IN THE SUPREME COURT OF THE STATE OF NEVADA

LAWRENCE PRUETT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46244

FILED

MAR 27 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY J. Richards
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of second-degree murder with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Sally L. Loehrer, Judge. The district court sentenced appellant Lawrence Pruett to serve two consecutive prison terms of 10 to 25 years.

Pruett was charged with one count of open murder for the shooting death of his roommate. At trial, Pruett admitted that he shot his roommate and hid the body in a freezer. Pruett also admitted that he fabricated several stories to explain his roommate's disappearance, got rid of the shotgun, and paid someone to haul away the bloody mattress and freezer. Pruett maintained, however, that he shot his roommate in self-defense, arguing that his roommate was a violent drug addict and had threatened him with a knife. The State argued that the shooting was not justified and presented testimony from the medical examiner that the roommate was shot once in the back and shot in the knee, possibly while the knees were curled up to the chest.

First, Pruett contends that the jury instructions defining malice aforethought and implied malice are unconstitutionally vague.

However, as Pruett concedes, this court has explicitly upheld these instructions.[1] We decline Pruett's invitation to revisit the issue.

Second, Pruett contends that reversal of his conviction is warranted because the district court gave an erroneous second-degree murder jury instruction. Jury instruction number 11 defined second-degree murder as follows:

> (a) Murder with malice aforethought, but without the admixture of premeditation or deliberation; or,
>
> (b) Where an involuntary killing occurs in the commission of an unlawful act, which in its consequences, naturally tends to take the life of a human being or is committed in the prosecution of a felonious intent.

Pruett argues that the instruction was improper because subsection b was not supported by the facts of the case given that there was no dispute that the killing was intentional. Citing to Bolden v. State,[2] Pruett argues that he was prejudiced by the erroneous instruction because the jury delivered a general verdict, and the jury may have found him criminally liable under a felony-murder theory without the necessary statutory element of malice aforethought. We conclude that Pruett's contention lacks merit.

As a preliminary matter, we note that Bolden is inapplicable to this case because the second-degree murder jury instruction contained a

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[1]See Cordova v. State, 116 Nev. 664, 666-67, 6 P.3d 481, 482-83 (2000); Leonard v. State, 114 Nev. 1196, 1208, 969 P.2d 288, 296 (1998).

[2]121 Nev. ___, ___, 124 P.3d 191, 201 (2005) (where jury delivers a general verdict that could have been based on legally invalid ground, reversal is required because the basis for the jury verdict is not discernable).

legally valid statement of Nevada law.[3] Further, we conclude that any error in giving the felony-murder second-degree murder instruction was harmless beyond a reasonable doubt because Pruett conceded that the killing was intentional, the State did not present any evidence in support of a felony-murder theory and, to the contrary, the prosecutor conceded during closing argument that the felony-murder language in subsection b of the second-degree murder instruction was not applicable to the case.[4]

Finally, Pruett contends that the district court erred in giving jury instructions numbers 23 and 24 regarding self-defense. Jury instruction number 23 stated --

> The law does not justify the use of a greater degree of force than is reasonably necessary nor does it justify a person who has been acting in self-defense in the infliction of further injuries upon his assailant after there is no longer apparent danger.

Jury instruction number 24 stated:

> Words or abuse, insult or reproach addressed to the person without any threat of injury or attempt to inflict injury, will not justify a homicide.

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[3]See NRS 200.070 ("but where the involuntary killing occurs in the commission of an unlawful act, which, in its consequences, naturally tends to destroy the life of a human being, or is committed in the prosecution of a felonious intent, the offense is murder"); see generally Keating v. Hood, 191 F.3d 1053, 1062 (9th Cir. 1999) (recognizing that where one theory of the case is factually insufficient, but legally valid, a general verdict will not be disturbed because a reviewing court may assume that the jurors analyzed the evidence and rested the verdict on the ground supported by the facts), abrogated on other grounds by Mancuso v. Olivarez, 292 F.3d 939 (9th Cir. 2002).

[4]See Collman v. State, 116 Nev. 687, 722-23, 7 P.3d 426, 449 (2000).

Pruett alleges that the two self-defense instructions were confusing and conflicted with the other instructions allowing an individual in actual or apparent danger of great bodily injury to use deadly force. Further, Pruett alleges that the district court failed to tailor the self-defense instructions to the facts of this case as required by Runion v. State.[5] We disagree.

At trial, the district court gave numerous jury instructions defining self-defense, many of which were derived from Runion. The jury was properly instructed that, under Nevada law, a person who is not the original aggressor has no duty to retreat before responding with force to a reasonably perceived threat to his person.[6] The jury was also properly instructed that the danger necessary to justify self-defense may be actual or apparent.[7]

Additionally, we disagree with Pruett that jury instructions number 23 and 24 were misleading or confusing. Jury instruction number 23 contained a correct statement of Nevada law because, although there is a rule in Nevada providing there is no duty to retreat, the rule does not authorize a person to continue to use force when he could not reasonably have believed that his attacker presented a continuing threat.[8] Likewise, jury instruction number 24 contained a correct statement of Nevada law

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[5]116 Nev. 1041, 1050-51, 13 P.3d 52, 58-59 (2000).

[6]See Culverson v. State, 106 Nev. 484, 797 P.2d 238 (1990).

[7]Runion, 116 Nev. 1041, 13 P.3d 52 (recognizing that self-defense is a justification for homicide in instances of apparent danger).

[8]See State v. Comisford, 41 Nev. 175, 177-78, 168 P. 287, 287 (1917) (recognizing that amount of force justifiable in self-defense is that which a reasonable person would have believed necessary to protect himself).

because hostile words without the threat of injury are not sufficient justification for homicide.[9] Accordingly, Pruett has failed to show that the district court abused its discretion in charging the jury.

Having considered Pruett's arguments and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.

Douglas, J.
Douglas

Becker, J.
Becker

Parraguirre, J.
Parraguirre

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

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[9]NRS 200.200 ("If a person kills another in self-defense, it must appear that: 1. The danger was so urgent and pressing that, in order to save his own life, or to prevent his receiving great bodily harm, the killing of the other was absolutely necessary; and 2. The person killed was the assailant, or that the slayer had really, and in good faith, endeavored to decline any further struggle before the mortal blow was given.").