

IN THE SUPREME COURT OF THE STATE OF NEVADA


ALBERT HOLGUIN A/K/A ALBERTO
M. HOLGUIN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48711

FILED

JAN 09 2008

ORDER OF AFFIRMANCE

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of conspiracy to commit burglary (count I), burglary (count II), and voluntary manslaughter without the use of a deadly weapon (count III). Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge. The district court sentenced appellant Albert Holguin to serve a jail term of 12 months for count I, a consecutive prison term of 24-60 months for count II, and a consecutive prison term of 48-120 months for count III.

Holguin contends that the district court erred by refusing his proffered jury instruction on self-defense to the charge of felony murder and committed reversible error by instructing the jury as follows:

Self defense is a defense as a matter of law to an allegation of deliberative, intentional murder. It is not a defense to first degree felony murder.

We conclude that Holguin's contention is without merit.

"The district court has broad discretion to settle jury instructions, and this court reviews the district court's decision for an abuse of that discretion or judicial error."¹ In this case, even assuming, without deciding, that Holguin was entitled to a jury instruction on self-defense as a defense to felony murder, we conclude that any error was harmless beyond a reasonable doubt.² The jury did not find Holguin guilty of first-degree murder under any of the four alternative theories presented by the State, including felony murder, and instead, found him guilty of voluntary manslaughter without the use of a deadly weapon,³ thereby rejecting the notion that the killing was committed during the perpetration or attempted perpetration of a felony.⁴ Therefore, Holguin cannot demonstrate that he was prejudiced by the allegedly erroneous, yet immaterial, instruction above, or that there was a likelihood of a different

¹Crawford v. State, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005); see also Jackson v. State, 117 Nev. 116, 120, 17 P.3d 998, 1000 (2001) (holding that "[a]n abuse of discretion occurs if the district court's decision is arbitrary or capricious or if it exceeds the bounds of law or reason").

²Crawford, 121 Nev. at 754, 121 P.3d at 588-89.

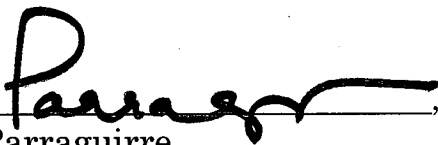
³See NRS 200.040.

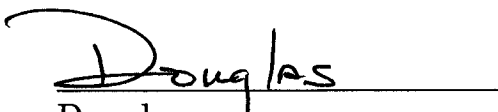
⁴See NRS 200.030(1)(b).

verdict had the district court instructed the jury as he requested.
Accordingly, we

ORDER the judgment of conviction AFFIRMED.⁵


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

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

⁵Because Holguin is represented by counsel in this matter, we decline to grant him permission to file documents in proper person in this court. See NRAP 46(b). Accordingly, this court shall take no action and shall not consider the proper person documents Holguin has submitted to this court in this matter.