

SUPREME COURT OF LOUISIANA

97-K-0300

STATE OF LOUISIANA
Versus
ADRIENNE HARRIS

CALOGERO, C.J., dissenting.

I dissent from the majority’s view that the trial court’s admission of the inadmissible evidence in this case was harmless error. Here, the defendant testified that she killed the victim in self defense as a result of being continuously battered over a period of years.

The inadmissible evidence allowed at trial went directly to the heart of this defense. The trial court improperly allowed the State to elicit testimony as to whether the victim was ever “justified” in hitting the defendant. Furthermore, the trial court allowed the testimony of two ex-girlfriends of the victim and an ex-wife of the victim which attempted to set forth the implication that the victim was of a “non-violent” character, because he was never violent to any of these three witnesses. This evidence is also irrelevant

When this improperly allowed evidence is scrutinized, unlike the majority, I cannot hold that beyond a reasonable doubt the complained of evidence did not contribute to the verdict.

In *State v. Gibson*, this Court stated that the harmless error rule was

Whether there is a reasonable possibility that the constitutional error complained of might have contributed to the conviction is a question of law to which our appellate jurisdiction extends. Although the standard requires a reviewing court to consider the evidence in order to determine if there is a reasonable possibility that the error had prejudicial effect, it does not permit a court to substitute for the verdict its judgment of what the jury would or should have decided in the absence of error.

Focusing on the incriminating quality of the tainted evidence is less intrusive on the jury's function than the overwhelming evidence test.

State v. Gibson, 391 So. 2d 421, 427 (La. 1980).

The majority seems to believe that because the jury found the defendant guilty of manslaughter, instead of second degree murder, the inadmissible evidence did not impermissibly influence the jury. I cannot say, however, that this is surely the case. Here, the majority should focus the potential influence of the inadmissible evidence on the defendant's possible acquittal. The majority should not merely hold that the admission of the inadmissible evidence was harmless because the defendant was found guilty of a lesser crime than that of which she could have been found guilty. What about the defendant's possibility of being acquitted?

The Louisiana Code of Criminal Procedure article 921 reads "A judgment or ruling should not be reversed by an appellate court because of any error, defect, or irregularity, or variance which does not affect substantial rights of the accused." *See State v. Burnette*, 353 So. 2d 989, 993-94 (La. 1978). In this case, the introduction of this particular inadmissible evidence in the context of the State's case, with a likely consequence that the erroneously admitted evidence might weigh heavily on a jury's determination of manslaughter versus acquittal, makes it evident that the substantial rights of the accused have been affected. Therefore, the admittedly erroneous ruling of the trial court in allowing the inadmissible evidence was, in my view, not harmless error.