


IN THE SUPREME COURT OF THE STATE OF NEVADA

JUAN MANUEL ALCARAZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48642

FILED

MAR 10 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury trial, of one count each of second-degree murder with the use of a deadly weapon and carrying a concealed firearm. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge. The district court sentenced appellant Juan Manuel Alcaraz to serve a prison term of life with parole eligibility after 10 years for the murder count, with an equal and consecutive term for the deadly weapon enhancement, and a consecutive term of 24 to 60 months for the concealed firearm count.

Alcaraz contends that the evidence presented at trial was insufficient to support the jury's finding of guilt for second-degree murder. Specifically, Alcaraz contends that the victim provoked the attack and Alcaraz acted in the "heat of the moment" and in self-defense.

Our review of the record on appeal, however, reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a

rational trier of fact.¹ In particular, we note that the jury was presented with a videotape of the incident. The videotape showed that the victim “punched” Alcaraz, but Alcaraz did not appear to be injured. Alcaraz then stepped back from the victim, inhaled on his cigarette, pulled a handgun from his waistband, and shot the victim six times. Alcaraz then fled the scene and disposed of his clothes and the weapon.

The jury could reasonably infer from the evidence presented that Alcaraz unlawfully killed the victim with “malice aforethought.”² It is for the jury to determine the weight and credibility to give conflicting testimony, and the jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict.³

Alcaraz next contends that the prosecutor committed misconduct during his rebuttal closing argument by suggesting that the defense’s theory of voluntary manslaughter was “ridiculous and an insult to justice.” The prosecutor stated that

The defense is trying to say that this is self defense. That it is not. He’s now trying to argue that this was done as a manslaughter, and so he, during the opening statements, had been throwing out the buzz words for manslaughter, this

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

²NRS 200.010(1); NRS 200.030(2).

³See Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981); see also McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

impulsive reaction, this highly provoking injury. Where there is no sufficient time to deliberate your thought process, oh, no, this man, that's a freebie for him. This man knew what he was doing.

Defense counsel objected to the statement and the district court sustained the objection.

“[A] criminal conviction is not to be lightly overturned on the basis of a prosecutor's comments standing alone.”⁴ Prosecutorial misconduct may constitute harmless error when there is overwhelming evidence of guilt and this court can determine that no prejudice resulted to the defendant.⁵ A prosecutor's remarks are prejudicial if they “so infected the proceedings with unfairness as to make the results a denial of due process.”⁶

In this case, we conclude that any alleged prosecutorial misconduct was not prejudicial. The State presented overwhelming evidence of Alcaraz's guilt, including a videotape of the murder. Additionally, the district court took appropriate curative measures immediately after the statement was made, sustaining defense counsel's objection and admonishing the prosecutor. Accordingly, reversal of

⁴Hernandez v. State, 118 Nev. 513, 525, 50 P.3d 1100, 1108 (2002) (quoting United States v. Young, 470 U.S. 1, 11 (1985)).


⁵See Pellegrini v. State, 104 Nev. 625, 628-29, 764 P.2d 484, 487 (1988).

⁶Thomas v. State, 120 Nev. 37, 47, 83 P.3d 818, 825 (2004) (citing Darden v. Wainwright, 477 U.S. 168, 181 (1986)).

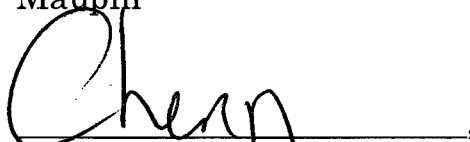
Alcaraz's conviction is not warranted on the basis of prosecutorial misconduct.

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

ORDER the judgment of conviction AFFIRMED.

 J.

Maupin

 J.

Cherry

 J.

Saitta

cc: Hon. Stewart L. Bell, 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