

IN THE MISSOURI COURT OF APPEALS
EASTERN DISTRICT

Nos. ED110491

STATE OF MISSOURI,

Respondent,

v.

MICHAEL K. HUMPHREY,

Appellant.

Appeal from the Circuit Court of Audrain County, Missouri
of Case No. 20AA-CR00019-02

The Honorable Jason H. Lamb
Circuit Court Judge Presiding

APPELLANT’S STATEMENT, BRIEF, AND ARGUMENT

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JURISDICTIONAL STATEMENT

Appellant, Michael K. Humphrey, was convicted after a jury trial in the County of Audrain of one count of 2nd-degree Murder, Mo. Rev. Stat. §565.021. The Honorable Jason H. Lamb sentenced Mr. Humphrey to life imprisonment with the possibility of parole. Sentence to be served in the Missouri Department of Corrections. As this appeal involves no issues reserved for the exclusive jurisdiction of the Supreme Court of Missouri, jurisdiction properly lies in this Court. MO. CONST., ART. V, § 3; Mo. Rev. Stat. § 477.050.

STATEMENT OF THE FACTS

Appellant Michael K. Humphrey asks this Court to reverse his sentence and judgment and remand for a new trial because the trial court plainly erred when it allowed the hearsay testimony of Brandon Blackwell.

Procedural Overview

On February 19, 2020, in the Montgomery County Circuit, Mr. Humphrey was charged by away of information with one count of first degree murder and one count of armed criminal action. (D2). Subsequently, on April 8, 2020 Mr. Humphrey filed and was granted a change of venue to the Audrain County Circuit Court. On July 9, 2020, the state filed an amended information which was superceded by a second amended information filed on July 1, 2021. (D11). On October 14, 2021, the trial court began voir dire with venirepersons who were brought in from Cape Girardeau County. (D9). Also, on that same date the trial court found Mr. Humphrey to be a prior offender. On October 15, 2021, a jury was chosen. On October 18, 2021, Mr. Humphrey's jury trial commenced. On October 20, 2021, the jury found Mr. Humphrey guilty on all counts. (Tr. 1144-1145). On December 27, 2021, the state filed a third amended information charging Mr. Humphrey with second degree murder and armed criminal action. (D24). On that same date, the state filed a nolle prosequi on the armed criminal

action count. (D25). On January 3, 2022, the state made an oral motion for judgment notwithstanding the verdict. (Tr. 1156)/ The court granted the motion and amended the guilty verdict as to Count I (first degree murder) to second degree murder. The court sentenced Mr. Humphrey to life in prison with the possibility of parole. (1157). After obtaining an order from this Court to file a late notice of appeal (D27), Mr. Humphrey timely filed a notice of appeal. (D28).

Trial evidence

Lynlee Renick¹ shot her husband Ben Renick eight times while he was working in his snake shed. Ben raised snakes and had recently made a deal to sell his business to a NHL player for 1.2 million dollars. (Tr. 874). Prior to shooting Ben, Ms. Renick had enlisted her spa's bookkeeper, Ashley Shaw, to help poison Ben with Percocet. (Tr. 733). To induce her participation in killing Ben, Ms. Renick told Ms. Shaw that Ben had been abusing her. *Id.* When this plan failed, Ms. Renick hatched a new plot to murder Ben and again enlisted the help of Ms. Shaw. The two of them decided that they needed a gun to murder Ben. At the time, Ms. Renick was having sexual affairs with Brandon Blackwell, who she met on Ashley Madison, and Aric Bremer who was doing marketing for Ms. Renick's

¹Ms. Renick was convicted of second degree murder and armed criminal action after a jury trial and was sentenced to sixteen years imprisonment. *See State v. Renick*, No. 20BA-CR03007 (Boone Co. Cir.).

spa. (Tr. 779, 677). Also, Ms. Renick's spa was on the verge of financial collapse. (Tr. 903)

In furtherance of her plan, Ms. Renick contacted Mr. Humphrey who she had known in the past by driving out to his trailer with Ms. Shaw. (Tr. 734). Ms. Renick told Mr. Humphrey she was being abused by Ben. (Tr. 735). Ms. Shaw testified that Ms. Renick told her that Mr. Humphrey would get her a gun and she would kill Ben. (Tr. 744). Ms. Shaw further testified that the first attempt to kill Ben by shooting him failed as Mr. Humphrey's car broke down. *Id.* Ms. Renick decided on June 8th to kill Ben. Ms. Renick had planned a "date night" with Ben to see the movie Wonder Women. She also called a babysitter but her real intent was to kill Ben first. Ms. Shaw testified that Mr. Humphrey had not arrived at the spa on the morning of the appointed day and that Ms. Renick was upset that the murder would not happen that day. (Tr. 751). Ms. Shaw testified that Mr. Humphrey arrived at the spa around two or three o'clock in the afternoon. (Tr. 755). Ms. Shaw did not see Mr. Humphrey at the spa but she did see vehicle that she and others at the spa had previously jumped. It was also the same vehicle that Ms. Shaw saw Mr. Humphrey sitting in when Ms. Renick and her first contacted him. (Tr. 756). Prior to departing, Ms. Renick leaves her phone at the spa. After Ms. Shaw sees the car, Ms. Renick leaves the spa. (Tr. 758). On the way to see

Ben, Mr. Humphrey and Ms. Renick have to stop to get gas at the Lake of the Woods.

After Ms. Renick's departure, Ms. Shaw is alone with another employee Rachel Hunt. (Tr. 758). They go to a bank and convenience store so they are caught on camera and have an alibi. (Tr. 760). Ms. Shaw testified that after an hour and a half to two hours, Ms. Renick returns to the spa, and hurries to the back room and takes a shower. Ms. Renick asks Ms. Shaw to take her clothes but she refused and Mr. Renick packs them in a bag and puts on new clothes. Mr. Humphrey comes in the spa and asks "does she know" and leaves. (Tr. 824). Ms. Shaw testified that she did not see a gun and that Ms. Renick tells her Mr. Humphrey shot Ben in the back. (Tr. 768). A few days later Ms. Renick returns to the spa and tells her she shot Ben. (Tr. 771). Ms. Shaw admitted during her trial testimony that she lied on and off for two years to investigators about Ben's murder. (Tr. 774). She further testified that two weeks after Ben's murder, Ms. Renick had her contact Mr. Humphrey to let him know that law enforcement may be contacting him. (Tr. 776). Ms. Shaw received immunity for testifying against Mr. Humphrey. (Tr. 787). Ms. Shaw testified that the stereo cover story wasn't discussed until Ben's death and she never spoke to Mr. Humphrey about it. (Tr. 788).

After Ben's body was found as the result of Ms. Renick's 911 call and it was determined that the cause of the death was gun shot wounds, Missouri State Highway Patrol Corporal Devin Foust interviewed Ms. Renick on June 19th. (Tr. 622). After going through her phone, he found Mr. Humphrey's name. Ms. Renick initially said his mother was a client and then explained he was an old boyfriend. *Id.* Corporal Foust then interviewed Mr. Humphrey who said he nothing about the murder of Ben Renick and Ms. Renick had come by to have a car stereo installed. (Tr. 638). Foust also testifies that after Ms. Renick was interviewed she sent a emoji to Mr. Humphrey in which he replied "lol." (Tr. 872). Mr. Humphrey was interviewed four times and eventually admitted being present with Ms. Renick when she shot her husband. (State's Exhibits 87, 89, 91, 93). He further told the police that it was his understanding that she was divorcing him and that they were picking up her kids but the next he knows she is shooting Ben. *Id.*

Brandon Blackwell's Testimony

Mr. Blackwell testified that he met Ms. Renick in June 2017 through the dating app Ashley Madison. (Tr. 688). He met Ms. Renick earlier in the week when Ben was murdered at the spa and they had a "sexual encounter." *Id.* A couple of months after Ben's death, they go together again. (Tr. 690). Eventually,

they lived together because Ms. Renick got pregnant. (Tr. 691). At one point in the relationship, Mr. Blackwell asked Ms. Renick what she knew about Ben's murder. She eventually told him but when they discussed it, she would take their cell phones and put them in different rooms. (Tr. 692). Mr. Blackwell testified that when the police initially came to speak to him about Ben's murder he didn't know anything at that time. (Tr. 693). Eventually Mr. Blackwell was jailed for violating a protection order involving Ms. Renick. (Tr. 694). While sitting in jail, he decided to do something and had his father contact the investigators. Mr. Blackwell testified that he told the police "everything that she had told me about what her and Michael had done." (Tr. 694). Mr. Blackwell further testified that he never spoke to Mr. Humphrey and that his only knowledge of Mr. Humphrey's alleged involvement came from Ms. Renick. (Tr. 709).

POINT RELIED ON

The trial court plainly erred when it failed to act *sua sponte* and allowed the testimony of Brandon Blackwell that he told the police “everything that she [Lynnlee Renick] had told me about what her and Michael [Humphrey] had done,” because this testimony violated Mr. Humphrey’s rights to due process and a fair trial guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Sections 10 and 18(a) of the Missouri Constitution, in that the testimony was offered for the truth of the matter, Mr. Blackwell was not a co-conspirator, and it did not fit any of the exceptions to the general rule against hearsay.

State v. Drudge, 296 S.W.3d 37 (Mo. App., E.D. 2009).

State v. Ledford, 550 S.W.2d 871 (Mo. App. 1977)

State v. Newsom, 299 S.W.3d 784 (Mo. App. S.D. 2009)

ARGUMENT

The trial court plainly erred when it failed to act *sua sponte* and allowed the testimony of Brandon Blackwell that he told the police “everything that she [Lynnlee Renick] had told me about what her and Michael [Humphrey] had done,” because this testimony violated Mr. Humphrey’s rights to due process and a fair trial guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Sections 10 and 18(a) of the Missouri Constitution, in that the testimony was offered for the truth of the matter, Mr. Blackwell was not a co-conspirator, and it did not fit any of the exceptions to the general rule against hearsay.

Preservation Statement

Mr. Humphrey neither objected to Mr. Blackwell’s testimony nor did he raise this issue in a motion for new trial². Accordingly, this issue is not preserved for appeal. Mr. Humphrey requests review for plain error under Rule 30.20.

Standard of Review

Rule 30.20 provides, in pertinent part, that “[w]hether briefed or not, plain errors affecting substantial rights may be considered in the discretion of the court

²Trial counsel did not file a motion for new trial because it was a “strategy decision.” (Tr. 1154).

when the court finds that manifest injustice or miscarriage of justice has resulted therefrom.” Thus, Mr. Humphrey must show that the trial court “committed an evident, obvious and clear error, which affected the substantial rights of the appellant” and that the error resulted in a manifest injustice or a miscarriage of justice. *State v. Drudge*, 296 S.W.3d 37, 40-41 (Mo. App., E.D. 2009).

***The trial court plainly erred in failing to act sua sponte
and allowing the hearsay testimony of Brandon Blackwell***

The state charged that Mr. Humphrey, “with another or others” . . . “caused the death of Benjamin Renick by shooting him.” (D19).³ Clearly, the state’s theory of the case was that Mr. Humphrey was an accessory to Ms. Renick’s murder of Mr. Renick and that he conspired with others to make this happen. Mr. Blackwell, however, was not involved in the murder of Mr. Renick and did know of Ms. Renick’s involvement until after the murder. (Tr. 693). Mr. Renick cannot be deemed a co-conspirator in the case and, even if he was, his statement that that he told the police “everything that she [Lynlee Renick] had told me about what her and Michael [Humphrey] had done” was inadmissible hearsay. (Tr.694).

³This is the charge that the state proceeded to trial on. After Mr. Humphrey’s conviction for first-degree murder, the trial court allowed the state of file a third amended complaint and amended the conviction to second-degree murder. (D26).

"Hearsay evidence is in-court testimony regarding an out-of court statement used to prove the truth of the matter asserted therein that derives its value from the veracity of the out-of-court statement." *State v. Newsom* , 299 S.W.3d 784, 788-89 (Mo. App. S.D. 2009). "Hearsay testimony is inadmissible unless it either fits into a recognized exception or it is offered for a non-hearsay purpose." *Id.* Also, an extrajudicial statement inculcating a conspirator who is charged with and standing trial for an offense, made by a co-conspirator after consummation of the offense and not in furtherance of the conspiracy, is hearsay and inadmissible against the conspirator who is standing trial. *See State v. Ledford*, 550 S.W.2d 871, 872-873 (Mo. App. 1977) (citing *State v. Cross*, 357 S.W.2d 125, 128 (Mo. 1962); *State v. Chernick*, 278 S.W.2d 741, 748 (Mo. 1955); and *State v. Hill*, 352 Mo. 895, 879 S.W.2d 712, 715-16 (1944)). The exception to this principle is if an inculpatory extrajudicial statement is made by a conspirator, although made after termination and not in furtherance of the conspiracy, may be admissible against a conspirator standing trial if made in the defendant-conspirator's presence and under circumstance indicating that the defendant-conspirator acquiesced therein. *Id.* at 873.

Mr. Blackwell's testimony that Ms. Renick had told him everything that she and Mr. Humphrey did was inadmissible hearsay as it was not in furtherance of the

conspiracy and there is no evidence that Mr. Humphrey was present when Ms. Renick made it to Mr. Blackwell and acquiesced in its making. Even without trial counsel objecting to this testimony, the trial court should have recognized its inadmissible nature and taken action to correct it.

Mr. Humphrey suffered a manifest injustice because the jury heard an out of court statement asserted for the truth of the matter that did not fall within any of the hearsay exceptions that Mr. Humphrey acted in concert with Mr. Renick in the murder of her husband.

CONCLUSION

WHEREFORE, for the reasons stated above, Appellant respectfully requests that this Court vacate his convictions, and remand his case for a new trial.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE AND SERVICE

Pursuant to Missouri Supreme Court Rule 84.06(g), I hereby certify that on this 26th day of January 2022, a true and correct copy of the foregoing brief served via the e filing system to Evan.Buchheim@ago.mo.gov. In addition, pursuant to Missouri Supreme Court Rule 84.06(c), I hereby certify that this brief includes the information required by Rule 55.03. This brief was prepared with WordPerfect X8, uses Times New Roman 14 point font, and does not exceed the greater of 15,500 words, 1,200 lines. The word-processing software identified that this brief contains 2,791 words.

/s/ Kevin L. Schriener

KEVIN L. SCHRIENER, Mo. Bar No. 35490