IN THE SUPREME COURT OF THE STATE OF NEVADA

ROCHALONN M. CHAPMAN A/K/A ROCHALONN MICHAEL CHAPMAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49449

ROCHALONN M. CHAPMAN A/K/A ROCHALONN MICHAEL CHAPMAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49450

FILED

DEC 06 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY [signature]
DEPUTY CLERK

ORDER OF AFFIRMANCE

These are consolidated appeals from an order of the district court denying appellant Rochalonn Chapman's motion for a new trial and from a judgment of conviction. Eighth Judicial District Court, Clark County; Sally L. Loehrer, Judge. Pursuant to a jury verdict, the district court convicted Chapman of second-degree murder with the use of a deadly weapon and sentenced her to serve two consecutive prison terms of 10 to 25 years.

First, Chapman contends that the district court erred by denying her proposed jury instructions on the defense of others.[1] Chapman claims that in addition to instructions on self-defense she was

[1]The State presented eight self-defense instructions based on the sample instructions contained in Runion v. State, 116 Nev. 1041, 13 P.3d 52 (2000). Chapman's proposed instructions followed the State's instructions, but added the phrase "or defense of others" wherever the State's instructions said "self-defense."

entitled to instructions on defense of others because her newborn child was present at the time of the shooting.

As a general rule, "'[a] defendant in a criminal case is entitled, upon request, to a jury instruction on [her] theory of the case so long as there is some evidence, no matter how weak or incredible, to support it.'"[2] However, the district court has broad discretion in settling jury instructions and its decisions will not be disturbed absent an abuse of discretion or judicial error.[3]

Here, the district court observed that Chapman's testimony was that the victim was the one who took care of the baby, bonded with the baby, would not let Chapman have the baby, and never threatened to kill the baby. The district court noted that if Chapman's four-year-old son had been in the apartment, Chapman would have been entitled to her proposed instructions because she had presented evidence that the victim had kicked the four-year-old. The district court denied the proposed instructions because the four-year-old was not in the apartment and no evidence was presented that the victim was going to harm the baby.[4] Based on our review of the trial transcripts, we conclude that the district court did not abuse its discretion or err by denying Chapman's proposed instructions.

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[2]Harris v. State, 106 Nev. 667, 670, 799 P.2d 1104, 1105-6 (1990) (quoting Roberts v. State, 102 Nev. 170, 172-73, 717 P.2d 1115, 1116 (1986)).

[3]Jackson v. State, 117 Nev. 116, 120, 17 P.3d 998, 1000 (2001).

[4]The victim fathered the newborn baby, but not Chapman's four-year-old son.

Second, Chapman contends that the district court erred by unduly limiting her cross-examination of the State's expert witness. Chapman specifically claims that she should have been permitted to question the State's expert witness about her injuries because the expert witness requirements of NRS 174.234(2) do not apply to cross-examination and rebuttal witnesses.

The decision to admit or exclude expert testimony lies within the sound discretion of the district court and will not be disturbed absent a clear abuse of discretion.[5]

Here, the State provided notice that it intended to call Dr. Larry Simms, the Chief Medical Examiner at the Clark County Coroner's Office, to testify as an expert about the victim's cause of death. During the trial, Chapman announced that she intended to question Dr. Simms on cross-examination about her own injuries. The district court determined that because Chapman did not provide the State with the required notice she could not ask Dr. Simms to testify as an expert on anything other than the victim's cause of death.

Chapman subsequently moved to call Dr. Simms as an expert witness to rebut questions a police detective asked about Chapman's injuries during a videotaped interview, which was shown to the jury. The district court determined that Chapman's decision not to redact the questions from the videotape and the State's decision to present the videotape at trial did not open the door to admitting the testimony of an undisclosed expert witness.

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[5]Sampson v. State, 121 Nev. 820, 827, 122 P.3d 1255, 1259 (2005); see also Brown v. State, 110 Nev. 846, 852, 877 P.2d 1071, 1075 (1994).

Even assuming that the district court erred in concluding that the expert witness requirements of NRS 174.234(2) applied to cross-examination and rebuttal, we note that the questions that Chapman intended to ask Dr. Simms during cross-examine were beyond the scope of direct,[6] and that Chapman failed to demonstrate that the detective's questions about her injuries somehow opened the door for rebuttal testimony from an expert witness.[7] Under these circumstances, we conclude that the district court did not abuse its discretion by limiting Dr. Simm's expert testimony on cross-examination and excluding him as a defense rebuttal witness.[8]

Third, Chapman contends that she was denied a fair trial when the prosecutor engaged in misconduct during his closing argument. Chapman claims that the prosecutor improperly invited the jury to abandon the proof beyond a reasonable doubt standard and pursue a verdict that would make them "feel good" when he stated

> Ladies and gentlemen, domestic violence does not give someone a license to kill. Don't return that verdict that supports that domestic violence gives someone a chance to kill. Trahan

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[6]See NRS 50.115(2).

[7]See Lopez v. State, 105 Nev. 68, 81, 769 P.2d 1276, 1285 (1989) (holding that the"[a]dmission of rebuttal evidence is within the discretion of the trial court"); Morrison v. Air California, 101 Nev. 233, 236, 699 P.2d 600, 602 (1985) ("The general rule for determining whether certain rebuttal evidence is proper is 'whether it tends to counteract new matters by the adverse party.'") (quoting McGee v. Burlington Northern, Inc., 571 P.2d 784 (Mont. 1977)).

[8]See Wyatt v. State, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) (we will affirm the judgment of a district court if it reached the correct result for the wrong reason).

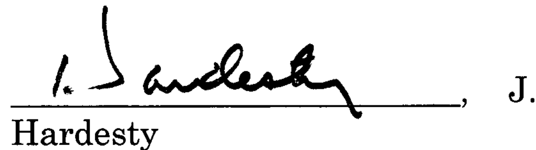
> Fields [the victim] didn't deserve to be killed. The defendant committed murder though. That's a proper verdict. It's a verdict that ultimately you can feel good about.

The test for determining whether prosecutorial misconduct deprived a defendant of a fair trial is "whether the prosecutor's statements so infected the proceedings with unfairness as to make the results a denial of due process."[9]

Here, Chapman objected to the prosecutor's statement and the district court sustained Chapman's objection, ordered the statement stricken, and admonished the prosecutor for improper argument. We conclude that the district court adequately cured any prejudice arising from the prosecutor's improper argument, Chapman received a fair trial, and Chapman was not denied due process.

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

ORDER the judgments of the district court AFFIRMED.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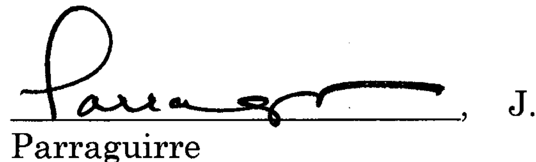
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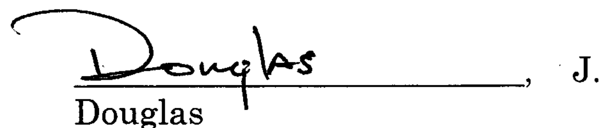
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Douglas

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[9]Rudin v. State, 120 Nev. 121, 136-37, 86 P.3d 572, 582 (2004).

cc: Hon. Sally L. Loehrer, 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