IN THE SUPREME COURT OF THE STATE OF NEVADA

GREGORY D. BOYD A/K/A GREGORY D. HOOKS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49559

FILED

JAN 27 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of conspiracy to commit murder, first-degree murder with the use of a deadly weapon, and attempted murder with the use of a deadly weapon. Eighth Judicial District Court, Clark County; James A. Brennan, Senior Judge.

In this case, appellant Gregory Boyd randomly drove up and shot two victims who were walking down the street, killing one and wounding the other. He now raises four challenges to his conviction. For the following reasons, we conclude that Boyd's arguments fail and, therefore, affirm the district court's judgment of conviction. The parties are familiar with the facts and we do not recount them here except as necessary to our disposition.

Voluntariness—Boyd's confession

Although Boyd confessed to the shooting in a taped interview with police after his arrest, he now contends that his statements should have been suppressed because they were involuntary. We disagree.[1]

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[1]Unfortunately, Boyd did not provide this court with a transcript of the taped confession, and the only record before us are the transcripts from trial and an evidentiary hearing on Boyd's motion to suppress.

A confession is involuntary if it was coerced by physical intimidation or psychological pressure and overcomes an individual's free will.[2] "To determine the voluntariness of a confession, the court must consider the effect of the totality of the circumstances on the will of the defendant."[3] "On appeal, if substantial evidence supports the district court's finding that the confession was voluntary, then the district court did not error in admitting the confession."[4]

Here, Boyd argues that his confession was involuntary under the totality of the circumstances. Boyd argues that because he was denied food and water, sleep deprived, subjected to repeated questioning that lasted four hours, a juvenile without prior experience with police, denied an opportunity to call his father, and promised leniency if he cooperated, or alternatively, that the district attorney would be informed if he was uncooperative—his confession was involuntary.

Our review of the totality of the circumstances, however, reveals substantial evidence to support the district court's decision. In particular, Boyd, an eighteen year old who was already familiar with his Miranda rights from prior detentions as a juvenile,[5] was Mirandized on

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[2]See Passama v. State, 103 Nev. 212, 214, 735 P.2d 321, 322-23 (1987).

[3]Id. (considering the following factors: "the youth of the accused; his lack of education or his low intelligence; the lack of any advice of constitutional rights; the length of detention; the repeated and prolonged nature of questioning; and the use of physical punishment such as the deprivation of food or sleep").

[4]Brust v. State, 108 Nev. 872, 874, 839 P.2d 1300, 1301 (1992).

[5]See Elvik v. State, 114 Nev. 883, 893, 965 P.2d 281, 287 (1998) (stating that a defendant's "intelligence and experience with the criminal

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two separate occasions before he confessed, signed a Miranda acknowledgment form, was given an opportunity to call his father, and was offered food and water. Although the interview took place the morning after Boyd's arrest and Boyd had not slept in the interim, there is no indication that his will was overborne under the circumstances. Furthermore, since informing Boyd that "[his] cooperation will affect how things happen in court, how things happen with the DA's office," neutrally described the impact that his cooperation would have on the proceedings, it was not an impermissible attempt to leverage Boyd's reticence against him.[6] Lastly, although Boyd was repeatedly told that his family would be disappointed if he did not own up to his crimes, this did not overcome his free will to make a voluntary statement.[7] As a result, we conclude that there was substantial evidence to support the district court's decision to deny Boyd's motion to suppress.[8]

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justice system also bear on the voluntariness of his statements" in upholding the voluntariness of fourteen-year-old defendant's statements).

[6]Cf. Passama, 103 Nev. at 215, 735 P.2d at 323 (stating that while it is permissible to inform the District Attorney of a defendant's cooperation, "[i]t is not permissible to tell a defendant that his failure to cooperate will be communicated to the prosecutor").

[7]U.S. v. Rutledge, 900 F.2d 1127, 1130 (7th Cir. 1990) ("The police are allowed to play on a suspect's ignorance, his anxieties, his fears, and his uncertainties; they just are not allowed to magnify those fears, uncertainties, and so forth to the point where rational decision becomes impossible.").

[8]Boyd also alleges that the police actively misled him during the interview. Even though the police notified Boyd that his fingerprints were found on the gun used to kill the victim before this had been verified, the

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Statements by Boyd's non-testifying co-defendant

Boyd asserts that his conviction warrants reversal since his taped confession allegedly contained incriminating statements made by a non-testifying co-defendant. Although Boyd has failed to provide this court with the objectionable statements, after reviewing the general nature of the statements from the trial transcripts, we disagree.

At trial, Boyd requested that the jury be permitted to watch the entire videotaped confession. However, during a sidebar conference, Boyd requested that certain statements made by Boyd's co-defendant—that the defendants had discussed stealing guns—be redacted. At the State's recommendation, the district court admitted the evidence without redaction but provided the jury with a limiting instruction that the statements were not offered for their truth and should only be considered to give context to Boyd's confession.

"[A]n incriminating statement by one defendant which expressly refers to the other defendant violates the Confrontation Clause of the Sixth Amendment."[9] However, "[i]n determining whether admission of a co-defendant's statement violates Bruton [v. United States], the central question is whether the jury likely obeyed the court's [limiting]

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tactic is permissible. See Rutledge, 900 F.2d at 1131 ("[T]he law permits the police to pressure and cajole, conceal material facts, and actively mislead.").

[9]Ducksworth v. State, 114 Nev. 951, 953, 966 P.2d 165, 166 (1998) (citing Bruton v. United States, 391 U.S. 123, 127-28 (1968)).

instruction to disregard the statement in assessing the defendant's guilt."[10]

Here, in addition to his murder charges, Boyd was also charged with conspiracy to commit robbery and attempted robbery with a deadly weapon. On its face, the statement that Boyd had discussed stealing guns with his co-defendant appears to incriminate him in a conspiracy to commit robbery. However, because Boyd was acquitted of the robbery charges, the jury must have obeyed the court's limiting instruction in assessing Boyd's guilt. Accordingly, Boyd's argument fails.

Malice jury instructions

While Boyd alleges that the malice jury instructions are unconstitutionally vague because of the phrases, "abandoned and malignant heart" and "heart fatally bent on mischief," this court has previously concluded that the use of such phrases in jury instructions does not deprive the defendant of a fair trial.[11] Furthermore, although neither phrase is used colloquially, a juror could most likely understand the ordinary meaning of both phrases. Accordingly, we conclude that the

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[10] Ducksworth, 114 Nev. at 955, 966 P.2d at 167 (1998) (relying on Bruton, 391 U.S. 123).

[11] See Guy v. State, 108 Nev. 770, 776-77, 839 P.2d 578, 582-83 (1992) (upholding a malice jury instruction containing the phrase "abandoned and malignant heart"); Leonard v. State, 114 Nev. 1196, 1208, 969 P.2d 288, 296 (1998) (recognizing that "'a heart fatally bent on mischief'" is not common parlance but that its use "did not deprive the appellant of a fair trial").

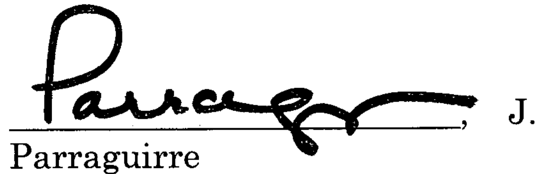
Notably, as well, Boyd failed to object to the malice instructions at trial.

phrases "abandoned and malignant heart" and "heart fatally bent on mischief" are not unconstitutionally vague.[12]

Conclusion

For the reasons set forth above, we conclude that Boyd's arguments on appeal lack merit.[13] Accordingly, we

ORDER the judgment of the district court AFFIRMED.



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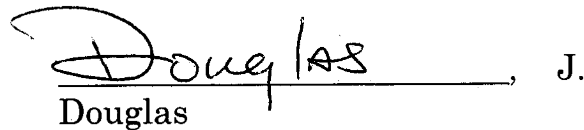
Parraguirre



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Douglas

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Pickering

cc: Chief Judge, Eighth Judicial District
Hon. James A. Brennan, Senior Judge
Christopher R. Oram
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

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[12]Cf. Guy, 108 Nev. at 776-77, 839 P.2d at 582-83; Leonard, 114 Nev. at 1208, 969 P.2d at 296.

[13]Boyd also argues that the district court abused its discretion by admitting evidence of a prior bad act, i.e., that he had fired gunshots at the two victims in the past. However, after reviewing the record, we conclude that the testimony did not refer to any act committed by Boyd; instead, the testimony referred to acts committed by his co-defendants and the victims. Accordingly, this argument is without merit.