IN THE SUPREME COURT OF THE STATE OF NEVADA

RONALD LEE LENNON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47618

FILED

MAY 28 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, upon a jury verdict, of one count of first-degree murder of a victim 65 years of age or older and one count of robbery of a victim 65 years of age or older. Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

The parties are familiar with the facts, and we do not recount them except as pertinent to our disposition.

Appellant Ronald Lee Lennon challenges his conviction on appeal based on alleged errors at trial. He argues that: (a) the district court violated his Sixth Amendment right to an impartial jury by intimidating and threatening prospective jurors from expressing any prejudice or bias that they may have had, (b) the district court committed constitutional error by allowing a police detective to give an unfounded expert opinion that the homicide victim's face covered with a pillow established that the killer knew the victim, and (c) the district court committed constitutional error by allowing a police detective to testify that the absence of flies and larvae at the crime scene established the date when the victim was killed. We conclude that these arguments lack merit.

08-13348

Intimidation of prospective jurors

Lennon argues that the district court's remarks to prospective jurors—that anyone having issues as to bias and prejudice would be assigned to a "boring" civil case that could last "several months"—after it had dismissed a prospective juror for cause, deprived him of his Sixth Amendment right to a fair and impartial jury. He asserts that the remarks intimidated and threatened other prospective jurors from expressing any bias or prejudice they may have had.

As support, Lennon contends that the district court's remarks amounted to a demeaning and threatening reprimand that had a chilling effect on the candor of the entire jury panel. Lennon argues that the district court's remarks caused the entire jury panel not to admit to any bias or prejudice that they may have had and that it caused the jury panel to not truthfully answer the questions posed to them during the remainder of the voir dire process. Consequently, while relying on United States v. Rowe,[1] Lennon argues that the dismissal of the entire jury panel was necessary to ensure his rights to fair and impartial jury under the Sixth Amendment.

In response, the State argues that the district court's remarks at issue did not cause the prospective jurors to feel intimidated or threatened. It contends that the district court's actions during jury voir dire were not inappropriate and that the dismissal of the entire jury pool was not necessary in this case.

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[1]106 F.3d 1226 (5th Cir. 1997).

In Rowe, the United States Court of Appeals for the Fifth Circuit held that the dismissal of the entire jury panel was necessary because the jurors in that case were given reason to fear reprisal for truthful responses.[2] The court held that the trial court's remarks—that "'you will be coming back again, and again, and again . . . and see if you can figure out how to put aside your personal opinions and do your duty to your country as a citizen'"—could only be interpreted as punishment for responding in the affirmative to questions about bias.[3] The court additionally concluded that "[t]he fact that the court got no response when it later asked the panel whether anyone had been intimidated [was] not surprising" because it could be presumed that the "members of the panel [were] not fools."[4]

Having reviewed the record, we conclude that the dismissal of the entire jury panel was not necessary in this case; the circumstances here are unlike those in Rowe. The record shows that the district court was able to openly question and communicate with prospective jurors and that it was able to excuse other jurors for cause after it had made the remarks at issue. Thus, unlike the jury panel in Rowe, the jury panel here did not appear to fear reprisal for truthful responses.

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[2]Id. at 1229.

[3]Id. at 1230.

[4]Id.

Therefore, we conclude that the district court's remarks at issue did not substantially affect Lennon's rights to a fair trial and fair and impartial jury; there was no plain error.[5]

The pillow on the victim's face

Lennon also argues that the district court committed constitutional error by allowing a police detective (over defense counsel's objection) to give an "unfounded expert opinion" that the victim's face being covered with a pillow established that the killer knew the victim.

Lennon contends that under NRS 50.275,[6] the police detective did not provide any scientific basis for his conclusion. He argues that because this case hinged upon circumstantial evidence that the victim was killed by him, a known acquaintance, the police detective's testimony as to the killer knowing the victim—as a result of the pillow found on her face—was unjustly prejudicial because it was not based on any scientific proof or knowledge.

The State responds that this testimony was not improper because the police detective's testimony was based on "personal professional experiences" and because defense counsel had been able to question the police detective about the foundation for his conclusions.

We conclude that the district court erred in allowing this testimony to come into evidence. Under NRS 50.275, only a qualified

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[5]See Grey v. State, 124 Nev. ___, ___, 178 P.3d 154, 163 (2008).

[6]NRS 50.275 provides: "If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by special knowledge, skill, experience, training or education may testify to matters within the scope of such knowledge."

expert could provide testimony as to whether the victim's face being covered with a pillow established that the killer knew the victim.

Despite the introduction of this testimony, however, we conclude that there was other abundant evidence in the record establishing Lennon's guilt beyond a reasonable doubt.[7] Thus, even if the district court had not allowed the police detective to testify that the victim's face being covered with a pillow established that the killer knew the victim, there was other abundant evidence introduced at trial that established beyond a reasonable doubt that Lennon and the victim were known acquaintances and that Lennon had killed and robbed the victim.[8]

Therefore, we conclude that the district court's error in allowing the aforementioned testimony to come into evidence amounted to harmless error because there is overwhelming evidence in the record establishing Lennon's guilt beyond a reasonable doubt.[9]

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[7]See Chapman v. California, 386 U.S. 18, 24 (1967).

[8]In reaching our conclusion, we note that the other abundant evidence establishing Lennon's guilt beyond a reasonable doubt, among other things, includes: Lennon having possession of the victim's purse after the time of the victim's death; the strap from this purse, among other ligatures, being tied around the victim's neck; the victim being known to be protective of her purse to the extent that she would never have given her purse to anyone in order to help her find a new one; video footage from the purported day of the victim's death showing the victim having a meal with Lennon and showing the victim wearing the same clothes that she was wearing when her body was found; DNA evidence found on the victim's fingernails indicating a partial match with Lennon; and the victim's broken fingernail found at the crime scene indicating that a struggle had taken place.

[9]See Butler v. State, 120 Nev. 879, 905, 102 P.3d 71, 89 (2004).

The absence of flies and larvae at the crime scene

Lennon argues that the district court committed constitutional error when it allowed a police detective to testify, over objection,[10] that the absence of flies and larvae at the crime scene established the date on which the victim was killed.

Lennon contends that the district court erred in admitting the police detective's testimony as to flies and larvae because it allowed a lay witness to offer an opinion that only an expert witness could provide. Lennon argues that there was no evidence presented that the police detective was qualified to gather, examine, and analyze specimens or was qualified to reach a valid conclusion on this "highly specific topic." Lennon argues that under NRS 50.275, the police detective needed specialized knowledge to testify as to what the presence or absence of flies and larvae meant. Consequently, while citing to Lord v. State,[11] Lennon argues that the police detective's experience as a detective did not provide a sufficient basis for him to conclude that the absence of flies and larvae at the crime scene established the date on which the victim was killed.

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[10]The record reveals that while defense counsel had raised an objection to the police officer's testimony when he had started talking about flies and larvae, defense counsel failed to object or renew the objection when the police officer went outside the district court's permitted scope in discussing flies and larvae—upon defense counsel's objection, the district court had ruled that the police detective could testify whether he saw flies or larvae at the crime scene, but could not reach a conclusion as to what the absence of flies or larvae had meant. Because defense counsel failed to object to the police detective going outside the scope of what the district court allowed, we have reviewed this purported error under a plain error standard. See Grey, 124 Nev. at ___, 178 P.3d at 163.

[11]107 Nev. 28, 806 P.2d 548 (1991).

In Lord, we held that the district court erred when it allowed a detective to testify that in his opinion, which was based on his experience as a law enforcement officer, certain minor injuries on the defendant indicated that the defendant had recently been in a fight; we concluded that it was error to allow this testimony to come into evidence because the detective was not qualified as a medical expert under NRS 50.275.[12] We additionally concluded that this error did not prejudice the defendant's substantial rights because there was other strong evidence of guilt and because defense counsel was able to establish on cross-examination that the detective was uncertain about how fresh the wounds were and that he believed that the wounds could have been caused by a simple accident rather than a fight.[13]

Nevertheless, Lennon asserts that because the date of the victim's death was a critical issue, any evidence on this point was highly significant. Consequently, Lennon contends that the error could not be deemed harmless.

We conclude that under our holding in Lord, it was not plain error for the police detective to testify as to the absence of flies and larvae establishing the day on which the victim was killed. As in Lord, defense counsel here was able to put the police detective's credibility and authority to make his conclusion relating to flies and larvae into question. Further, because defense counsel was able to question a forensic pathologist before the jury about room temperature, which circumstantially addressed the

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[12]Id. at 33-34, 806 P.2d at 551.

[13]Id. at 34, 806 P.2d at 551.

police detective's testimony as to flies and larvae, Lennon's substantial rights were not affected.[14]

We also note that during cross-examination, the police detective had stated that the absence of flies and larvae at the crime scene was a mere factor for him in drawing the conclusion that the victim was killed on a particular day; thus, the absence of flies and larvae at the crime scene was not the sole basis for his conclusion.

In any case, while the date of the victim's murder was a critical issue, the police detective's testimony as to flies and larvae was not the only grounds upon which the jury could conclude that the victim was killed by Lennon before he had moved away; there was other abundant evidence in the record establishing Lennon's guilt beyond a reasonable doubt.[15] Consequently, as in Lord, we conclude that Lennon's substantial rights were not affected with the introduction of the police detective's testimony relating to the absence of flies and larvae at the crime scene.[16]

Therefore, we conclude that the district court did not commit plain error in allowing this testimony to come into evidence.

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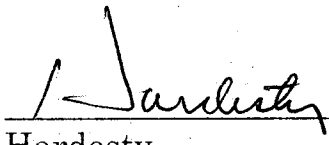
[14]See id.; see also Nelson v. State, 123 Nev. ___, ___, 170 P.3d 517, 524 (2007) ("As a general rule, an appellant must demonstrate that the error was prejudicial in order to prove that it affected his substantial rights.").

[15]See Chapman v. California, 386 U.S. 18, 24 (1967).

[16]107 Nev. at 34, 806 P.2d at 551.

As such, we conclude that Lennon's arguments on appeal lack merit.[17] Accordingly, we

ORDER the judgment of the district court AFFIRMED.



_____, J.
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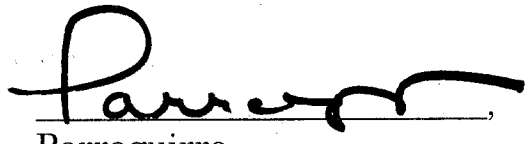

_____, J.
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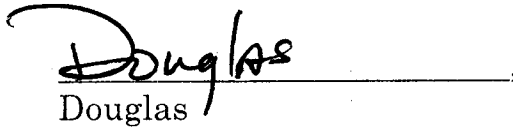

_____, J.
Douglas

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[17]Lennon additionally argues that the State's "maligning" of defense counsel during closing arguments amounted to prosecutorial misconduct, which deprived him of a fair trial. We conclude that the State's remarks during closing arguments that defense counsel was deluded did not amount to plain error. Though inappropriate, these remarks did not have a prejudicial impact on the verdict when viewed in the context of the trial as a whole, and they did not seriously affect the integrity or public reputation of the judicial proceedings. See Rose v. State, 123 Nev. ___, ___, 163 P.3d 408, 418 (2007).

We further note that defense counsel's comment that this was the weakest case that he had ever seen in Clark County was also inappropriate. Thus, we do not condone the attempts made by either the State or defense counsel to disparage opposing counsel. See Williams v. State, 103 Nev. 106, 111, 734 P.2d 700, 703-04 (1987).

cc: Hon. Valerie Adair, 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