

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAYMOND MEDINA, JR., AKA
RAYMOND LEE MEDINA, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46404

FILED

MAY 26 2006

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count each of attempted murder with the use of a deadly weapon and robbery with the use of a deadly weapon. Eighth Judicial District Court, Clark County; David Wall, Judge. The district court sentenced appellant Raymond Medina to serve two consecutive prison terms of 48 to 120 months for the attempted murder count, and two consecutive prison terms of 36 to 120 months for the robbery count, to run concurrently with the attempted murder count.

Medina first contends that there is insufficient evidence to sustain his convictions for attempted murder and robbery. In particular, Medina contends that the evidence only showed his mere presence at the scene. Medina also argues that the State failed to prove he was the attacker given that the victim could not identify him, Medina had no blood on his clothing or hands, and it would have been impossible for him to stab the taxi driver because of the height of the driver's seat. Our review of the

record on appeal, however, reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact.¹

In particular, the victim, a Las Vegas taxi driver, testified that in the early morning of March 1, 2005, he was stabbed from behind numerous times. At the time of the stabbing, Medina and a young female, who identified herself as "Sarah," were seated in the backseat of the cab. Although the victim did not see who stabbed him, he observed Sarah emerge from the cab and heard her yell to Medina, who was still seated in the backseat, "You want to kill right there or what?" The victim also testified that his red lunch bag was taken without his permission during the attack. An eyewitness, Ken Wallace, testified that he observed the injured cab driver and saw a female and male run from the cab; Wallace noticed that the male was bald and carrying a red bag. A school surveillance tape, admitted into evidence at trial, also showed a man carrying the victim's red lunch bag.

Amanda Dominguez, Medina's friend, testified at trial. She explained that, just before the stabbing, she had been riding in the cab with Medina and her friend, Sarah Pittelli, and observed that Medina had his knife out. Dominguez testified that she got out of the cab because Pittelli instructed the cab driver to stop to let Dominguez out.

Sarah Pittelli also testified at trial, explaining that after they dropped off Dominguez, Medina instructed the cab driver to go to a nearby apartment complex. As the cab driver was talking, Pittelli observed Medina grab the driver's hair and slit his throat. Then Pittelli saw

¹See Wilkins v. State, 96 Nev. 367, 609 P.2d 309 (1980); see also Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998).

Medina stab the driver numerous times on the upper area of the body. As Pittelli got out of the van, the driver's red bag fell, and she grabbed it. Ray then grabbed the red bag from her, and said, "Let's go. Go, run."

Las Vegas police officer Eugene Gallagher found Medina near the scene of the attack. Officer Gallagher testified at trial that Medina denied being in the taxi cab and explained that he was visiting a friend named Sarah and had been jogging in preparation for his entrance into the military. Officer Gallagher did not believe Medina because he was not wearing jogging shoes, he fit the description of the man involved in the stabbing, and he was all scraped up and not wearing a shirt. Las Vegas police officer Kirk Jordan testified at trial that he arrested Medina and, during the booking process, a corrections officer asked Officer Jordan what type of knife was used in the crime. Before Officer Jordan could answer, Medina blurted out, "switchblade." Officer Jordan also testified that, on a rooftop near the crime scene, police found a pair a black leather gloves with a knife inside. The State presented expert testimony that the blood on the knife belonged to the victim, and the gloves contained Medina's DNA.

The jury could reasonably infer from the evidence presented that Medina attempted to kill the victim and took that victim's property by force with the use of a deadly weapon.² It is for the jury to determine the weight and credibility to give conflicting testimony, and the jury's

²See NRS 200.030(4); NRS 193.330(1)(a)(1); NRS 193.165(1); NRS 200.380(2).

verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict.³

Medina also contends that reversal of his conviction is warranted because the State failed to gather material and exculpatory evidence. Specifically, Medina alleges that the police were grossly negligent for failing to gather Pittelli's clothing and clippings of her fingernails to test for the presence of the victim's blood because it would have proved that she stabbed the victim. Likewise, Medina argues that the police were grossly negligent for failing to search Pittelli's home "for evidence of the crime, such as bloody clothes or the cab's missing keys." We conclude that Medina's contention lacks merit.

In Daniels v. State,⁴ we held that dismissal of criminal charges may be an available remedy for the State's failure to gather evidence where the evidence was material and the failure to gather the evidence was the result of a bad faith attempt to prejudice the defendant's case. Here, Medina has failed to show that the evidence was material. His allegation that Pittelli was the attacker is contrary to the evidence presented at trial and the allegation that testing of Pittelli's clothing or person would have been material to the case is mere speculation.⁵ Nonetheless, even assuming the evidence was material, Medina has not alleged, much less demonstrated, that the failure to gather evidence resulted from bad faith. Further, there is no indication that the material

³See Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981); see also McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

⁴114 Nev. 261, 267-68, 956 P.2d 111, 115 (1998).

⁵See Randolph v. State, 117 Nev. 970, 987, 36 P.3d 424, 435 (2001).

value of the evidence was so obvious that the police were grossly negligent in failing to collect it.⁶ Accordingly, reversal of Medina's conviction is not warranted based on the State's failure to gather evidence.

Finally, Medina contends that the district court erred in admitting hearsay testimony of State's witnesses Lupita Amaya and Fernando Magnon under the adoptive admission exception to the hearsay rule. In particular, Medina argues that the testimony is "double hearsay" and inconsistent rendering it inherently unreliable. We disagree.

A statement is admissible as an adoptive admission when a person is accused of a crime, under circumstances where the right of self-incrimination is inapplicable, and the accused does not deny the accusation but instead responds with silence or an equivocal statement.⁷ In such cases, "both the accusatory statement and the fact of silence or equivocation may be offered as an implied or adoptive admission of guilt."⁸

At trial, Amaya and Magnon both testified that, on the day of the attack, Medina and Pittelli came over to their apartment and were winded as if they had been in a fight. Magnon asked them what happened. Amaya testified that Pittelli said, "He just shanked them up, he just fucked them up," and Medina said "yeah" in a low voice. Similarly, Magnon testified that Pittelli said, "You fucked him up, [Medina]," and Medina smiled and shook her hand. We conclude that Pittelli's accusation and Medina's response were admissible under the adoptive exception to the hearsay rule because rather than deny Pittelli's accusation, Medina's

⁶Id.

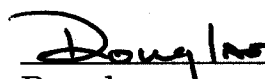
⁷Maginnis v. State, 93 Nev. 173, 175, 561 P.2d 922, 923 (1977).


⁸Id.


response amounted to an admission of guilt. Accordingly, the district court did not abuse its discretion by admitting the testimony.

Having considered Medina's contentions and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Douglas


_____, J.
Becker


_____, J.
Parraguirre

cc: Hon. David Wall, District Judge
Gregory D. Knapp
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk