended to present such an expert, the State argued that the report should not be admitted. The court then asked the prosecutor why Steele should not be allowed to question the pathologist about the toxicology report and the prosecutor responded that the pathologist only collects samples which are then sent to another lab to be tested. The trial court agreed that the report itself would be inadmissible without the testimony of the proper expert; however, it further determined that "I don't want to make my ruling too broad that the defendant can't ask, on cross examination, what may be relevant questions as to the deceased's status, as far as alcohol or whatever else." (R. 16.) Later, during the pathologist's testimony, defense counsel fully questioned him as to the presence of these controlled substances in the victim's body.

Because Steele was allowed to, and did, question the pathologist concerning the presence of the alcohol and the metabolites of the marijuana and cocaine, he suffered no prejudice. Although the pathologist refrained from testifying concerning the effect that these substances may have had on the victim, as he stated, that was not his expertise and he was not qualified to give such testimony. Rule 702, Ala. R. Evid., provides: "If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise." Moreover, pursuant to Rule 702(b)(3), it is required that the expert has applied the

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[3]The State also argued that it was inadmissible as improper bad character evidence of the victim.

methodology and principles required in the testing to the facts of the case.

Dr. Hart was not qualified to give testimony concerning the effect that these substances might have on an individual and was not proffered as an expert on such matters. He testified that he was unfamiliar with the effect that the cited substances might have an a person. Moreover, Steele did not present an expert as to the possible effect of these substances and therefore he suffered no prejudice and there was no error.

II.

Steele argues that the trial court erred in granting the State's motion in limine to exclude evidence of the victim's character. Steele alleges that, like the prior argument, he was not allowed to introduce evidence concerning the victim's character based on the toxicology report. He basically repeats his prior contentions under another basis of claim. However, ironically, he cites to evidence of testimony that was introduced at trial to support his argument that Steele was fearful of the victim and that the victim had been drinking. Thus, he was allowed to introduce testimony alluding to the victim's alcohol content, as well as the evidence that may have indicated that Steele's family was possibly fearful of the victim. Moreover, as determined in Issue I, there was no error in the failure to admit the toxicology report.

III.

Steele argues that the short period of time that the jurors deliberated indicates that they did not consider all the evidence. Specifically, he makes the bare allegation that, because the jurors only deliberated for a little over an hour, they "could not possibly have considered all of the evidence presented in this case." (Steele's brief, at 32.) It is questionable whether this issue is preserved because no objection was made on this ground to the trial court. Birge v. State, 973 So. 2d 1085, 1105 (Ala. Crim. App. 2007).

Moreover, in Hollis v. State, 417 So. 2d 617 (Ala. Crim. App. 1982), Hollis claimed that the abbreviated time period for deliberations in that case indicated that the jurors

"could not have fully considered the evidence before reaching their verdict." 417 So. 2d at 619-20. In Hollis, the jury only deliberated for five minutes. This Court found no error or abuse of discretion by the trial court and stated:

> "The duration of jury deliberations is a matter vested entirely within the discretion of the trial court. See Lake v. State, 390 So. 2d 1088 (Ala.Cr.App. 1980), cert. denied, 390 So. 2d 1093 (Ala. 1980), cert. denied, 450 U.S. 1004, 101 S.Ct. 1715, 68 L.Ed. 2d 207 (1981); Martin v. State, 29 Ala. App. 395, 196 So. 753 (1940). The record supports no finding of an abuse of discretion here."

Similarly, in the present case there is no indication of abuse of discretion or that the jurors had not been considering the evidence throughout the trial and properly arrived at a verdict in approximately an hour.

IV.

Steele argues that the evidence did not support the jury's verdict because he clearly acted in self-defense. The jury in this case was fully instructed as to self-defense. Moreover, this specific issue was not included in his motions for judgment of acquittal.

In the present case, the jury was presented with evidence that could reasonably have been determined to support a charge of murder. The jury, as finders of fact, properly weighed the evidence after making credibility choices and found that Steele murdered B.J.

> "'"Where, as here, the killing was admitted, the question of whether or not it was justified under the theory of self-defense was for the jury." Townsend v. State, 402 So. 2d 1097, 1098 (Ala.Cr.App. 1981). The issue of self-defense invariably presents a question for the jury, whose verdict will not be disturbed on appeal. "[E]ven if the evidence of self-defense is undisputed, the credibility of the defendant with respect to the evidence of

self-defense is for the jury, and they may, in their discretion, accept it as true or reject it." Mack v. State, 348 So. 2d 524, 529 (Ala.Cr.App. 1977).

"'This Court's observation in Hilliard v. State, 610 So. 2d 1204[, 1205] (Ala.Cr.App. 1992), a recent case with similar facts, is applicable here:

> "'"The only evidence at trial concerning the appellant's theory of self-defense was the appellant's testimony in which he stated that he stabbed the victim only after the victim pulled a knife on him. The jury does not have to accept the accused's version of what happened.
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> "'"Whether the killing of another was justified as an act of self-defense is a question for the jury, Turner v. State, 160 Ala. 40, 49 So. 828 [(1909)]; and this is true even though the defendant's testimony as to how the difficulty occurred is uncontradicted.'

"'"Collier v. State, 49 Ala. App. 685, 275 So. 2d 364, 367 (1973). 'The weight and credence given the testimony of the accused as to the issue of self-defense is a question for the jury.' Garraway v. State, 337 So. 2d 1349, 1353 (Ala.Cr.App. 1976). See also Atchley v. State, 393 So. 2d 1034, 1051 (Ala.Cr.App. 1981); Warren v. State, 380 So. 2d 305, 307 (Ala.Cr.App. 1979), cert. quashed, 380 So. 2d 307 (Ala. 1980); Graham v. State, 339 So. 2d 110, 113 (Ala.Cr.App.), writ denied, 339 So. 2d 114 (Ala. 1976)."'

"Quinlivan v. State, 627 So. 2d 1082, 1087 (Ala. Crim. App. 1992).

> "'[T]he question of whether the appellant was in actual or apparent immediate peril so as to justify the use of physical force in self-defense is a question of fact to be decided solely by the jury, after appropriate instruction by the court as to the application of the term. Lemley v. State, 599 So. 2d 64, 74 (Ala.Cr.App. 1992).'

"Moore v. State, 659 So. 2d 205, 208 (Ala. Crim. App. 1994)."

State v. Neel, 57 So. 3d 186, 191 (Ala. Crim. App. 2010).

Here, the jury chose not to believe the testimony that indicated that Steele had acted in self-defense in causing the death of B.J. There was sufficient evidence that the two men argued, Steele went into the house and retrieved the Bowie knife from the closet, and stabbed B.J. in the chest, intentionally causing his death.

Therefore, the trial court's judgment is due to be affirmed.

AFFIRMED.

Windom, P.J., and Welch, Kellum, and Joiner, JJ., concur.