

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON
MAY 1996 SESSION

FILED

June 28, 1996

Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,)
) C.C.A. No. 02C01-9509-CR-00254
 Appellee,)
) Shelby County
 V.)
) Honorable Joseph B. Dailey, Judge
)
 SHINNY L. LEVERETT,) (First Degree Murder; Conspiracy to
) Commit First Degree Murder)
 Appellant.)

FOR THE APPELLANT:

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At Trial:
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OPINION FILED: _____

AFFIRMED

PAUL G. SUMMERS,
Judge

OPINION

The appellant, Shanny L. Leverett, was convicted by a jury of first degree murder and conspiracy to commit first degree murder. He was sentenced, concurrently, to life on the murder conviction and 15 years for conspiracy. His sole issue on appeal is controlled by the Tennessee Rules of Evidence. He questions whether the trial judge abused his discretion in finding that a statement made to a psychologist by a non-testifying codefendant was not within the ambit of either the 803(4) or 804(b)(3) exceptions to the rule against hearsay. We affirm the trial judge's decision.

The appellant was indicted with two codefendants for murdering and conspiring to murder Frank Miles (victim). The victim was stabbed six times, cut once, shot seven times, and run over by a car. After the victim's death, the appellant gave a statement in which he accepted responsibility for shooting the victim. At trial, however, the appellant professed innocence and claimed that his earlier statement was a fabrication.

The victim's wife, Andrea Miles, was one of the appellant's codefendants. Prior to trial, she was ordered to Memphis Mental Health Institute (MMHI) for an evaluation as to her competency to stand trial. During this competency evaluation, she made a statement about the incident to a staff psychologist. Her statement was paraphrased and placed in her evaluation as follows:

On August 5, 1992, [the victim] kicked [her] in her back and her head, calling her names and telling her that he was going to paralyze her for good. He had been drinking and [she] believes that he was also using cocaine. She took several knives from the kitchen and went into their bedroom. Mr. Miles followed her and continued to be verbally abusive. She hit him in the chest with a steak knife, and he fell across the bed and reached for his gun. She then stabbed at his face. He jumped up and said to her, "If I don't die, I'm going to kill you." She took the gun away from him and began firing shots at him. He ran out the front door and fell down in the driveway.

At trial, Ms. Miles invoked her fifth amendment privilege. The appellant then sought to introduce her statement via testimony of her psychologist. The appellant argued that the statement was admissible as: (1) a statement against penal interest, Tenn. R. Evid., Rule 804(b)(3), and (2) a statement for purposes of medical diagnosis and treatment, Tenn. R. Evid., Rule 803(4).

The trial judge refused to allow the psychologist to testify as to Ms. Miles' statement. The trial judge held that the statement was hearsay and did not fall within a recognized exception. In addressing the 804(b)(3) exception, the trial judge found that when taken in context with all of Ms. Miles' prior statements, the statement was self-serving and supported a self-defense posture. He, therefore, concluded that the statement was not against her penal interest. As to the 803(4) exception, the trial judge found that the exception did not extend to statements made to psychologists.

The decision as to whether the statement was credible and admissible was within the trial court's discretion. The 803(4) exception does not apply to a statement made for diagnosis or treatment of mental and emotional maladies. State v. Barone, 852 S.W.2d 216 (Tenn. 1993). Whether the evidence can be accurately categorized as a statement against Ms. Miles' penal interest is debatable at most. Accordingly, the statement does not fall within either of the proffered exceptions. The judge ruled within his sound discretion.

We affirm the convictions and sentences.

PAUL G. SUMMERS, Judge

CONCUR:

JOE B. JONES, Presiding Judge

DAVID G. HAYES, Judge