IN THE SUPREME COURT OF THE STATE OF NEVADA

DE RAC ADRIAN HANLEY A/K/A DERAC ADRIAN HANLEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48826

FILED

MAY 05 2009

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 verdict, of one count of second-degree murder with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

A jury convicted De Rac Adrian Hanley of second-degree murder with the use of a deadly weapon, for which the district court sentenced him to life in prison, with the possibility of parole after a minimum of 10 years, plus an equal consecutive term for a deadly weapon enhancement. On appeal, Hanley challenges NRS 193.165, the deadly weapon enhancement statute, as unconstitutionally vague. He also complains that the district court failed sua sponte to recognize his statement to the police as involuntary and exclude it and that it rejected the jury questionnaire Hanley proposed shortly before trial. We reject each of Hanley's assignments of error and affirm.[1]

[1]Hanley also challenges the district court's denial of his proper person motion asserting speedy trial rights, its refusal of his proposed jury instructions on justifiable homicide, and the instructions given on voluntary intoxication, excessive force and self-defense, and the use of a deadly weapon. He further challenges the district court's admission of

continued on next page . . .

Deadly weapon enhancement

Although he did not raise this argument in the district court, Hanley challenges his deadly weapon enhancement, arguing it is based on an unconstitutionally vague definition of "deadly weapon." Because Hanley did not raise this constitutional challenge below, we review it for plain error. See Browning v. State, 124 Nev. ____, ____, 188 P.3d 60, 71 (2008). To establish plain error, Hanley must demonstrate that the error was so obvious it is apparent from a casual review of the record and that the error affected his substantial rights. See Nelson v. State, 123 Nev. ____, ____, 170 P.3d 517, 524 (2007). Hanley cannot meet this test.

In Hernandez v. State, 118 Nev. 513, 528, 50 P.3d 1100, 1110-11 (2002), this court considered and rejected essentially the same vagueness challenge to NRS 193.165 Hanley makes here. Since its post-Zgombic v. State, 106 Nev. 571, 798 P.2d 548 (1990), amendment, NRS 193.165 includes both a "functional" and an "inherently dangerous" definition of "deadly weapon." Hernandez, 118 Nev. at 528, 50 P.3d at 1111. Even under the stricter "inherently dangerous" test set out in NRS 193.165(5)(a),[2] the kitchen knife with the seven-and-one-half-inch blade

---

. . . continued

certain portions of Detective Mark McNett's and defense witness Paul Daniels's testimony, and photographs of the death scene and autopsy. Finally, Hanley raises allegations concerning prosecutorial misconduct, sufficiency of the evidence and cumulative error. After careful review, we conclude that none of these arguments has merit.

[2]In 2007, NRS 193.165 was amended to include a new subsection 2, and all of the subsequent subsections were renumbered. See 2007 Nev. Stat., ch. 525, § 13, at 3188.

that Hernandez used in the commission of his crime was a "deadly weapon." Id. at 528, 50 P.3d at 1110-11. "The statute gave Hernandez fair notice that the knife was a deadly weapon for purposes of sentence enhancement." Id. at 528, 50 P.3d at 1111.

As in Hernandez, Hanley had fair notice that the twelve-and-one-half-inch-long kitchen knife that he used to kill Earl Jerome Spangenberg was a deadly weapon under NRS 193.165(6)(a) or (b). Not only was the knife, by its design and construction, inherently capable of causing substantially bodily harm or death, but Hanley also used the knife in a manner that caused another's death. Hanley has not met his burden of showing the statute is impermissibly vague.

Voluntariness of statements

Next, Hanley challenges the district court's failure to sua sponte suppress his statement to police. Hanley argues his statement was involuntary because he had been under the influence of alcohol and morphine when he stabbed Spangenberg and was still under the influence several hours later when he spoke to police. Because Hanley raises this challenge for the first time on appeal, we review it for plain error. See Browning v. State, 124 Nev. ____, ____, 188 P.3d 60, 71 (2008).

"To be admissible, a confession must be made freely and voluntarily." Kirksey v. State, 112 Nev. 980, 990, 923 P.2d 1102, 1109 (1996). In order to be voluntary, "[a] confession must be the product of a free will and rational intellect." Id. "[I]ntoxication alone does not automatically make a confession inadmissible." Id. at 992, 923 P.2d at 1110. For intoxication to render a Miranda waiver involuntary, a defendant must prove that he was so intoxicated that "'he was unable to

understand the meaning of his comments.'" Id. (quoting State v. Rivera, 733 P.2d 1090, 1097 (Ariz. 1987)).

While Hanley argues that he was still under the influence of alcohol and morphine he had ingested earlier that day when he gave his statement to police, Detective McNett testified to Hanley's lucidity. A responding officer testified that, while Hanley faintly smelled of alcohol and had bloodshot eyes, he understood Hanley when Hanley was responding to questions and Hanley did not need assistance walking. During the interrogation, Hanley was cooperative, talkative and appeared very lucid. Further, by all accounts, Hanley appeared to understand the significance of the surrounding events and the meaning of his comments. On this record, we cannot conclude that the district court committed plain error in admitting Hanley's statement to the police.[3]

Voir dire and jury questionnaire

Finally, Hanley challenges the district court's restrictions on voir dire, including its refusal to circulate the jury questionnaire he proposed.

NRS 175.031 states that "[t]he court shall conduct the initial examination of prospective jurors, and defendant or his attorney and the district attorney are entitled to supplement the examination by such further inquiry as the court deems proper. Any supplemental examination

---

[3]Hanley also claims that the statement was involuntary because he was emotional and "suffering from the stress of the homicide." Not surprisingly, he fails to present any authority that those conditions render a confession inadmissible. It seems probable that a suspect who has committed a homicide would be emotional and stressed. Hanley's reasoning would render almost every murder confession involuntary.

must not be unreasonably restricted." Reasonableness is key: "[B]oth the scope of voir dire and the method by which voir dire is pursued are within the discretion of the district court." Salazar v. State, 107 Nev. 982, 985, 823 P.2d 273, 274 (1991) (internal quotations and citations omitted).

The district court gave Hanley considerable latitude on voir dire. Its ruling respecting penalty questions heeded the concerns discussed in Leonard v. State, 117 Nev. 53, 67-68, 17 P.3d 397, 406 (2001), and was not unreasonable. The district court rejected Hanley's motion for leave to circulate a juror questionnaire because he did not file the motion until August 8, 2006, with trial scheduled to begin on August 21, 2006. This, too, was reasonable. The district court did not abuse its discretion in rejecting Hanley's motion for tardiness.

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

ORDER the judgment of the district court AFFIRMED.

Parraguirre, J.

Douglas, J.

Pickering, J.

cc: Hon. Jackie Glass, 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