S T A T E O F M I C H I G A N

C O U R T O F A P P E A L S

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED April 12, 2007
v	No. 267239 Wayne Circuit Court
ANGEL PRINGLE, Defendant-Appellant.	LC No. 05-006043-01

Before: Wilder, P.J., and Sawyer and Davis, JJ.

PER CURIAM.

Defendant appeals as of right her jury trial conviction of first-degree murder, MCL 750.316. Defendant was sentenced to life imprisonment. We affirm.

This case arises out of the stabbing death of Valecia Chiles. Defendant and Terry Edwards had been in a six-year relationship, albeit a somewhat unstable one, and they had two children together. They are presently engaged to be married. During part of their relationship, Edwards had a relationship with Jodi Garner, which resulted in Garner becoming pregnant. Defendant was aware of the relationship, and she had threatened Garner over the telephone while it was ongoing, but she asserts that she was unaware of the pregnancy. Three days before the stabbing, defendant engaged in a violent altercation with Garner. This altercation involved attacking Garner with a baseball bat and kicking her in the stomach.

On May 30, 2005, Edwards was apparently supposed to have picked up defendant, but instead he exchanged telephone numbers with Chiles at a gasoline station, and he then picked Chiles up and took her to his home. Defendant took a taxi to Edwards' house and went upstairs, where she discovered Edwards and Chiles having sex. Initially, defendant and Edwards argued. According to both defendant and Edwards, Chiles then produced a knife and stabbed defendant in the thigh. Defendant and Chiles struggled, and defendant took control of the knife and stabbed Chiles in the stomach. Defendant then ran to the bathroom and retrieved a pair of scissors. Defendant and Chiles continued struggling, and defendant managed to stab Chiles again. Chiles fell backwards into the hot tub and did not move from there. A subsequent autopsy revealed that Chiles had received multiple stab wounds, each of which would individually have been fatal within minutes. Defendant pulled Chiles out of the hot tub, took her downstairs, and waited for the police to arrive. The stab wound to defendant's thigh was deemed superficial. Defendant was arrested and charged with first-degree murder.

Defendant first argues that the trial court should not have admitted evidence of her altercation with Garner three days before the stabbing. We disagree. A challenge to a trial court's evidentiary ruling is reviewed for an abuse of discretion. *People v Sabin* (*After Remand*), 463 Mich 43, 60; 614 NW2d (2000). The abuse of discretion standard recognizes that there may be more than one reasonable and principled outcome; when the trial court selects one of the principled outcomes, there is no abuse of discretion, and we defer to the trial court's judgment. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006); *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003).

MRE 404(b)(1) governs a trial court's decision to admit or exclude other acts evidence:

> Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, scheme, plan, or system in doing an act, knowledge, identity, or absence of mistake or accident when the same is material, whether such other crimes, wrongs, or acts are contemporaneous with, or prior or subsequent to the conduct at issue in the case.

Other acts evidence may be admitted where: (1) the evidence is offered for some purpose other than under a character-to-conduct theory, or a propensity theory, (2) the evidence is relevant to a fact of consequence at the trial, and (3) the trial court determines under MRE 403 that the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice. If requested, the trial court may provide a limiting instruction under MRE 105. *People v Ackerman*, 257 Mich App 434, 439-440; 669 NW2d 818 (2003).

The prosecution here sought to admit the evidence of the prior altercation in order to establish defendant's intent and motive when she went into the bedroom and stabbed Chiles. Evidence may properly be admitted for a purpose other than establishing a defendant's character and propensity to commit the charged offense. *People v Johnigan*, 265 Mich App 463, 465; 696 NW2d 724 (2005). We deem this a proper purpose for the evidence. See *Ackerman, supra* at 439-440. Furthermore, the evidence of defendant's prior violent altercation with her boyfriend's mistress was relevant to intent and motive in this case. See *Ackerman, supra* at 439-440; *Sabin, supra* at 55-56. The evidence makes it more likely that she suspected Edwards was having an affair when he failed to pick her up and that her purpose in taking a taxi to Edwards' house was a violent one. Moreover, defendant's prior aggression under similar circumstances was relevant to the credibility of her insistence that she acted solely in self-defense in this case.

"'Evidence is unfairly prejudicial when there exists a danger that marginally probative evidence will be given undue or preemptive weight by the jury.'" *People v Ortiz,* 249 Mich App 297, 306; 642 NW2d 417 (2001), quoting *People v Crawford,* 458 Mich 376, 398; 582 NW2d 785 (1998). The trial court is in the best position to gauge the effect of such testimony. *People v Magyar,* 250 Mich App 408, 416; 648 NW2d 215 (2002). In this case, because there was a possibility of a danger that the jury would give undue weight to evidence that defendant had violently attacked a pregnant woman three days before this stabbing, the trial court gave a limiting instruction on the use of the other acts evidence. We conclude that the trial court did not abuse its discretion by finding that the probative value of the evidence was not substantially outweighed by the danger of unfair prejudice. *Ackerman, supra* at 439-440.

Defendant next argues that the trial court erred by failing to instruct the jury on the offense of voluntary manslaughter. Defendant's trial counsel explicitly and repeatedly stated that defendant was satisfied with the instructions as given, waiving this issue for appeal. *People v Lueth*, 253 Mich App 670, 688; 660 NW2d 322 (2002); *People v Carter*, 462 Mich 206, 214; 612 NW2d 144 (2000). However, because it is pertinent to defendant's assertion that she received ineffective assistance of counsel, we note that voluntary manslaughter is a killing performed in the heat of passion caused by adequate provocation and without sufficient time for a reasonable person to control that passion. *People v Tierney*, 266 Mich App 687, 714; 703 NW2d 204 (2005). Defendant's theory of her case was that she acted in self-defense, not out of passion caused by reasonable provocation. A voluntary manslaughter instruction would not be compatible with defendant's theory of her case or her own testimony. The trial court did not err by failing to give a voluntary manslaughter instruction.

Defendant finally argues that she received ineffective assistance of counsel for failing to secure a jury instruction on voluntary manslaughter and for failing to call character witnesses to rehabilitate defendant's character after the prosecution attacked it. We disagree.

Whether a person has been denied the effective assistance of counsel is a mixed question of fact and constitutional law. The trial court's factual findings are reviewed for clear error, while its constitutional determinations are reviewed de novo. *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002); *People v Matuszak*, 263 Mich App 42, 48; 687 NW2d 342 (2004). Effective assistance of counsel is presumed and the defendant bears a heavy burden of proving otherwise. *LeBlanc, supra* at 578. Defendant must show that counsel's performance was deficient and that, under an objective standard of reasonableness, she was denied her Sixth Amendment right to counsel. *People v Carbin*, 463 Mich 590, 599-600; 623 NW2d 884 (2001). She must also demonstrate a reasonable probability that, but for counsel's deficient performance, the result of the proceeding would have been different. *Carbin, supra* at 599-600. Because defendant did not move for a new trial or an evidentiary hearing below, our review is limited to the record. *People v Barclay*, 208 Mich App 670, 672; 528 NW2d 842 (1995).

As discussed, a voluntary manslaughter instruction was not warranted in this case because defendant's theory was self-defense. Defense counsel was not ineffective for failing to make a superfluous request. See *People v Matuszak*, 263 Mich App 42, 57-58; 687 NW2d 342 (2004). The decision to present a self-defense defense is a tactical decision that we deem reasonable. In any event, we will not substitute our judgment for that of counsel regarding matters of trial strategy, nor will we assess counsel's competence with the benefit of hindsight. *People v Garza*, 246 Mich App 251, 255; 631 NW2d 764 (2001). The record does not suggest any witnesses besides defendant herself that defense counsel should have, or could have, called; moreover, the record does not tell us what those witnesses might have testified to. Furthermore, decisions regarding what evidence to present and whether to call or question witnesses are presumed to be matters of trial strategy. *People v Rockey*, 237 Mich App 74, 76; 601 NW2d 887 (1999). We therefore conclude that trial counsel was not deficient for failing to call character witnesses in support of defendant.

Affirmed.

/s/ Kurtis T. Wilder
/s/ David H. Sawyer
/s/ Alton T. Davis