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IN THE COURT OF APPEALS OF INDIANA

Alan Lee Bennett,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

August 23, 2021

Court of Appeals Case No. 20A-CR-2061

Appeal from the Spencer Circuit Court

The Honorable Jon A. Dartt, Judge

Trial Court Cause No. 74C01-1903-MR-78

Weissmann, Judge.

[1] Alan Lee Bennett was convicted of murder after shooting and killing Linda Bowman during a domestic dispute. He appeals his conviction, claiming (1) the State violated his right to due process by destroying allegedly exculpatory evidence and (2) the trial court improperly excluded evidence of his intoxication. Finding no error, we affirm.

Facts

[2] "I have a boyfriend that lives with me and he's hittin' me," Bowman told Spencer County 9-1-1 dispatch. Ex. Vol. I, p. 144. "He's threatenin' me with a gun, he's gonna shoot!" *Id.* Then the line went dead.

[3] Minutes later, Daviess County, Kentucky 9-1-1 dispatch received a call from Bennett. "I shot Linda and I tried to kill myself," Bennett said. Ex. Vol. I, p. 147. Bennett had shot Bowman in the head with a muzzleloader[1] and shot himself with a different firearm.

[4] Responding officers found Bennett, conscious and responsive, just inside the front door of the home he and Bowman shared with a gunshot wound to his face. Bowman was lying dead in the kitchen with a gunshot wound to her head. Debris from the discharge of a muzzleloader was found near her body. The gun itself was steps away and had blood on the barrel.

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[1] A muzzleloader, also known as a black powder rifle, is a firearm that is loaded from the barrel. The ammunition is not contained in a singular cartridge and loaded into a separate chamber. Rather, the powder, projectile, and cartridge case must all be loaded separately before the gun can be fired properly. Tr. Vol. III, p. 10; Tr. Vol. IV, p. 115; Tr. Vol. V, pp. 5-6.

[5] As the officers rendered first aid to Bennett, they heard him say "he had to kill her because she wouldn't stop bitching" and that he "wanted to shut the bitch up." Tr. Vol. III, pp. 179, 191.

[6] The State charged Bennett with murder. Before trial, Bennett moved to dismiss the charge because the State cleaned the muzzleloader in the course of performing tests on it. Bennett argued that the State's actions constituted the destruction of materially exculpatory evidence. App. Vol. V, pp. 2-7. The trial court denied Bennett's motion but provided funding for Bennett to find a ballistics expert, who testified that cleaning the weapon destroyed evidence of powder and residue that could have been analyzed. Tr. Vol. V, pp. 10-11.

[7] Bennett also contested the trial court's limitations on evidence of voluntary intoxication. In an order issued during trial, the court stated that "limited evidence of the effect of voluntary intoxication may be used by a defendant in his defense in other relevant areas besides mens rea. . ." App. Vol V, p. 59. The court permitted Bennett to present two witnesses, who testified to the physiological and psychological effects of alcohol consumption.

[8] The trial court instructed the jury on self-defense and that voluntary intoxication is not a defense to a charge of murder. Tr. Vol. V, p. 123. The jury found Bennett guilty of murder, and the trial court sentenced him to 65 years in the Department of Correction. Bennett now appeals.

Discussion & Decision

[9] Bennett asks us to vacate his conviction for two reasons: (1) the State's cleaning of the muzzleloader constituted destruction of materially exculpable evidence, violating his due process rights; and (2) the trial court impermissibly limited his evidence of voluntary intoxication to disprove his claim of self-defense.

[10] We affirm Bennett's conviction, finding the State did not destroy materially exculpable evidence and that the trial court's limitation on evidence was not an abuse of discretion.

I. Due Process and Destruction of Evidence

[11] Bennett argues that the trial court erred in denying his motion to dismiss, which alleged that the State destroyed materially exculpatory evidence when it cleaned corrosion and buildup from the barrel of the muzzleloader. The State's failure to preserve materially exculpatory evidence is a violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution. *Bishop v. State*, 40 N.E. 3d 935, 950 (Ind. Ct. App. 2015) (citing *United States v. Agurs*, 427 U.S. 97 (1976)), *trans. denied*; *see also California v. Trombetta*, 467 U.S. 479, 488 (1984).

[12] But the corrosion and buildup removed from the muzzleloader in the course of cleaning was not "materially exculpatory" evidence. "To meet this standard of constitutional materiality, evidence must both possess an exculpatory value that was apparent before the evidence was destroyed, and be of such a nature that the defendant would be unable to obtain comparable evidence by other

reasonably available means." *Albrecht v. State*, 737 N.E.2d 719, 724 (Ind. 2000) (quoting *Trombetta*, 467 U.S. at 488-89). Evidence is "exculpatory" when it has a tendency to clear a defendant from alleged fault or guilt. *Id.*

[13] The corrosion and buildup evidence did not possess an exculpatory value that was apparent before it was destroyed. Bennett argues that the corrosion evidence proved that the gun was unsafe and prone to misfiring, thereby implying he did not act with the requisite intent to commit murder. But his own expert did not testify that corrosion would have caused the gun to fire without pulling the trigger.[2] And although the State's expert testified that corroded muzzleloaders can accidentally fire as they are loaded, Bennett testified that he had loaded the firearm sometime before the day of the murder. Tr. Vol. III, pp. 12, 14; Tr. Vol. IV, p. 228. The defense therefore failed to show that examining the gun before it was cleaned could have provided evidence that Bennett did not act knowingly or intentionally when he pulled the trigger. At most, the corrosion evidence could have shown that Bennett intentionally fired the muzzleloader without intending to hit Bowman, a theory that was not presented by the defense at trial or on appeal.

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[2] The State's expert and the defense's expert used different definitions of the word "misfire." The State used it to refer to the gun firing without anyone pulling the trigger. Tr. Vol. III, p. 14. The defense used it to refer to a gun's failure to fire properly after the trigger has been pulled. Tr. Vol. V, p. 8. Although the defense's expert testified that a muzzleloader might misfire due to corrosion, he meant that it would not fire at all, the projectile "may exit the barrel but not . . . go very far," or the gun might "hang fire," meaning there would be a delay between pulling the trigger and the gun firing. *Id.* at 7-9, 12.

[14] Bennett also failed to establish that he could not obtain comparable evidence of the corrosion by other means. Both Bennett and the State introduced evidence of the corrosion. The State established corrosion through photographs of the inside of the barrel and expert testimony. Tr. Vol. III, pp. 23, 26. The defense's expert, who reviewed those photographs, testified generally to the effects of corrosion on muzzleloaders. Tr. Vol. V, pp. 10-11. Bennett fails to offer any basis in fact or precedent for finding direct access to the muzzleloader in its original condition would have produced more probative evidence in his defense.

[15] When the State fails to preserve "potentially useful evidence"—meaning "evidentiary material of which no more can be said than that it could have been subjected to tests, the results of which might have exonerated the defendant"—it is not a due process violation unless the defendant can show that the State acted in bad faith. *Bishop*, 40 N.E.3d at 950 (citing *Arizona v. Youngblood*, 488 U.S. 51, 58 (1988)). Assuming the evidence in question was even "potentially useful," Bennett has made no such showing. The State did not violate Bennett's due process rights by cleaning the muzzleloader.

II. Intoxication Evidence is Not Admissible to Prove Self Defense

[16] Bennett argues the trial court erred in disallowing evidence of his voluntary intoxication to support his self-defense claim, which should have been admissible as "relevant to something other than lack of mens rea" pursuant to *Sanchez v. State*, 749 N.E.2d 509 (Ind. 2001). Alternatively, Bennett argues for a

broad interpretation of *Sanchez* that would render all voluntary intoxication evidence relevant. *Sanchez* upholds the constitutionality of Indiana Code § 35-41-2-5, which prohibits consideration of intoxication evidence to negate the mens rea requirement in criminal cases. *Id.* at 511. Mens rea is the state of mind the prosecution must prove the defendant had while committing a crime to secure a conviction. *Mens rea,* Black's Law Dictionary (11th ed. 2019).

[17] Bennett contends the trial court's error stopped him from explaining his version of Bowman's death as the only surviving witness to it; stopped his expert from estimating his BAC at the time of the incident, which would have contextualized his ability to form coherent statements; and stopped his psychologist from testifying to his state of mind before the killing.

[18] We review legal questions of an evidentiary rule's scope *de novo* and the court's application of an evidentiary rule for an abuse of discretion. *Harris v. State*, 165 N.E.3d 91, 94 (Ind. 2021). Errors in the admission or exclusion of evidence are considered harmless unless they affect the substantial rights of the party. *Crabtree v. State*, 152 N.E.3d 687, 703 (Ind. Ct. App. 2020).

[19] Bennett argues that *Sanchez* and Indiana Code § 35-41-2-5 do not prohibit intoxication evidence in support of a self-defense claim. *Sanchez*, 749 N.E.2d at 520-21. Indiana's self-defense statute provides: "A person is justified in using reasonable force against any other person to protect . . . from what the person reasonably believes to be the imminent use of unlawful force." Indiana Code § 35-41-3-2. The phrase "reasonably believes" requires a defendant claiming self-

defense to both subjectively believe that force was necessary to prevent serious bodily injury and that such belief was one a reasonable person would have had under the circumstances. *Littler v. State*, 871 N.E.2d 276 (Ind. 2007).

[20] Bennett claims evidence of his intoxication should have been permitted to support his subjective belief that force—shooting Bowman—was necessary for his own protection. We hold that to permit voluntary intoxication evidence for this purpose would impermissibly resurrect the voluntary intoxication defense, which has been lifeless since the Indiana General Assembly enacted Public Law 210 in 1997. 1997 Ind. Legis. Serv. P.L. 210-1997 (West).

[21] Indiana was part of a wave of states that statutorily abolished the voluntary intoxication defense. *Montana v. Egelhoff*, 518 U.S. 37, 49 (1996); Meghan Paulk Ingle, 55 Vanderbilt Law Review 607, 615-16. These statutes reversed a common law trend that emerged in the late 19th century allowing voluntary intoxication to mitigate culpability for certain crimes. *Sanchez*, 749 N.E.2d at 512. Public Law 210 added a new section to the Indiana Code which provides that intoxication is not a criminal defense.[3] It also eliminated a Code provision that allowed the intoxication defense for specific intent crimes.[4] The only surviving exceptions are when the defendant becomes intoxicated involuntarily

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[3] The following text was added to become Indiana Code § 35-41-2-5: "Intoxication is not a defense in a prosecution for an offense and may not be taken into consideration in determining the existence of a mental state that is an element of the offense unless the defendant meets the requirements of IC 35-41-3-5."

[4] The following text was eliminated: "Voluntary intoxication is a defense only to the extent that it negates an element of an offense referred to by the phrase 'with intent to' or 'with intention to.'" 1997 Ind. Legis. Serv. P.L. 210-1997 (West).

or unknowingly.[5] Our Supreme Court later clarified that this law codified the prohibition on allowing temporary mental incapacity from voluntary intoxication to form the basis for an insanity defense. *Berry v. State*, 969 N.E.2d 35, 38 n.1 (Ind. 2012). The insanity defense, like self-defense, is not explicitly mentioned in P.L. 210. 1997 Ind. Legis. Serv. P.L. 210-1997 (West).

[22] Bennett's argument proposes that these statutes ushered in an entirely new era, in which drinking oneself into delirium cannot be a defense on its own but can form the partial basis of a self-defense claim. We disagree. Instead, we find that P.L. 210 has more in common with an earlier era of common law, when "inasmuch as [a defendant's] Ignorance was occasioned by his own Act and Folly, and he might have avoided it, he shall not be privileged thereby." *Egelhoff*, 518 U.S. 37 at 45 (citing Serjeant Pollard's argument to the King's Bench in *Reninger v. Fogossa*, 1 Plowd. 1, 19, 75 Eng. Rep. 1, 31 (1550)). Bennett should not be privileged by his drunkenness. Though P.L. 210 did not explicitly forbid voluntary intoxication from forming the basis of a self-defense claim, we do not believe our General Assembly meant to create a loophole. By adding that voluntary intoxication "is not a defense," removing the language that it sometimes can be, and preserving the involuntary intoxication defense, the text of P.L. 210 indicates the legislature's desire to completely eliminate voluntary intoxication as an excuse for criminal behavior. Our Supreme Court's

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[5] "It is a defense that the person who engaged in the prohibited conduct did so while he was intoxicated, only if the intoxication resulted from the introduction of a substance into his body: (1) without his consent; or (2) when he did not know that the substance might cause intoxication." Ind. Code § 35-41-3-5.

subsequent application of the law to the insanity defense, which is also not explicitly mentioned, is in keeping with this interpretation. *Berry*, 969 N.E.2d at 38 n.1. Allowing voluntary intoxication to bolster a self-defense claim is a backdoor to reanimating the voluntary intoxication defense as a whole, in defiance of the legislature's apparent intent.

[23] Other jurisdictions have reached similar conclusions. In rejecting voluntary intoxication evidence to advance a self-defense claim, the Tenth Circuit Court of Appeals has stated that if voluntary intoxication is not a defense to a crime, "it should not be available as a partial defense." *U.S. v. Yazzie*, 660 F.2d 422, 431 (10th Cir. 1981). The Supreme Court of California has likewise observed, "if you voluntarily choose to become intoxicated and then kill someone, you may not claim that you were so intoxicated you were unaware your victim posed no threat. . . ." *People v. Soto*, 415 P.3d 789, 796 (Cal. 2018).

[24] Because using evidence of voluntary intoxication to advance a self-defense claim would run afoul of Indiana Code § 35-41-2-5, the trial court did not err in limiting admission of that evidence.

[25] Bennett also argues for a broad interpretation of *Sanchez* that would allow him to introduce evidence of intoxication to prove mens rea in an effort to undermine his statements admitting to killing Bowman, which tended to prove mens rea. This argument lacks logical consistency and we will not entertain it. The trial court did not abuse its discretion in excluding Bennett's desired

voluntary intoxication evidence. Consistent with the findings above, the trial court is affirmed.

Kirsch, J., and Altice, J., concur.