

IN THE SUPREME COURT OF THE STATE OF NEVADA

LEONARD W. HILL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47991

FILED

FEB 29 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Appeal from a judgment of conviction, pursuant to jury verdict, of one count of first-degree murder. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

FACTS

In the early morning of December 12, 2005, appellant Leonard Hill and Robin Martin, a romantically involved couple, got into a loud argument at their shared apartment in Las Vegas, Nevada. The couple had ended their relationship, and Hill was in the process of moving out. A little after midnight, neighbors called the police. The police arrived and, after determining that Hill and Martin had cooled down and planned to sleep in separate bedrooms, left the apartment. Shortly after the police left, neighbors again heard shouting and a woman screaming, followed by a loud crash, and then silence. A neighbor again called the police.

When the police arrived for a second time, Hill refused to open the apartment door for twenty minutes. After Hill eventually opened the door, police officers found Robin Martin's body on the floor in the bedroom. The cause of death was later determined to be strangulation. Officers also found a knife on the dining room floor. Hill was largely uninjured, but had sustained several cuts on his left forearm, and a scratch on his forehead. He made several spontaneous statements to the police

indicating that Martin had attacked him with a knife, and he had strangled her in self-defense.

Among other testimony, Medical Examiner Alane Olson testified that while a person generally becomes unconscious after 10 to 15 seconds of continuous pressure to the neck, a person must apply continuous pressure for at least three to four minutes to cause death by strangulation. This was a change from her preliminary hearing testimony, where Dr. Olson indicated that death could occur after 60 to 120 seconds of continuous pressure to the neck. Crime Scene Analyst Gary Reed further testified regarding the nature of defensive wounds, indicating that a person who defends himself from a knife attack will generally sustain "gashes" or "stab injuries" to the hands, webbing of fingers, and underside of the arms. The State had not previously indicated that Reed would offer this testimony.

A jury convicted Hill of first-degree murder, and the district court sentenced him to life in prison, with the possibility of parole after twenty years.

DISCUSSION

On appeal, Hill asserts numerous assignments of error. While the majority of these assignments of error lack merit, we conclude that the erroneous admission of expert testimony by Dr. Olson and CSA Reed, as well as several instances of prosecutorial misconduct, warrant reversal.

Admission of expert testimony

Trial courts have wide discretion in determining the relevance and admissibility of evidence.¹ This court reviews decisions to admit or exclude evidence under an abuse of discretion standard.² Accordingly, a district court's decision to admit expert testimony will not be overturned absent a clear abuse of discretion.³

NRS 174.234(2)(a) provides that at least 21 days prior to trial, each side must serve written notice of expert witnesses containing “[a] brief statement regarding the subject matter on which the expert witness is expected to testify and the substance of his testimony.” The parties also have a continuing duty to supplement this filing as new information arises.⁴

Here, it appears that the State served proper initial notice of Dr. Olson’s testimony, and Dr. Olson testified at the preliminary hearing that death by strangulation could occur after one to two minutes of continuous pressure to the neck.⁵ However, at trial, Dr. Olson changed her opinion, and testified that a person would have to apply continued pressure to the neck for at least three to four minutes to cause death by strangulation. She explained that she reached this conclusion after

¹Atkins v. State, 112 Nev. 1122, 1127, 923 P.2d 1119, 1123 (1996).

²See id.

³DeChant v. State, 116 Nev. 918, 924, 10 P.3d 111, 112 (2000).

⁴NRS 174.234.

⁵The State’s notice provided only that Dr. Olson would testify as “an expert in the autopsy of Robin Martin.”

trial, and discovered that “three to four minutes is the generally accepted length of time at which death will occur following reduction or cessation of blood flow to the head.”⁶

As Dr. Olson had already given her preliminary hearing testimony that death by strangulation could occur in as little as 60 seconds, we conclude that the State’s failure to provide notice of the significant change in the substance of her testimony violated both the supplementation requirement of NRS 174.234(2)(a) as well as fundamental notions of fairness. Even if the State was also unaware of this change in testimony, Dr. Olson’s new testimony dealt a severe blow to Hill’s argument that he acted in self-defense, and Hill was not afforded any opportunity to secure his own expert to rebut this testimony. Accordingly, we conclude that the district court abused its discretion in admitting the changed testimony of Dr. Olson.

Similarly, we conclude that the district court abused its discretion in admitting CSA Reed’s testimony because the State violated NRS 174.234(1)(a). The State’s notice of expert witnesses indicated that Reed would “testify as an expert in crime scene analysis.” However, at trial, in addition to testimony regarding the crime scene at Hill and Martin’s apartment, the district court allowed Reed to testify regarding the general nature of defensive wounds.⁷ We conclude that the district

⁶While Hill objected to the admission of this changed testimony, it does not appear that he requested a continuance to procure his own expert.

⁷The district court rejected the State’s attempt to have Reed testify as to whether Hill’s injuries were consistent with defensive wounds, concluding that Reed was not qualified to so testify.

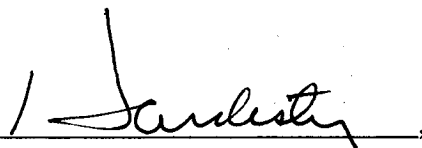
court abused its discretion in admitting Reed's testimony related to defensive wounds because the State's expert witness notice provided no indication that Reed would testify regarding the nature of defensive wounds. And, as with Dr. Olson's testimony, Hill had no opportunity to secure his own expert to rebut Reed's testimony.⁸

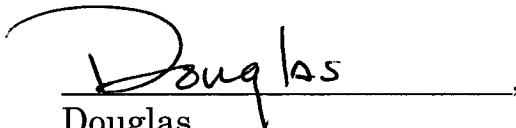
Given the detrimental impact that both CSA Reed's and Dr. Olson's testimony had on Hill's assertion that he acted in self-defense, we further conclude that these errors were not harmless, and warrant reversal.

CONCLUSION

For the reasons stated above, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.⁹


_____, J.
Hardesty


_____, J.
Douglas

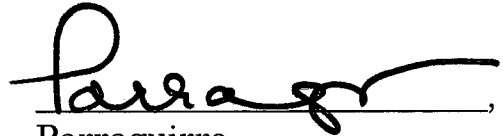
⁸Hill did not request a continuance.

⁹We have reviewed Hill's remaining assignments of error, and conclude that they lack merit. We specifically note that Hill's post-arrest spontaneous statements to the police were likely voluntary, and not a product of custodial interrogation, indicating that their admission did not violate Miranda v. Arizona. 384 U.S. 436, 479 (1966).

cc: Hon. Michelle Leavitt, 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

PARRAGUIRRE, J., dissenting:

I disagree with the majority's conclusion that a new trial is warranted based on the expert testimony in this case. Having reviewed the record, I believe that a simple request for a continuance could have solved any potential problems raised by the expert testimony at issue here. Moreover, both witnesses in question—Dr. Alane Olson and Crime Scene Analyst Gary Reed—were subject to cross-examination regarding their challenged testimony. As a result, I believe that any error that occurred in the admission of their testimony was harmless, and I would affirm the judgment of the district court.

 J.
Parraguirre