

IN THE SUPREME COURT OF THE STATE OF NEVADA

JIM BASS HOLDEN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47698

FILED

OCT 17 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *JMB*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of burglary while in possession of a firearm, one count of conspiracy to commit murder, one count of extortionate collection of a debt, and one count of first-degree murder with the use of a deadly weapon. Eighth Judicial District Court, Clark County; David Wall, Judge. The district court sentenced appellant Jim Bass Holden to life with the possibility of parole for murder, with an equal and consecutive term for the use of a deadly weapon. The district court further sentenced Holden to concurrent prison terms of varying lengths for the remaining counts.

Holden first contends that his right to due process was violated because the prosecutor characterized the decedent as a "victim." Holden argues that to allow the prosecutor to so characterize the decedent "in a case where the defendant claims that he acted in self-defense creates an inference of guilt and denies the defendant's due process right to a fair trial." We note, however, that Holden never claimed that he acted in self-defense. Rather, Holden's defense was that the decedent was shot by a third party. We therefore conclude that even if the district court erred by allowing the prosecutor to refer to the decedent as a "victim," Holden has not demonstrated that he suffered any prejudice.

Holden next contends that the district court improperly excluded the testimony of a proposed expert on false confessions. The proposed expert would have testified that under some circumstances, individuals falsely confess.

NRS 50.275 allows for the admission of “scientific, technical or other specialized knowledge [that] will assist the trier of fact to understand the evidence or to determine a fact in issue.” The admissibility of expert testimony is within the sound discretion of the district court.¹ In the instant case, the district court found that the proffered evidence was not helpful because whether Holden might have falsely confessed to protect his family was not an area of scientific inquiry. We conclude that the district court did not abuse its discretion.

Holden also contends that the district court erred by taking judicial notice of the fact that a witness had identified Holden’s co-conspirator as being present when the murder occurred. The witness made the identification during the co-conspirator’s preliminary hearing. Whether to take judicial notice of a fact is within the trial court’s discretion.²

In this case, the court’s judicial notice was based on a certified transcript from the preliminary hearing, and so the fact that the witness had identified the co-conspirator was not subject to reasonable dispute. The record does not support Holden’s argument that the taking of judicial notice of the earlier identification denied him to opportunity to challenge the witness on her memory and any potential bias. The witness herself

¹Smith v. State, 100 Nev. 570, 572, 688 P.2d 326, 327 (1984).

²NRS 47.150; see also NRS 47.130.


testified that she had previously identified the co-conspirator, and defense counsel could have cross-examined her as to her memory and bias at that point. We therefore conclude that Holden's contention is without merit.

Finally, Holden contends that the district court erred by allowing a medical examiner to testify. Specifically, Holden argues that there was improper foundation because Dr. Alane Olson, the medical examiner who testified, was not the medical examiner who actually conducted the autopsy.

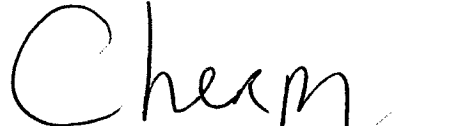
The district court allowed Dr. Olson to review the autopsy report and offer her expert testimony as to the decedent's cause of death. NRS 50.285 allows that the facts or data upon which an expert bases her opinion may either be perceived by her or made known to her before the hearing. We conclude that the district court did not err by allowing Dr. Olson's testimony.

Having considered Holden's contentions and concluded that they are without merit, we

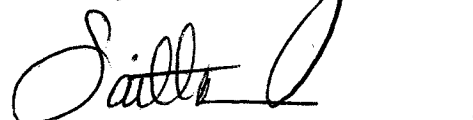
ORDER the judgment of conviction AFFIRMED.

 J.

Gibbons

 J.

Cherry

 J.

Saitta

cc: Hon. David Wall, District Judge
Bret O. Whipple
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk