

IN THE SUPREME COURT OF THE STATE OF NEVADA

DANTE HANALEI PATTISON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46610

FILED

DEC 24 2007

ORDER OF AFFIRMANCE

METHE M. BLOOM
CLERK OF SUPREME COURT
BY *[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, one count of manslaughter with the use of a deadly weapon, and two counts of first-degree murder with the use of a deadly weapon where the victim was over the age of sixty-five. Eighth Judicial District Court, Clark County; Lee A. Gates, Judge.

In March 2005, a jury found appellant Dante Hanalei Pattison guilty of murdering his pregnant sister and grandparents. The district court sentenced him to four consecutive life sentences without the possibility of parole. Pattison appeals and argues that (1) the use at trial of evidence obtained during Pattison's competency evaluation period at Lake's Crossing violated his right to due process and his right against self-incrimination, and (2) because the State failed to prove that he was not psychotic at the time of the murder, insufficient evidence existed to support a guilty verdict for first-degree murder. The parties are familiar with the facts, and we do not recount them here except as necessary for our disposition.

Evidence obtained during Pattison's competency evaluation

This court gives great deference to a district court's decision to admit evidence and will not reverse such a decision unless it is manifest error.¹

Pattison argues that the State's use of evidence obtained during his competency evaluation period at Lake's Crossing violated his due process rights under the Fifth Amendment. Pattison begins his argument with a review of McKenna v. State,² Esquivel v. State,³ and Winiarz v. State.⁴ However, in Estes v. State, this court distinguished those cases from the issue presented in this case because "none of the defendants in those matters placed their sanity at the time of the alleged criminal misconduct at issue."⁵ In Estes, this court held that the State could introduce evidence obtained during the defendant's evaluation period at Lake's Crossing if the defendant put his sanity in question and the evidence excluded incriminating statements.⁶ Because Pattison placed his sanity in question by pleading not guilty by reason of insanity, this court's determination in Estes controls this case.

¹See Bletcher v. State, 111 Nev. 1477, 1480, 907 P.2d 978, 980 (1995).

²98 Nev. 38, 639 P.2d 557 (1982).

³96 Nev. 777, 617 P.2d 587 (1980).

⁴104 Nev. 43, 752 P.2d 761 (1988).

⁵122 Nev. ___, ___, 146 P.3d 1114, 1121 (2006).

⁶Id.

Pattison attempts to distinguish this case from Estes by arguing that he did not intend to introduce evidence obtained at Lake's Crossing in his case-in-chief or allow his experts to read reports from Lake's Crossing in developing their opinions. In Estes, no facts suggest that the defendant relied on records from Lake's Crossing to establish the defendant's insanity defense, yet this court held that the State could introduce evidence obtained during the defendant's competency evaluation period.⁷ When Pattison put his sanity in question by pleading not guilty by reason of insanity, he "opened the door" to the State's use of evidence obtained during Pattison's competency evaluation period at Lake's Crossing as long as that evidence did not include incriminating statements.

Pattison next asserts that statements he made to doctors at Lake's Crossing and, conversely, the doctors' reports of what he did not say to them during his competency evaluations at Lake's Crossing should have been suppressed because he was not properly advised of his Fifth Amendment rights.

This court acknowledged in Estes that "[i]nterviews during psychiatric evaluations are custodial and statements made by the defendant are entitled to Fifth Amendment protection."⁸ However, this court further stated that "when the defendant places his sanity or mental capacity at issue, a defendant's right to protection under the Fifth and Fourteenth Amendments from the disclosure of confidential

⁷Id. at ___, 146 P.3d at 1119, 1121.

⁸Id. at ___ n.26, 146 P.3d at 1121 n.26.

communications made during a court-ordered psychiatric evaluation relates only to the incriminating communications themselves.”⁹ Thus, the defendant’s non-incriminating statements concerning his mental state are not protected by the Fifth Amendment’s guarantee of due process and protection against self-incrimination.¹⁰ In Estes, this court held that the defendant’s statements indicating that he was fabricating his insanity defense and that were inconsistent with his later testimony were not incriminating.¹¹

When Pattison placed his sanity in question, he waived his right to object to the admission of any non-incriminating statements that he made or did not make regarding his mental health. None of Pattison’s statements or silences at Lake’s Crossing were incriminating. All of the evidence from Lake’s Crossing related to Pattison’s mental health and not whether he committed the crime in question. The Lake’s Crossing evidence relied upon by Dr. Thomas Bittker, the State’s expert who reviewed reports from Lake’s Crossing staff in developing his expert opinion, also did not contain incriminating statements but only statements regarding Pattison’s mental health.

Therefore, we conclude that the district court did not err when it permitted the State to offer evidence obtained during Pattison’s competency evaluation period at Lake’s Crossing to rebut Pattison’s case-in-chief. Because Pattison asserted an insanity defense, his non-

⁹Id. at ___, 146 P.3d at 1121.

¹⁰Id.

¹¹Id. at ___, 146 P.3d at 1122-23.

incriminating statements concerning his mental state were not protected by the Fifth Amendment's guarantee of due process and protection against self-incrimination.

Sufficiency of the evidence

In reviewing the sufficiency of evidence to support a conviction, this court inquires “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.”¹² Additionally, “[w]here there is conflicting testimony, the jury determines its weight and credibility.”¹³

Pattison argues that the State failed to produce evidence that Pattison was not psychotic at the time of the shooting and that the State's experts all testified that Pattison was suffering from drug-induced psychosis. Pattison argues that even if the jury believed the State's theory of drug-induced psychosis, the law regarding voluntary intoxication would have prohibited a verdict that Pattison was guilty of first-degree murder. Pattison also argues that if the jury believed Pattison's interpretation of the evidence, the evidence required a verdict of not guilty by reason of insanity.

To support a guilty verdict for first-degree murder, the State must prove beyond a reasonable doubt that the murder was “willful,

¹²Rose v. State, 123 Nev. ___, ___, 163 P.3d 408, 414 (2007) (quoting Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1381 (1998)).

¹³Estes, 122 Nev. at ___, 146 P.3d at 1128.

deliberate and premeditated.”¹⁴ A murder without premeditation or deliberation is second-degree murder.¹⁵ In a prosecution for first-degree murder, intent and premeditation may be deduced from the circumstances of the killing.¹⁶ A defendant may contend that he was incapable of forming the requisite deliberation or premeditation because he was voluntarily intoxicated;¹⁷ however, intoxication does not legally preclude a finding that the defendant premeditated or deliberated.¹⁸ This is a question of fact that the jury must determine.¹⁹

The State presented evidence that Pattison’s behavior at the time of the shooting was not consistent with the behavior of a person suffering from delusions. The State further offered evidence that Pattison struggled with his sister for control of the gun and shot her despite her pleas for him to put the gun away. The State also offered evidence that Pattison shot all of his victims at close range, shot some of them multiple times, and that every shot he fired hit a victim. All of these facts support a finding that Pattison willfully and deliberately killed his victims. While there is evidence that Pattison may have been suffering from a drug-induced delusion, we conclude that the record contains sufficient evidence

¹⁴NRS 200.030(1)(a).

¹⁵See NRS 200.030(2).

¹⁶Dearman v. State, 93 Nev. 364, 367, 566 P.2d 407, 409 (1977).

¹⁷NRS 193.220.

¹⁸King v. State, 80 Nev. 269, 271-72, 392 P.2d 310, 311 (1964).

¹⁹Id. at 272, 392 P.2d at 311.

from which a reasonable juror could have found that Pattison was guilty of first-degree murder.


Pattison's second argument, that if the jury believed Pattison's interpretation of the evidence it was required to return a verdict of not guilty by reason of insanity, implies that the State had the burden to prove that Pattison was sane at the time of the shooting and is therefore meritless. The State is not required to prove that a defendant is sane at the time he committed a crime.²⁰ A defendant raising an insanity defense bears the burden of proving by a preponderance of the evidence that at the time of the alleged crime he suffered from delusions that rendered him incapable of determining the wrongfulness of his actions or understanding that his actions were not authorized by law.²¹


Because the burden was on Pattison, not the State, to prove his insanity and Pattison did not meet that burden, we conclude sufficient evidence exists from which a reasonable juror could determine that Pattison was able to form the requisite intent to justify a verdict of first-degree murder. Accordingly, we

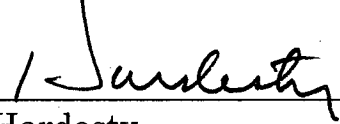
²⁰See Finger v. State, 117 Nev. 548, 556, 27 P.3d 66, 72 (2001) (explaining the M'Naghten rule).

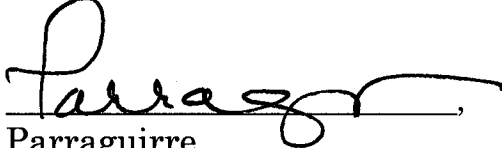
²¹Id. at 576, 27 P.3d at 84-85; NRS 174.035(4). In 2007, the Legislature amended NRS 174.035 and enacted a new test for the defense of insanity. 2007 Nev. Stat., ch. 327, § 4, at 1405. The statute, as amended, does not contain retroactive language and is therefore inapplicable to this case. Castillo v. State, 110 Nev. 535, 540, 874 P.2d 1252, 1256 (1994) (overruled on other grounds by Wood v. State, 111 Nev. 428, 430, 892 P.2d 944, 946 (1995)).

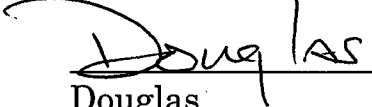
ORDER the judgment of the district court AFFIRMED.



_____, C.J.
Maupin



_____, J.
Gibbons


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas


_____, J.
Cherry


_____, J.
Saitta

cc: Hon. Lee A. Gates, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk