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Appellant, a 49-year-old woman, was charged with fatally beating Geneva Gomez (“Gomez”), her 33-year-old daughter, at Appellant’s

Oklahoma City home in August 2016.¹ Gomez' boyfriend, Juan Merlos, testified that Gomez lived with him and his family until a few days before the homicide. On August 25, Gomez and Appellant came to his home to collect Gomez' belongings. Merlos said that Appellant angrily accused him of taking some personal property of hers; other than that, he did not know what prompted Gomez to move out. According to Merlos, Appellant called him "the devil" and accused Gomez of being "like possessed or something." Before leaving with Appellant, Gomez assured Merlos that everything would be all right once Appellant calmed down.

Merlos communicated with Gomez via text message and social media over the next several hours, but she stopped communicating some time the next day. Merlos became worried about her welfare. On the afternoon of August 27, he had a friend, Michael Jackson, drive him to Appellant's home. Jackson waited in the car while Merlos knocked on the front door. Appellant opened the door, grabbed Merlos by the collar, and yanked him inside. Merlos said he asked where Gomez was, and Appellant motioned to an adjacent room. Merlos saw

¹ Because both perpetrator and victim have the same last name, we will refer to the mother as "Appellant" and to the daughter as "Gomez" or "the victim."

Gomez' lifeless body lying on the floor, but because her face and head were so severely swollen, he hardly recognized her. When Merlos asked Appellant why she didn't summon help for Gomez, she mumbled "the money and the devil' and stuff like that." When Merlos started to leave, Appellant locked the front door and tried to block his exit. Merlos pushed Appellant out of the way; Appellant tried to restrain him by putting him in a head-lock. Eventually, Merlos wrested himself from Appellant's grip and ran back to Jackson's car, locking the passenger-side door. Appellant walked to Jackson's side of the car, tapped on his window, and said something about Gomez being "possessed" and needing help. Both Merlos and Jackson noticed that Appellant's hands appeared swollen, and that she had blisters on her fingers. Jackson himself went inside to check on Gomez' welfare; when he saw her body, he telephoned for help. As they waited for police and an ambulance to arrive, Appellant paced around, repeating that Gomez was possessed and needed help.

Merlos testified that Appellant and Gomez operated a massage business together. According to his testimony, their relationship was a good one, and the two women spent a lot of time together. Michael Jackson also knew both women, and said he was unaware of any

difficulties between them.

Gomez died from multiple blunt force trauma to the head. Some, but not all, of her wounds appeared to have been inflicted with an inanimate object. Patches of her hair had been pulled out. Her bruises, contusions, and other injuries suggested she had been beaten repeatedly and possibly choked. After her death, Gomez' body had been laid out in the form of a cross on the floor of Appellant's home, and a large crucifix had been placed on her chest. Several small crucifixes and rosary had been forced into her throat, although the medical examiner was confident that they were placed there after death. While Gomez' wounds suggested a bloody struggle, the interior of Appellant's home was remarkably clean; crime-scene detectives found evidence that she had scrupulously attempted to clean Gomez' blood and hair from the walls and floors. The medical examiner was able to determine that Gomez had been dead for an appreciable amount of time before Merlos arrived.

According to Merlos, Appellant's demeanor when talking to police was noticeably different from the way she acted when he first came to the scene. Inside the home, Appellant "said she was sorry," but when she was outside talking to police, "it was like a different ball game with

emotion,” and she acted as if she were the victim.

At trial, Appellant did not testify or present any witnesses of her own. Her defense lawyers did not contest the claim that she had killed her daughter, but argued that her bizarre behavior, two days before the homicide and shortly afterward, where she made repeated references to “the devil” and to Gomez being “possessed” and “needing help,” showed that she did not kill her daughter with malice aforethought.

DISCUSSION

Appellant raises four claims of error. The first two are closely related and we discuss them together. Appellant made statements to police, both at the scene and later in a custodial interview, about her motive for killing her daughter. The trial court ruled *in limine* that unless the State was introducing Appellant’s conversations with police about her motive for the killing, those statements were inadmissible hearsay. The prosecutor never offered these out-of-court statements into evidence. When defense counsel attempted to elicit some of the statements himself (while cross-examining an officer who questioned Appellant at the scene), the trial court declined to admit them. In Proposition I, Appellant claims the trial court’s ruling was an abuse of discretion; in Proposition II, she claims the exclusion of these

statements violated her constitutional right to present a defense.

We review a trial court's evidentiary rulings for an abuse of discretion. *Cuesta-Rodriguez v. State*, 2010 OK CR 23, ¶ 14, 241 P.3d 214, 224. A defendant's unsworn, out-of-court statements are hearsay, and are generally not admissible unless they are offered against him. See 12 O.S.2011, § 2801(B)(2)(a). Appellant claims her statements to police were not hearsay because they were not offered for their truth, but only to show her "state of mind" and her motive for killing Gomez. See 12 O.S.2011, § 2803(3). Alternatively, she claims the statements fall under the "excited utterance" exception to the rule barring most hearsay. See 12 O.S.2011, § 2803(2). Both arguments are meritless.

While motive is not an element of first-degree malice murder, evidence of motive may still be quite relevant. "The external circumstances surrounding the commission of a homicidal act may be considered in finding whether or not deliberate intent existed in the mind of the defendant to take a human life. External circumstances include words, conduct, demeanor, motive, and all other circumstances connected with a homicidal act." OUJI-CR (2nd) No. 4-63. The State might offer evidence of motive (*e.g.* life insurance policies, sexual affairs) to make it more likely that the defendant committed the crime in the

first place. A defendant might offer evidence of why she killed the victim to attempt to excuse the act (*e.g.* because she acted in self-defense) or mitigate its criminality (*e.g.* because she acted in a heat of passion).

Appellant claims her statements to police about Gomez being demonically possessed were not hearsay because they were not offered for their truth. See 12 O.S.2011, § 2801(A)(3). She maintains that whether or not Gomez was *actually* possessed by demons was not at issue. That much is true; but Appellant fails to show how *her own* state of mind, at the time the statements were made, supported any legally-recognized defense or lesser alternative to malice murder (a subject we revisit in Proposition IV).

The “state of mind” exception to the general ban on hearsay permits certain out-of-court statements which indicate the declarant’s state of mind *at the time the statements were made*, but not to prove anything about *past events* recalled through memory. 12 O.S.2011, § 2803(3). Appellant’s statements to police about why she killed Gomez fail this test. In reality, she was attempting to introduce the statements *not* to show her state of mind at the time they were made, but to show her state of mind *at the time she killed Gomez* – which is not a proper justification for admitting them. By the time Appellant made the

statements, Gomez had been dead for some time. And as for Appellant's claim that the statements meet the hearsay exception for "excited utterances," the testimony of Merlos and Jackson about Appellant's calm demeanor, and the fact that she made the statements long after the homicide and after spending considerable time cleaning up the crime scene, convinces us that they were not admissible under that exception either. See 12 O.S.2011, § 2803(2); *Pullen v. State*, 2016 OK CR 18, ¶¶ 10-11, 387 P.3d 922, 927.

Appellant's constitutional attack is also unavailing. She claims that exclusion of her statements to police denied her the constitutional right to present a defense. See generally *Crane v. Kentucky*, 476 U.S. 683, 690, 106 S.Ct. 2142, 2146, 90 L.Ed.2d 636 (1986). But the right to present a defense is not unlimited; a defendant does not have an unfettered right to offer testimony that is inadmissible under standard rules of evidence. *Taylor v. Illinois*, 484 U.S. 400, 410, 108 S.Ct. 646, 653, 98 L.Ed.2d 798 (1988). She must comply with established rules of procedure that are designed to assure both fairness and reliability in the ascertainment of the truth. *Simpson v. State*, 2010 OK CR 6, ¶ 9, 230 P.3d 888, 895.

When excluding Appellant's statements to police unless the State

was offering them (consistent with Evidence Code provisions discussed above), the trial court commented that if Appellant wanted to explain to the jury why she killed her daughter, she was free to take the witness stand. Appellant claims it is unfair to make the presentation of her defense theory contingent upon her willingness to testify, citing *Williams v. State*, 1996 OK CR 16, 915 P.2d 371. In *Williams*, the defendant was accused of first-degree murder; he claimed he acted in self-defense. At the time of the homicides, an eyewitness heard Williams make a statement relevant to his state of mind; the version of the statement this eyewitness gave when testifying at trial was different – and not as helpful to the defense – as the version she had given at preliminary hearing. The trial court ruled that Williams had to take the stand himself before he could elicit *any* other evidence of self-defense – including cross-examining the eyewitness about her initial version of his statement. *Id.* at ¶¶ 4, 7, 915 P.2d at 375. The court did not even appear to consider whether the statement in question was admissible under any exception to the hearsay rule; it simply declined to admit the version Williams wanted to introduce (unless he testified first) because it was “self-serving.” *Id.* at ¶¶ 15, 19, 915 P.2d at 378, 379. As a result, the State was allowed to present one version of Williams’s statement

that was not as favorable to him as a different version (also related under oath), which was equally admissible under the Evidence Code, albeit for different reasons.² The trial court's ruling prevented Williams from not only impeaching the eyewitness with her prior inconsistent testimony, but also from augmenting that testimony with other evidence concerning one of the victims' prior threats. *Id.* at ¶¶ 12, 15, 915 P.2d at 377, 378. This Court concluded that the trial court's analysis and ruling were fundamentally flawed, and denied Williams his constitutional right to present a defense. *Id.* at ¶ 25, 915 P.2d at 381-82.

The situation here is much different. First, the State did not attempt to offer *any* version of Appellant's statements to police. Second, the statements excluded in *Williams* were, in fact, admissible under the Evidence Code for any number of reasons; the trial court simply neglected to consider that fact. In contrast, the statements at issue here were not admissible as "excited utterances," or under any other exception to the general ban on hearsay. The trial court did not

² When one party introduces another party's extrajudicial statement against him, it is not considered hearsay. 12 O.S.2011, § 2801(B)(2)(a). Hence, the State was not required to establish that Williams's statement met any exception to the hearsay ban – although the facts clearly showed that the statement was admissible under any of several hearsay exceptions, even when offered by Williams himself.

condition Appellant's ability to present a defense on her testifying. If there had been any other witnesses who could offer evidence of Appellant's state of mind at the time of the homicide (as there was in *Williams*), she was free to present them; but apparently there were none. The only witnesses coming close to this description were Merlos and Jackson – and notably, *at no time* was defense counsel prevented from eliciting testimony from either of them about the strange things Appellant said before and after the homicide, and from arguing to the jury that her strange behavior negated an intent to kill.³ Thus, if it was the goal of the defense to show the jury that Appellant had unorthodox or even delusional ideas, roughly around the time she killed Gomez, that goal was accomplished when Merlos and Jackson testified to Appellant's statements about "the devil and the money" and about Gomez being "possessed." The trial court did not abuse its discretion in excluding Appellant's statements to police hours after the homicide,

³ Even if Appellant *had* taken the witness stand, her statements to police would not necessarily have been admissible. On the witness stand, she might have offered the same information that she gave to police, or not. If she offered different reasons for killing Gomez, the State could have introduced the prior statements as being inconsistent with her current explanation. 12 O.S.2011, § 2613. If her testimony was consistent with her prior statements, she would only have been able to offer them to rebut a claim by the State that she had recently fabricated her explanation on the witness stand. 12 O.S.2011, § 2801(B)(1)(b). The act of testifying allows a witness to tell her story in the courtroom, but not necessarily to bolster it by showing she made consistent statements outside the courtroom.

and Appellant was not denied an opportunity to present a legally-cognizable defense to the charge. Propositions I and II are denied.

In Proposition III, Appellant claims the evidence presented at trial was insufficient to show, beyond a reasonable doubt, that she killed her daughter with malice aforethought. We disagree. As noted above, the jury may consider all of the external circumstances surrounding the homicide to determine if the injuries Appellant inflicted were done with the requisite intent to kill. OUJI-CR (2nd) No. 4-63. The jury heard about Appellant's strange comments two days before the homicide and hours afterward. Besides the fact that the assault on Gomez was protracted and quite brutal, the jury also heard about the post-mortem insertion of foreign objects in Gomez' throat; the staging of Gomez' dead body with a crucifix on her chest; Appellant's extensive efforts to clean up evidence of the struggle; Appellant's violent attempts to keep Merlos from leaving the scene; and Appellant's change in demeanor when police arrived. Considering all of the evidence presented, a rational juror could conclude, beyond any reasonable doubt, that Appellant killed Gomez with a deliberate intent to do so. *Jackson v. Virginia*, 443 U.S. 307, 318-19, 99 S.Ct. 2781, 2788-89, 61 L.Ed.2d 560 (1979); *Head v. State*, 2006 OK CR 44, ¶ 6, 146 P.3d 1141, 1144. Proposition

III is denied.

Finally, in Proposition IV, Appellant claims the trial court erred in failing to instruct the jury on the lesser alternative offense of Heat of Passion Manslaughter, 21 O.S.2011, § 711(2), which was requested by defense counsel. A trial court's decision on whether to give lesser-offense instructions is reviewed for an abuse of discretion. *McHam v. State*, 2005 OK CR 28, ¶ 21, 126 P.3d 662, 670. No lesser offense instructions are warranted unless a *prima facie* case for that offense has been made – that is, unless there is competent evidence to support each element of that crime. *See Ball v. State*, 2007 OK CR 42, ¶¶ 31-33, 37, 173 P.3d 81, 90-91; *see also Shrum v. State*, 1999 OK CR 41, ¶ 10, 991 P.2d 1032, 1036.

Heat-of-passion manslaughter requires evidence fulfilling the following elements: (1) adequate provocation; (2) a passion or emotion such as fear or anger in the defendant; (3) the homicide occurred while that passion existed, and before there was a reasonable opportunity for the passion to cool; and (4) a causal connection between the provocation, passion, and homicide. *Charm v. State*, 1996 OK CR 40, ¶ 8, 924 P.2d 754, 760. While there was evidence that Appellant acted somewhat strangely before and after the homicide, evidence fulfilling

any of the actual requirements for heat-of-passion manslaughter was noticeably absent. If the defense wanted to show that Appellant's belief in demonic possession amounted to a mental illness that excused her culpability, it could have presented a defense of insanity; but it did not. (As strange as they may have been, Appellant's statements did not actually suggest that she believed *her own* life was in danger due to any supernatural forces, or that she erroneously believed she was destroying a supernatural being, instead of killing her daughter.) No reasonable view of the evidence makes out a *prima facie* case that Appellant killed her daughter in a heat of passion, precipitated by adequate provocation. *Ball*, 2007 OK CR 42, ¶ 37, 173 P.3d 81, 91. What Gomez might have done to warrant a fatal beating by her mother is simply never explained. The trial court did not err in rejecting these instructions. *Charm*, 1996 OK CR 40 ¶¶ 9-10, 924 P.2d at 760-61. Proposition IV is denied.

DECISION

The Judgment and Sentence of the District Court of Oklahoma County is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2019), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

**AN APPEAL FROM THE DISTRICT COURT OF OKLAHOMA COUNTY
THE HONORABLE RAY C. ELLIOTT, DISTRICT JUDGE**

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OPINION BY KUEHN, V.P.J.

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LUMPKIN, J.: CONCUR IN RESULTS
HUDSON, J.: CONCUR
ROWLAND, J.: RECUSE