

SUPREME COURT OF LOUISIANA

No. 97-K-0300

STATE OF LOUISIANA

v.

ADRIENNE HARRIS

**ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,
FIRST CIRCUIT, PARISH OF SAINT TAMMANY**

KIMBALL, Justice, dissenting

I disagree with the majority’s conclusion that the erroneous admission of the challenged evidence in this case is harmless error. Defendant’s defense was that she was a battered wife, and that when the victim went to the kitchen, after just having beaten her and threatening to kill her, she armed herself and shot him upon his return, believing he was going to try to kill her. The trial court improperly admitted testimony to the effect that the victim was justified in hitting the defendant and testimony by three former girlfriends of the victim that he was not violent with them during their relationships. The proper analysis for determining harmless error “is not whether, in a trial that occurred without the error, a guilty verdict would surely have been rendered, but whether the guilty verdict actually rendered in this trial was surely unattributable to the error.” *State v. Quatrevingt*, 93-1644, p. 16 (La. 2/28/96), 670 So.2d 197, 206; *State v. Everidge*, 96-2647, p. 8 (La. 12/2/97), 1997 WL 757380; *State v. Hawkins*, 96-0766 p. 5 (La. 1/14/97), 688 So.2d 473, 478. In making this determination, the reviewing court must assume the “damaging potential” of the error was “fully realized.” *Hawkins*, 96-0766 at p. 5, 688 So.2d at 478.

Whether or not defendant, in fact, shot and killed the victim was not at issue in this case. Thus, the strength of the State’s case with respect to defendant’s culpability for the homicide itself is not relevant with respect to a determination of whether or not the error was harmless. The primary determination to be made by the jury was whether the homicide was justifiable under La. R.S. 14:20,

or whether the defendant was guilty of manslaughter or second degree murder. Consequently, of paramount importance at trial was whether or not the defendant reasonably believed she was in imminent danger of losing her life or receiving great bodily harm and that killing the victim was necessary to save herself. When “fully realizing” the “damaging potential” of the improperly admitted testimony by prior girlfriends that the victim did not abuse or beat them, it is apparent this could only have served to diminish the jury’s likelihood of believing the defendant’s defense that she was a battered wife and had been beaten that night; considerations which go to the very heart of her justifiable homicide defense. I disagree with the majority’s statement that the testimony from the former girlfriends does not even “contradict” the evidence he did abuse the defendant. It was directly contradictory, giving the jury reason to disbelieve defendant’s justifiable homicide defense. I simply cannot agree that the guilty verdict actually rendered in this trial was surely unattributable to the error.