

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT EUGENE ALLEN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45970

FILED

JAN 09 2007

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Rubade*
CMEF DEPUTY CLERK

This is an appeal from a judgment of conviction. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

On August 25, 2005, the district court convicted appellant Robert Eugene Allen, pursuant to a jury verdict, of first-degree murder with the use of a deadly weapon. He was sentenced to a life term in prison with the possibility of parole, plus an equal and consecutive term for the deadly weapon enhancement.

Allen raises two issues on appeal. First, he argues that there was insufficient evidence to convict him of first-degree murder. Allen contends that he killed his wife, Laurel, in a rage and that there was no evidence of deliberation. Therefore, according to him, he is guilty of either second-degree murder or voluntary manslaughter. We disagree. That Allen killed his wife was undisputed. The evidence showed that Allen believed that his wife was having an affair with another man. On August 18, 2003, the night of the murder, Laurel received a telephone call. Suspicious, Allen checked the caller identification function on the telephone and recognized the number as being one that had been received several times previously. Later that evening, after eating dinner and after Laurel showered, Allen applied lotion to her back for a skin condition she

had. Allen testified that as he applied the lotion, he thought about the telephone call and became increasingly upset. He testified that he snapped and struck Laurel in the head with an antique iron. Allen further testified that he did not remember retrieving a knife from the kitchen and stabbing Laurel. After the attack, Allen drove to a friend's house and told his friend that he hit Laurel with an iron, crushing her skull, and that he had stabbed her.

Laurel's autopsy revealed that she suffered multiple lacerations on her scalp and fractures of her skull. Her most significant injury and the one that caused her death was a 4- to 5-inch-deep stab wound that extended from her neck, across her jugular vein, and into her chest cavity, piercing her lung.

When reviewing for sufficiency of the evidence, "[t]he relevant inquiry for this Court is 'whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'"¹ Here, Allen testified that the telephone call that precipitated his attack on Laurel occurred two to three hours before the killing. Further, during the attack he ceased beating Laurel with the iron, retrieved a knife from the kitchen, returned to the bedroom, and stabbed her in the neck, delivering the fatal wound.

A conviction for first-degree murder requires proof beyond a reasonable doubt that the killing was willful, i.e., with the intent to kill,

¹Koza v. State, 100 Nev. 245, 250, 681 P.2d 44, 47 (1984) (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979) (emphasis in original)).

deliberate, and premeditated.² Deliberation connotes "a dispassionate weighing process and consideration of consequences before acting."³ Premeditation "is a design, a determination to kill, distinctly formed in the mind."⁴ We conclude that the jury could have found that the killing was willful, deliberate, and premeditated from the evidence showing that Allen beat his wife several hours after she received the telephone call he claims enraged him and that he ceased the beating long enough to retrieve a knife from the kitchen and inflict the fatal wound. Therefore, we conclude that the evidence sufficiently supports the jury's finding of first-degree murder.

Allen next argues that the district court erred in admitting prior bad act evidence. Although such evidence is generally inadmissible, it may be introduced to show, for example, "motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident."⁵ Prior to admitting prior bad act evidence, the district court must conduct a Petrocelli⁶ hearing to establish whether "(1) the [prior bad act] is relevant to the crime charged; (2) the act is proven by clear and convincing

²NRS 200.030; Byford v. State, 116 Nev. 215, 234, 994 P.2d 700, 713 (2000).

³Byford, 116 Nev. at 235, 994 P.2d at 714.

⁴Id. at 237, 994 P.2d at 714.

⁵NRS 48.045(2).

⁶Petrocelli v. State, 101 Nev. 46, 692 P.2d 503 (1985).

evidence; and (3) the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice."⁷


Here, the district court held a Petrocelli hearing to determine the admissibility of evidence of a domestic violence incident between Allen and Laurel that occurred several weeks before the murder. The evidence presented at the hearing revealed that on June 27, 2003, Laurel's son, Aaron Dahl, heard banging noises emanating from Laurel and Allen's bedroom. Dahl heard his mother repeatedly scream, "Help me." Dahl dialed 9-1-1 and then successfully gained entry into the locked bedroom. He observed Laurel sitting on the floor in the corner of the bedroom. Allen exited the bedroom and waited outside for the police to arrive. Henderson Police Officer Mitchell Wilson testified that when he arrived, Laurel was crying, "visibly afraid," and shaking. He stated that Laurel told him that earlier in the evening she and Allen had discussed their marital problems, including his suspicion that she was having an affair. Allen became upset, and as she got out of bed, Allen grabbed her wrist and pulled her back on the bed. Laurel screamed for help, and Allen let go of her, grabbed a three-inch buck knife, and threatened to kill himself. Officer Wilson stated that Laurel told him that she attempted to exit the bedroom but Allen grabbed her and, for a short time, prevented her from leaving. Officer Wilson testified that he observed physical injuries to Laurel's wrist and arms. He further stated that he issued Allen a citation for domestic battery.

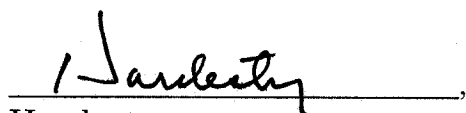
⁷Rosky v. State, 121 Nev. 184, 195, 111 P.3d 690, 697 (2005) (quoting Tinch v. State, 113 Nev. 1170, 1176, 946 P.2d 1061, 1064-65 (1997)).


After considering the evidence presented, the district court concluded that the incident on June 27 was relevant to demonstrate ill will and motive, that it was proven by clear and convincing evidence, and that its probative value exceeded any prejudice. We will not reverse on appeal a district court's decision to admit or exclude prior bad act evidence absent manifest error.⁸ Allen's defense at trial was that after Laurel received a suspicious telephone call, he became enraged by the thought of her having an affair and killed her. The evidence shows that the physical altercation on June 27 also erupted as a result of marital discord because Allen suspected Laurel of being unfaithful. We conclude that the prior bad act was relevant to show Allen's motivation for killing Laurel and satisfied the other Tinch factors necessary for its admission. Therefore, we conclude that the district court did not err in admitting this evidence.

Having considered Allen's claims and concluded that they lack merit, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Parraguirre


_____, J.
Hardesty


_____, J.
Saitta

⁸Id.

cc: Hon. Donald M. Mosley, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk