

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES E. STEWART,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48370

FILED

JUN 08 2007

ORDER OF AFFIRMANCE

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

This is a direct appeal from a judgment of conviction, pursuant to a jury verdict, of one count of second-degree murder with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge. The district court sentenced appellant Charles Stewart to serve two consecutive terms of life in prison with the possibility of parole in 10 years on each term.

Sufficiency of the evidence

Stewart contends that the evidence was insufficient to support his conviction for second-degree murder with the use of a deadly weapon. We disagree.

Our review of the record reveals sufficient evidence to establish Stewart's guilt beyond a reasonable doubt as determined by a rationale trier of fact.¹ Here, evidence was admitted that the victim, James Phillips, was going to meet Stewart to collect some money. Phillips entered a car registered in Stewart's name, and he was fatally shot after

¹See Wilkins v. State, 96 Nev. 367, 374, 609 P.2d 309, 313 (1980); see also Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998).

he exited the vehicle. The gun used in the shooting was observed by a witness to the shooting as being retrieved by the shooter between the driver's and passenger's seat of the vehicle. Stewart was observed immediately after the shooting by another witness as being a passenger in the vehicle and throwing the gun out of the vehicle's window. Stewart's fingerprints were lifted from the gun, and the location of his thumbprint was consistent with pointing the gun. Stewart's vehicle was later found with Stewart's fingerprints on both the driver's side and passenger's side of the vehicle. And the vehicle had been wiped with oil, which indicates an attempt was made to remove any fingerprints from it.

Although some of the evidence against Stewart was circumstantial, it is well-settled that "[c]ircumstantial evidence alone may sustain a conviction."² Moreover, physical evidence, including fingerprints retrieved from the gun, linked Stewart to the murder. We conclude that the above evidence, viewed in a light most favorable to the State,³ was more than sufficient for a reasonable jury to find Stewart guilty beyond a reasonable doubt of second-degree murder with the use of a deadly weapon.⁴ Stewart is not entitled to relief on this claim.

²McNair v. State, 108 Nev. 53, 61, 825 P.2d 571, 576 (1992).

³Because we conclude that the evidence was sufficient to support Stewart's conviction as an aider and abettor, we do not reach whether the evidence was also sufficient to support his conviction as a principal or co-conspirator. See Bolden v. State, 121 Nev. 908, 914, 124 P.3d 191, 195 (2005); Sharma v. State, 118 Nev. 648, 652, 56 P.3d 868, 870 (2002); NRS 195.020.

⁴See Keys v. State, 104 Nev. 736, 738, 766 P.2d 270, 271 (1988); NRS 200.010; NRS 200.020; NRS 200.030 (1), (2).

References to Stewart's moniker "No Good"

Stewart also contends that the prosecutor committed reversible misconduct by violating a district court order and repeatedly referring to Stewart during trial by his moniker "No Good." We disagree.

On the morning of the trial, Stewart moved the district court to preclude the prosecutor's use of his moniker "No Good" during trial. The district court later ruled:

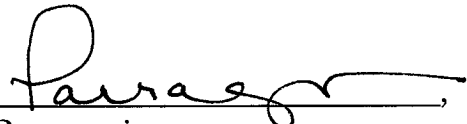
I'm going to grant the motion to a limited extent. I'm not going to allow the prosecutor's [sic] to call him that, I don't want the police to call him that; except in the context if they have to say: Does he have a moniker to put it together. The people on the street that know him as that are going to have to refer to him the way they know him, and so we'll try to kept it to a minimum, but the people will have to identify him the way they know him.

At trial, Phillip's girlfriend, Shannon Crawford, testified that she only knew of Stewart by his moniker, and she did not know his real name. Crawford and the prosecutor referred to Stewart as "No Good" a total of seven times during Crawford's testimony. Additionally, while describing the course of the investigation, LVMPD Detective Tod Williams explained that Stewart was known by the moniker "No Good," which was tattooed on his left shoulder. Detective Williams also recounted statements made by Crawford that referred to a man she knew as "No Good." Detective Williams and the prosecutor referred to Stewart as "No Good" a total of four times.

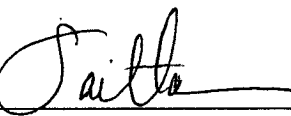
We conclude that the references to Stewart as "No Good" by Crawford, Detective Williams, and the prosecutor generally occurred within the limits of the district court's pretrial order.

Given the strength of the evidence supporting Stewart's conviction, we conclude that any prejudice that resulted from the use of his moniker was harmless.⁵ Stewart is not entitled to relief on this basis. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Parraguirre


_____, J.
Hardesty


_____, J.
Saitta

cc: Hon. Stewart L. Bell, District Judge
Gregory L. Denué
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

⁵See Hardison v. State, 104 Nev. 530, 532, 763 P.2d 52, 54 (1988) (concluding that a police officer's reference to a defendant's street nickname was "manifestly harmless" in light of the evidence of the defendant's guilt).