

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM J. KINSEY A/K/A WILLIAM
JERMAINE KINSEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45897

FILED

MAR 24 2006

JANETTE M. HILLMAN
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of voluntary manslaughter with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Judge. Appellant William Kinsey was sentenced to a prison term of 48-120 months, plus an equal and consecutive term for the use of a deadly weapon.

Kinsey contends two errors occurred related to the jury instructions. First, he asserts the district court erred when it refused to give Kinsey's proffered instruction regarding his theory of the case. "[I]f requested, theory of the case instructions must include the significance of findings made under the theory posited."¹ Kinsey's theory of the case is that he acted in self-defense. The jury was given numerous instructions related to self-defense. Kinsey's proffered instruction contained argument and was more akin to a closing argument than a jury instruction. A

¹Carter v. State, 121 Nev. ___, ___, 121 P.3d 592, 597 (2005).

defendant is not entitled to misleading or inaccurate instructions.² Further, Kinsey's proffered "instruction," was not a request for a theory of the case instruction. "The district court has broad discretion to settle jury instructions, and this court reviews the district court's decision for an abuse of that discretion or judicial error."³ We perceive no abuse of discretion or judicial error. The instructions submitted correctly stated the law and summarized the relevant statutory definitions.

Second, Kinsey asserts that the district court should be required to give a voluntary manslaughter instruction with an instruction defining the State's burden of proof. Kinsey suggests this court should extend the holding of Crawford v. State,⁴ where this court determined a defendant is entitled to such an instruction "if requested." Kinsey made no such request. We decline to extend our holding in Crawford to mandate the district court giving such an instruction, absent a request to do so. The instruction the jury received on reasonable doubt is the exact instruction prescribed by NRS 175.211(2). The jury received separate instructions on the elements of murder in the first and second degree, voluntary and involuntary manslaughter, and self-defense. Additionally, the jury was informed the State must prove beyond a reasonable doubt,

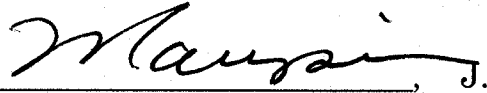
²Crawford v. State, 121 Nev. ___, ___, 121 P.3d 582, 589 (2005) (citing Carter, at ___, 121 P.3d at 597).

³Id. at ___, 121 P.3d at 585.

⁴Id.

that Kinsey did not act in self-defense.⁵ "A jury is presumed to follow its instructions."⁶ Therefore, we

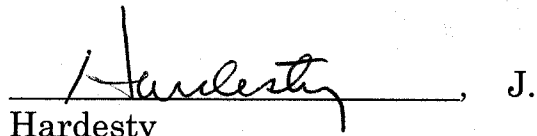
ORDER the judgment of conviction AFFIRMED.



Maupin



Gibbons



Hardesty

cc: Hon. Joseph T. Bonaventure, District Judge
Special Public Defender David M. Schieck
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁵We note that Kinsey does not challenge the sufficiency of the evidence.

⁶Weeks v. Angelone, 528 U.S. 225, 234 (2000).