

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2010 KA 1150

STATE OF LOUISIANA

VERSUS

RONALD K. BICKHAM

*W.P.R.*  
*D.O.*  
*IMH*

**DATE OF JUDGMENT:** FEB 11 2011

ON APPEAL FROM THE TWENTY-SECOND JUDICIAL DISTRICT COURT  
NUMBER 447504, DIV. G, PARISH OF ST. TAMMANY  
STATE OF LOUISIANA

HONORABLE WILLIAM J. CRAIN, JUDGE

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BEFORE: KUHN, PETTIGREW AND HIGGINBOTHAM, JJ.

**Disposition: CONVICTIONS AND SENTENCES AFFIRMED.**

KUHN, J.

Defendant, Ronald K. Bickham, was charged by grand jury indictment with two counts of first degree murder, violations of La. R.S. 14:30. He entered a plea of not guilty. After a trial by jury, defendant was found guilty as charged on both counts and was sentenced to life imprisonment at hard labor as to both counts, to be served concurrently. He now appeals, assigning error as to the admission of other crimes evidence. For the following reasons, we affirm the convictions and sentences.

#### **STATEMENT OF FACTS**

On or about December 22, 1995, the St. Tammany Parish Sheriff's Office was dispatched to a mobile home in Covington, Louisiana, the scene of a double homicide. The victims, Lloyd Bedford and Barbara Murray, suffered multiple stab wounds. Bedford's wounds included stab wounds to the back of his head and one that severed an artery. Murray's stab wounds included the transection of the right subclavian artery and vein, just below the collarbone, a stab wound on the left side of her face, and a slash on the middle finger of her right hand, consistent with a defensive wound. Bedford's body was lying in the hallway near the kitchen, and his pockets were turned inside out. Murray's body was on the kitchen floor wearing a gown that was pulled up and bloodstained underwear. The blood droplet on the victim's underwear appeared to be caused by someone standing over her. There were no signs of forced entry.

On the morning of the incident, at approximately 7:30 a.m., defendant, the victims' neighbor and frequent visitor, came to the nearby home of Janice Johnson Vick (she lived "around the corner" from the victims and defendant). Defendant's

hand was bleeding, and he asked if he could come in and wash his hands. Vick allowed defendant to come in and wash his hands, gave him a towel to wrap around his injured hand, and offered to take him to the hospital. Defendant opened the towel and showed his wound to Barry Powell, a construction worker who was working with the defendant at the time. Defendant told members of his family, Vick, and Powell that he cut his hand on vinyl siding. Powell described the defendant's injury as a "wide open" "stab" wound that did not appear to be caused by a "flimsy" material like vinyl siding. Powell took defendant to the emergency room for treatment. Defendant's sister confirmed that defendant had a long, deep cut that went across the palm of his hand to the area between his thumb and index finger. Defendant went back home that morning after getting stitches.

Defendant was in the area when the police arrived, and Detective Terry Parta noticed that he had a cut on his hand.<sup>1</sup> Defendant told the detective that he cut his hand on vinyl siding. The police recovered and seized pieces of vinyl siding with what appeared to be blood on them and a knife with no handle that appeared to be bloodstained from a burn pile located on Joe Freeman's property where the defendant and others had been constructing a home, across the street from the victims' residence. The results of expert DNA testing of samples from the vinyl siding and Murray's underwear compared to a sample of defendant included thirteen matching genetic locations, with the frequency of this profile being found in one in greater than ten billion individuals.

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<sup>1</sup> Barbara Murray was once married to defendant's uncle Willic Murray. Defendant stated that he was not related to Lloyd Bedford.

## ASSIGNMENT OF ERROR

In the sole assignment of error, defendant contends that the trial court erred and/or abused its discretion in permitting the State to introduce evidence of another crime, an armed robbery offense wherein the defendant entered a stopped car with a knife, demanded money, and stabbed the victim before her escape.

It is well settled that courts may not admit evidence of other crimes to show the defendant as a man of bad character who has acted in conformity with his bad character. La. C.E. art. 404B(1); see *State v. Williams*, 96-1023, p. 30 (La. 1/21/98), 708 So.2d 703, 725, cert. denied, 525 U.S. 838, 119 S.Ct. 99, 142 L.Ed.2d 79 (1998); *State v. Prieur*, 277 So.2d 126, 128 (La. 1973). Evidence of other crimes, wrongs or acts committed by the defendant is generally inadmissible because of the “substantial risk of grave prejudice to a defendant.” *Prieur*, 277 So.2d at 128. However, the State may introduce evidence of other crimes, wrongs or acts if it establishes an independent and relevant reason such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. La. C.E. art. 404B(1). Provided the defendant first requests it, the State must provide the defendant with notice and a hearing before trial if it intends to offer such evidence. Even when the other crimes evidence is offered for a purpose allowed under Article 404B(1), the evidence is not admissible unless it tends to prove a material fact at issue or to rebut a defendant’s defense. *State v. Jacobs*, 99-0991, p. 24 (La. 5/15/01), 803 So.2d 933, 951, cert. denied, 534 U.S. 1087, 122 S.Ct. 826, 151 L.Ed.2d 707 (2002). The State also bears the burden of

proving that defendant committed the other crimes, wrongs or acts. *State v. Galliano*, 2002-2849, p. 2 (La. 1/10/03), 839 So.2d 932, 933 (per curiam).<sup>2</sup>

Although a defendant's other bad acts may be relevant and otherwise admissible under Article 404B, the court must still balance the probative value of the evidence against its prejudicial effects before the evidence can be admitted. La. C.E. art. 403. Any inculpatory evidence is "prejudicial" to a defendant, especially when it is "probative" to a high degree. *State v. Germain*, 433 So.2d 110, 118 (La. 1983). As used in the balancing test, "prejudicial" limits the introduction of probative evidence of other misconduct only when it is unduly and unfairly prejudicial. *Id.*; see also *Old Chief v. United States*, 519 U.S. 172, 180, 117 S.Ct. 644, 650, 136 L.Ed.2d 574 (1997) ("The term 'unfair prejudice,' as to a criminal defendant, speaks to the capacity of some concededly relevant evidence to lure the factfinder into declaring guilt on a ground different from proof specific to the offense charged."); *State v. Jarrell*, 2007-1720, pp. 10-11 (La. App. 1st Cir. 9/12/08), 994 So.2d 620, 629-30. A trial judge is vested with wide discretion in determining relevance of evidence; his ruling on the admissibility of other crimes evidence will not be overturned absent a clear showing of abuse of

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<sup>2</sup> Under *Prieur*, the State had to prove by clear and convincing evidence that the defendant committed the other crimes. *Prieur*, 277 So.2d at 129. However, 1994 La. Acts 3d Ex.Sess., No. 51, § 2, added La. C.E. art. 1104, which provides that the burden of proof in pretrial *Prieur* hearings, "shall be identical to the burden of proof required by Federal Rules of Evidence Article IV, Rule 404." The burden of proof required by Federal Rules of Evidence Article IV, Rule 404, is satisfied upon a showing of sufficient evidence to support a finding by the jury that the defendant committed the other crime, wrong, or act. The Louisiana Supreme Court has yet to address the issue of the burden of proof required for the admission of other crimes evidence in light of the repeal of La. C.E. art. 1103 and the addition of La. C.E. art. 1104. However, numerous Louisiana appellate courts, including this court, have held that burden of proof to now be less than "clear and convincing." *State v. Millien*, 2002-1006, p. 11 (La. App. 1st Cir. 2/14/03), 845 So.2d 506, 514. Nonetheless, in the instant case the State satisfied its burden under the clear and convincing evidence standard. Also, there is no dispute that the State provided defendant reasonable notice and that a *Prieur* hearing was held.

discretion. *State v. Mosby*, 595 So.2d 1135, 1139 (La. 1992).

The victim of the armed robbery testified during the instant trial. Based on the instant trial testimony and the testimony she presented during the trial for the armed robbery conviction, in that case defendant jumped into the victim's car with a knife specifically described as a box cutter or razor knife and demanded money. The victim gave defendant her purse and informed him that she only had five dollars. Defendant began swinging the knife at the victim and cut her left hand when she raised it to cover her face. Defendant cut the victim's hand and face before she was able to use her right hand to open the car door and escape. The victim also stated that defendant threatened to kill her before she escaped and attempted to cut her throat. The offense took place in Lacombe, Louisiana at approximately 7:00 a.m., on October 3, 1997. In ruling the evidence admissible, the trial court noted that intent, identity, motive, and opportunity were at issue in this case and that the other crimes evidence would be relevant to establish one or more of those issues. Weighing the prejudicial nature of the evidence and its probative value, the trial court further found the evidence met the balancing test of Article 403.

In the instant case the State gave pretrial notice of its intent to use evidence of other crimes in compliance with due process. Additionally, the State clearly met its burden of proving that defendant committed the other offense. The trial court gave the jury a limiting instruction that the other crimes evidence was received for the limited purpose of proving an issue for which other crimes evidence may be admitted, but not to prove the bad character of defendant. The trial court further instructed the jury that defendant's guilt or innocence relative to

the instant offenses may not be determined merely because defendant may have committed another offense.

Louisiana jurisprudence has long sanctioned the use of other crimes evidence to show modus operandi as it bears on the question of identity when the other crime is so distinctively similar to the one charged, especially in terms of time, place, and manner of commission, that one may reasonably infer that the same person is the perpetrator in both instances. The determination of this standard is essentially a balancing process. The greater the degree of similarity of the offenses, the more the evidence enhances the probability that the same person was the perpetrator, and hence the greater the evidence's probative value, which is to be ultimately weighed against its prejudicial effect. Thus, the positive identification of a defendant as the perpetrator of a distinctively similar previous crime is often permitted to enhance the otherwise uncorroborated identification of that person as the perpetrator of the charged crime. *State v. Moore*, 440 So.2d 134, 137-38 (La. 1983).

Based on our review of the record, we agree with the trial court's ruling in this case in that the system evidence showed modus operandi that bore on identity. Defendant committed the armed robbery offense at approximately the same time of day as the instant offenses.<sup>3</sup> The victim of the armed robbery testified that defendant attempted to kill her. There was evidence that armed robbery was committed in the instant offenses. Thus, the other offense and the instant offenses

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<sup>3</sup> According to the testimony of Dr. Mackenzie, who performed the autopsies in this case, the autopsy report provides the time of discovery of the bodies as opposed to the time of death. Based on the circumstances presented in the record, including the time the defendant received care for his defensive wound, the instant offenses were committed between 7:00 and 7:30 in the morning.

are of the same nature. In defendant's other armed robbery offense, he "started swinging" a knife at his female victim and, in response, she held up her hand in a defensive posture to keep defendant from cutting her in her face or throat, incurring cuts on her hand and across her face. Similarly, in the instant offenses, the female victim sustained cuts to her face and hand, the latter of which was in a defensive posture, as defendant apparently attempted to cut her in the face and throat. We find that the modus operandi is so similar, especially in terms of time and manner of commission, that one may reasonably infer that the same person is the perpetrator in both instances. The crimes had sufficient distinctive similarities, and the probative value of the challenged evidence's tendency to establish identity outweighed its tendency only to prove "bad character."

In finding this evidence relevant and admissible, we have no difficulty concluding that it was more probative than prejudicial and outweighed any dangers set forth in Article 403. Additionally, the trial judge lessened the prejudicial effect and guarded against jury misuse of the evidence by giving cautionary instructions during the trial, as well as in his jury charges. In light of the foregoing, the trial court properly found the other crimes evidence admissible under Article 404B. The sole assignment of error is without merit.

#### **DECREE**

For these reasons, we affirm the conviction of and the sentence imposed against defendant, Ronald K. Bickham.

**CONVICTIONS AND SENTENCES AFFIRMED.**