

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT MARC LEEDS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48503

FILED

MAY 29 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count each of first-degree murder with the use of a deadly weapon, attempted murder with the use of a deadly weapon, battery with the use of a deadly weapon resulting in substantial bodily harm, and burglary while in possession of a deadly weapon. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Appellant Robert Marc Leeds was sentenced to life with the possibility of parole after serving a minimum of 20 years for first-degree murder, plus an equal and consecutive term of life with the possibility of parole after serving a minimum of 20 years for the deadly weapon enhancement; 72 to 240 months for the attempted murder, plus an equal and consecutive term for the deadly weapon enhancement, to be run concurrently with count one; and 48 to 156 months for the burglary, to run concurrently with counts one and two. The battery charge was dismissed.

On appeal, Leeds argues: (1) the district court abrogated his federal and state constitutional rights by amending the information to include new theories of liability and by instructing the jury on those theories at the close of evidence, (2) the district court erred by forcing defense counsel to disclose Dr. Krelstein's recorded interviews with Leeds, (3) the district court's exclusion of psychiatric testimony critical to the

defense theory violated his federal and state constitutional rights, and (4) the district court's admission of his computer and its contents violated Leeds' statutory rights as well as his federal and state constitutional rights.¹ For the reasons set forth below, we conclude that Leeds' contentions fail, and therefore, affirm the judgment of conviction.

The parties are familiar with the facts and we do not recount them except as necessary for our disposition.

¹Leeds also argues (1) the State's use of peremptory challenges to strike a minority juror violated his due process and equal protection rights; (2) the district court erred by admitting evidence of his conduct the night before the homicide; (3) the district court erred by admitting cumulative and gruesome photographs; (4) the district court admitted hearsay testimony in violation of his constitutional rights; (5) the district court erred by allowing Detective Branchini's expert testimony in the absence of the statutorily required pretrial notification; (6) the district court erred by admitting testimony suggesting that Leeds and defense counsel collaborated in hiding Leeds' computer from law enforcement; (7) the prosecutors committed misconduct by introducing evidence of Leeds' attorney-client-privileged communications and violated his constitutional rights; (8) Leeds' deadly weapon convictions must be stricken as they are based on an unconstitutionally broad definition of deadly weapon; (9) the district court erred by proffering jury instructions that were confusing, misleading, and misstated the law; (10) the district court erred by instructing the jury on, and allowing the State to argue, the doctrine of transferred intent; (11) the prosecutors' repeated misconduct in opening statement and closing argument warrants reversal of Leeds' conviction; (12) the district court's use of a general verdict form requires reversal of the first-degree murder and attempted murder charges as it did not reveal whether the jury unanimously found Leeds guilty based on a legally appropriate liability theory; (13) the State failed to present sufficient evidence to sustain the convictions; and (14) the cumulative errors warrant reversal. Having fully considered these issues, we conclude that they are without merit.

Amendment of the information to include felony murder

Leeds argues that the district court abrogated his federal and state constitutional rights by amending the information to include new theories of liability. He contends that the State should have never been allowed to amend the information to add the additional liability theory of felony murder because felony murder does not apply to a burglary charge when the intended offense was homicide.² We disagree.

Leeds was originally charged with first-degree murder and attempted murder; later he was also charged with burglary with intent to commit murder therein, among other charges. Three weeks before trial, the State was allowed to amend the information to include a felony murder theory of liability to the first-degree murder charge and to amend the burglary charge to allege that Leeds intended to commit assault and/or battery.

“[A]mendment of an information is usually within the trial court’s discretion, [and] that discretion is abused if an ‘additional or different offense is charged’” or the substantial rights of the defendant are prejudiced. Green v. State, 94 Nev. 176, 177, 576 P.2d 1123, 1123 (1978) (quoting NRS 173.095; Hollander v. State, 82 Nev. 345, 353, 418 P.2d 802, 806 (1966)).

This court previously held in State v. Contreras that Nevada’s statutory scheme allows a felony murder allegation where the predicate felony is burglary alleging an entry with the intent to assault and/or

²Leeds also argues that the amendment failed to give him adequate notice of the alleged misconduct. We conclude that this argument is without merit.

batter. 118 Nev. 332, 337, 46 P.3d 661, 664 (2002). In coming to its conclusion in Contreras, this court relied upon the New York rationale that “the likelihood of harm to individuals is greater when they are encountered in a dwelling or an enclosed space where escape or outside intervention is less likely than if they are encountered on the street.” Id. (adopting the rationale of People v. Miller, 297 N.E.2d 85, 87-88 (N.Y. 1973)).

Here, the amended burglary charge alleged that Leeds intended to commit assault and/or battery. This was not an additional or different charge and it did not affect Leeds’ substantial rights. We decline to revisit the decision made in Contreras, and thus, the felony murder doctrine applied. Therefore, the district court did not abuse its discretion in allowing the State to amend the information to add the additional theory of liability.

Disclosure of psychiatrist’s interviews

Next, Leeds argues the district court erred by forcing defense counsel to disclose to the State Dr. Krelstein’s recorded psychiatric interviews with Leeds. Leeds contends that granting the State access to the defense expert’s privileged information amounts to reversible error. We disagree.

Resolution of discovery issues is normally within the district court’s discretion. Lisle v. State, 113 Nev. 679, 695, 941 P.2d 459, 470 (1997).

We conclude that Leeds’ claim that Dr. Krelstein’s interviews with Leeds were privileged work product has no merit. “At its core, the work-product doctrine shelters the mental processes of the attorney, providing a privileged area within which he can analyze and prepare his

client's case.” Id. (quoting United States v. Nobles, 422 U.S. 225, 238 (1975)). NRS 174.245(2)(a) codifies this privilege, providing that “[a]n internal report, document or memorandum that is prepared by or on behalf of the defendant or his attorney in connection with the investigation or defense of the case” is not subject to discovery. The district court reviewed the interviews in camera and ordered defense counsel to disclose a redacted version of the interviews, in an attempt to preclude access to any material that could possibly be interpreted as privileged work product. Leeds has failed to show that the redacted versions of Dr. Krelstein’s interviews contained the mental processes of defense counsel in analyzing and preparing Leeds’ defense.

Additionally, NRS 50.305 states, in pertinent part, that an “expert may testify in terms of opinion or inference and give his reasons therefor without prior disclosure of the underlying facts or data, unless the judge requires otherwise.” NRS 50.305 gives the district court discretion to require an expert to disclose the underlying facts or data that he utilized in forming his opinions. We conclude that the district court did not abuse its discretion by requiring the disclosure of Dr. Krelstein’s recorded psychiatric interviews with Leeds, which formed the basis of his opinion.

Psychiatric testimony regarding diminished capacity

Leeds also contends that the district court erred when it excluded the psychiatric testimony of Dr. Krelstein. Leeds argues that by excluding testimony critical to the defense’s theory of the case, the district court violated his federal and constitutional rights. We disagree.

“A district court’s decision to admit or exclude evidence will not be reversed on appeal unless it is manifestly wrong.” Archanian v.

State, 122 Nev. 1019, 1029, 145 P.3d 1008, 1016 (2006). In Crawford v. State, this court stated “the technical defense of diminished capacity is not available in Nevada.” 121 Nev. 744, 757, 121 P.3d 582, 591 (2005); see also Fox v. State, 73 Nev. 241, 244, 316 P.2d 924, 926 (1957) (stating that if a mind is not insane, it is capable of knowing right from wrong, with no mention of a middle ground allowing for a defense of diminished capacity). Although Leeds argues that Dr. Krelstein’s testimony does not implicate a defense of diminished capacity, the district court found otherwise. Dr. Krelstein was not allowed to testify about Leeds’ state of mind at the time of the murder because this testimony would have implicated a diminished capacity defense. We conclude the district court was correct, Dr. Krelstein’s testimony would have implicated a diminished capacity defense. Because Dr. Krelstein’s testimony would have implicated a diminished capacity defense, which Nevada does not recognize, and the defense failed to articulate some other basis for his testimony, the district court did not err by refusing to allow his testimony.

Computer evidence


Finally, Leeds argues that the district court’s admission of his computer and its contents violated his statutory rights as well as his federal and state constitutional rights, because the search warrant was unlawful. Leeds contends that the warrant did not specify what evidence the government sought that pertained to the case, was nonsensical and unspecified, and thus, was unconstitutionally broad and factually impossible.

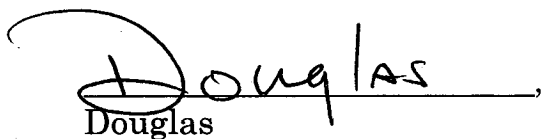
We note that Leeds raises this issue for the first time on appeal. Leeds did not file a pretrial motion to suppress and/or challenge the validity of the search warrant in the district court. Under NRS

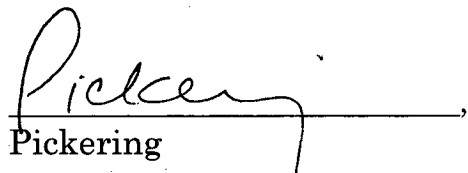
174.125(1), the defendant bears the burden of making any motion to suppress. Also, Leeds failed to object at trial to the admission of this evidence. The failure to raise an objection generally precludes appellate consideration. See Estes v. State, 122 Nev. 1123, 1131, 146 P.3d 1114, 1120 (2006). Under plain error review, this court determines whether there was an error, whether the error was “plain” or clear, and whether the error affected the defendant’s substantial rights. Green v. State, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003); NRS 178.602 (“Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.”). The latter inquiry requires that the defendant demonstrate actual prejudice. Green, 119 Nev. at 545, 80 P.3d at 95.

Leeds failed to object to the admission of the evidence from the computer as well as the computer itself and we decline to review the issue here because we conclude that even if the warrant was deficient, the alleged error did not affect Leeds’ substantial rights. In this case, Leeds failed to demonstrate actual prejudice given the strength of the State’s case against him. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 J.
Parraguirre

 J.
Douglas

 J.
Pickering

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