

IN THE SUPREME COURT OF THE STATE OF NEVADA

LUIS HERNANDEZ-AGUIRRE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50462

FILED

DEC 23 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 second-degree murder with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

Appellant Luis Hernandez-Aguirre was sentenced to ten years to life with an equal and consecutive term for the weapon enhancement. On appeal, Hernandez-Aguirre argues that the district court abused its discretion in denying his motions to substitute appointed counsel. For the reasons set forth below, we conclude that Hernandez-Aguirre's contentions fail, and therefore, affirm the judgment of conviction.¹

¹Hernandez-Aguirre also argues that: (1) the district court erred in denying his challenge for cause to a juror, thereby forcing the defense to use a peremptory challenge to remove the juror; (2) the district court abused its discretion by denying his motion for a mistrial based on the erroneous admission of bad act evidence; (3) the district court improperly admitted prejudicial and inflammatory evidence without adequate foundation; (4) the State committed multiple acts of prosecutorial misconduct; (5) the district court abused its discretion by admitting an inflammatory and irrelevant photograph of the victim and her son; (6) the district court abused its

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The parties are familiar with the facts and we do not recount them except as necessary for our disposition.

Motion to dismiss counsel

Hernandez-Aguirre argues that the district court improperly disregarded his legitimate concerns over the communications breakdown between Hernandez-Aguirre and his attorney, Melissa De La Garza, when it denied his motion for replacement counsel. We disagree.

This court reviews a district court's denial of a motion to substitute counsel for abuse of discretion. Garcia v. State, 121 Nev. 327, 337, 113 P.3d 836, 843 (2005).

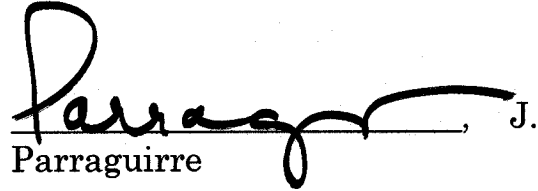
Four months after Hernandez-Aguirre's motions for replacement counsel, De La Garza left the public defender's office. The office then appointed her co-counsel Jordan Savage to represent Hernandez-Aguirre. The district court then granted a two-month continuance to allow Savage to prepare for trial. Hernandez-Aguirre did not raise the issue of substitute counsel again. We therefore conclude that the district court did not abuse its discretion with regard to this issue, as it was rendered moot because Hernandez-

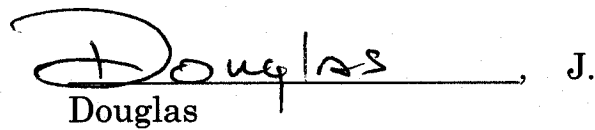
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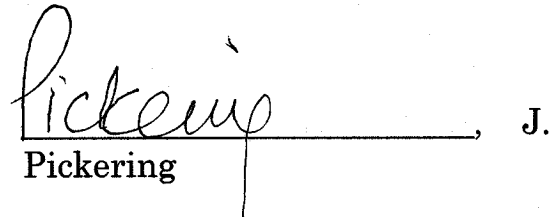
discretion by providing jury instructions that improperly favored the State and by rejecting defense instructions; (7) the State presented insufficient evidence to support the conviction for second-degree murder with the use of a deadly weapon; and (8) cumulative error warrants reversal of the judgment of conviction. Having fully considered these issues, we conclude that they are without merit.

Aguirre did receive substitute counsel, and that counsel was afforded an appropriate continuance to prepare for trial. Accordingly we,

ORDER the judgment of the district court AFFIRMED.

 J.
Parraguirre

 J.
Douglas

 J.
Pickering

cc: Hon. Donald M. Mosley, 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