

IN THE SUPREME COURT OF THE STATE OF NEVADA

MANUEL FRANCISCO MARQUES,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 44316

**FILED**

NOV 18 2005

ORDER OF AFFIRMANCE

WALTER M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. P. [Signature]*  
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of first-degree murder with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Sally L. Loehrer, Judge. The district court sentenced appellant Manuel Francisco Marques to serve two consecutive prison terms of life with the possibility of parole after 20 years.<sup>1</sup>

Marques' sole contention is that the district court erred by failing to give the jury a limiting instruction prior to the admission of evidence that he was subject to a temporary protective order issued on behalf on the victim. Marques had filed a motion in limine to exclude evidence of the protective order and the State opposed the motion. The district court denied the motion, stating that the protective order was "certainly not another bad act . . . . And [it is] not being admitted for the truth of the facts asserted therein." The district court ruled that evidence of the protective order was admissible to (1) show the state of mind of the victim, and (2) establish premeditation and deliberation. The district

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<sup>1</sup>The jury found Marques not guilty of one count of first-degree kidnapping with the use of a deadly weapon.

court also stated that it would give the jury a limiting instruction prior to the admission of the evidence. Nevertheless, the district court failed to give a limiting instruction to the jury. Additionally, Marques failed to request a limiting instruction. Citing to Tavares v. State for support,<sup>2</sup> Marques argues on appeal that his right to a fair trial was denied by the district court's omission.<sup>3</sup> We disagree with Marques' contention.

Even assuming, without deciding, that the district court should have given the jury a limiting instruction prior to the admission of the evidence, we conclude that any error was harmless beyond a reasonable doubt.<sup>4</sup> This court has stated that "under Tavares we consider the failure to give such a limiting instruction to be harmless if the error did not have a substantial and injurious effect or influence the jury's verdict."<sup>5</sup> Here, the State presented overwhelming evidence of Marques' guilt. In particular, we note that Marques wrote the following on a calendar found in his house and later admitted at trial: "I killed Candy. God forgive me. Came home to sleep will turn myself in tomorrow. Aug.

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<sup>2</sup>117 Nev. 725, 733, 30 P.3d. 1128, 1133 (2001) (holding that "the trial court should give the jury a specific instruction explaining the purposes for which [prior bad act] evidence is admitted immediately prior to its admission and should give a general instruction at the end of trial").

<sup>3</sup>Notably, Marques does not challenge the basis for the district court's ruling in allowing the admission of the evidence.

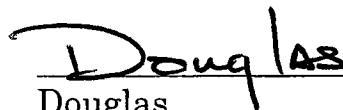
<sup>4</sup>See NRS 178.598 ("Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded."); see also U.S. v. Vgeri, 51 F.3d 876, 882 (9th Cir. 1995) (holding that the State must show "that the error more probably than not was harmless").

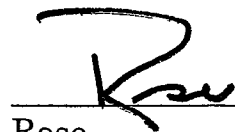
<sup>5</sup>Rhymes v. State, 121 Nev. \_\_\_, \_\_\_, 107 P.3d 1278, 1282 (2005) (citing Tavares, 117 Nev. at 732, 30 P.3d at 1132).

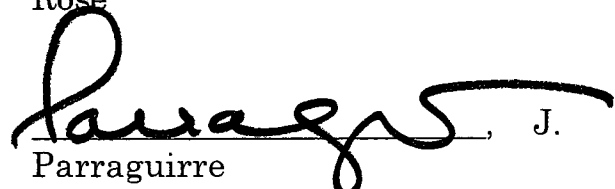
8th. I'm sorry." Further, William Kenny, a Catholic priest, testified that Marques confessed to him to murdering his wife. And finally, the jury heard an audiotape recording made by Detective Ken Hardy where Marques, while in custody, admitted to shooting his wife. Therefore, we conclude that the failure of the district court to provide a limiting instruction prior to the admission of evidence of the temporary protective order did not have a substantial effect or influence the jury's verdict.

Accordingly, having considered Marques' contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Parraguirre

cc: Hon. Sally L. Loehrer, District Judge  
Clark County Public Defender Philip J. Kohn  
Attorney General George Chanos/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk