

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTOPHER LAWRENCE  
DEYERLE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 50617

**FILED**

FEB 04 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 first-degree murder with the use of a deadly weapon. Third Judicial District Court, Lyon County; Robert E. Estes, Judge. The district court sentenced appellant Christopher Deyerle to a term of life imprisonment for first-degree murder with parole eligibility after twenty years and to an equal and consecutive term for the use of a deadly weapon.

Deyerle was tried and convicted of first-degree murder with the use of a deadly weapon for shooting and killing his estranged wife in front of her parents' Dayton home. On appeal, Deyerle challenges various evidentiary rulings and certain alleged instances of prosecutorial misconduct. Separately, he challenges his sentence, claiming that he was entitled to the benefit of certain ameliorative amendments to the deadly weapon enhancement statute. For the following reasons, we conclude that these arguments fail and 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.

Evidentiary issues

On appeal, Deyerle claims that evidence of his prior acts was improperly admitted and that he should have been allowed to introduce detailed evidence of his wife's methamphetamine use to support his

defense theory that this was a heat of passion killing. Neither argument, however, is persuasive.

Following a Petrocelli hearing, the district court admitted evidence of the threats that Deyerle made in the days before the murder and his controlling behavior, concluding that this evidence was admissible either for an independently relevant purpose—such as proof of motive, intent, plan, or preparation<sup>1</sup>—or under the *res gestae* exception, i.e., to convey the complete story of the crime.<sup>2</sup> We agree.<sup>3</sup>

Before the murder, Deyerle agonized over his separation and pending divorce, spoke openly about the prospect of killing his wife, threatened her male friends, and expressed a desire to harm any man that she might be dating.<sup>4</sup> According to Greg Hamilton, Deyerle stated over a week before the murder that he would kill his wife if she was cheating on him. One week later, Deyerle asked Hamilton how he could procure a

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<sup>1</sup>NRS 48.045(2).

<sup>2</sup>NRS 48.035(3).

<sup>3</sup>Although the legal basis for the district court's individual rulings on each piece of testimony is somewhat unclear from the record, since the State moved to admit this testimony under NRS 48.045(2) and NRS 48.035(3), we review the propriety of the district court's rulings under both exceptions to the prohibition on character evidence. Cf. Bellon v. State, 121 Nev. 436, 443-44, 117 P.3d 176, 180 (2005) (recognizing that an evidentiary ruling may stand "if the court reached the right result even though it was based upon incorrect grounds").

<sup>4</sup>Although several other witnesses testified largely to the same effect, Deyerle's challenge on appeal is limited to the testimony of five witnesses—Greg Hamilton, Larry Ward, Ian Zearley, and the victim's parents.

gun. During the same period of time, Deyerle conveyed a similar message to Larry Ward, his former employer—if his wife was seeing another man, he would “stab him in the neck with a pencil.”

Moreover, three days before the murder, Deyerle called the general store where his wife worked and asked her co-worker, Ian Zearley, “if he was a tough guy,” then cautioned ominously, “you better be,” before hanging up the phone. Two hours later, Deyerle arrived at the store. After he finished confronting his wife, Deyerle turned his attention to Zearley, stating “if you’re Ian, you’re next.”

To place this conduct in context, the victim’s parents offered testimony that Deyerle was a controlling and verbally abusive husband who repeatedly called and stopped by the family home in the weeks before the murder, left angry phone messages, and made unannounced visits to his wife’s place of work to try to mend the relationship.

Contrary to Deyerle’s assertions, each item of testimony was properly admitted. Since Deyerle sought to mitigate the first-degree murder charge to a lesser offense on the theory that the killing occurred due to a heat of passion, the determinative issue at trial concerned Deyerle’s intent to kill his estranged wife, which was easily inferable from Deyerle’s overriding desire to restore his marriage and in the meantime control his wife’s relationships with other men.<sup>5</sup>

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<sup>5</sup>See Ledbetter v. State, 122 Nev. 252, 262, 129 P.3d 671, 678 (2006) (“whatever might motivate one to commit a criminal act is legally admissible to prove motive under NRS 48.045(2)” (internal quotation marks omitted)).

Moreover, rather than reflect a series of unrelated, nondescript "bad acts," as Deyerle seems to claim, the challenged testimony illustrates the evolution of Deyerle's turmoil over his failed marriage into a deliberate and premeditated plan to kill. As such, this testimony portrays a pattern of events so interconnected with this murder that the nature of the murder could not have been accurately described without reference to it.<sup>6</sup> Accordingly, we perceive no abuse of discretion in admitting this testimony.

Likewise, the district court did not abuse its discretion in permitting the forensic pathologist to testify to discovering methamphetamine in the victim's system, while excluding any testimony about the drug's effects. While Deyerle asserts that this ruling prevented him from impeaching the victim's good character,<sup>7</sup> and from fully presenting his defense theory that he was provoked by the victim's explosive behavior, both arguments fail.

Since the victim's character was never directly placed in issue, the impeachment value of allowing an expert to speculate about the impact of methamphetamine on the victim's behavior was negligible.<sup>8</sup>

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<sup>6</sup>See Ochoa v. State, 115 Nev. 194, 200, 981 P.2d 1201, 1205 (1999) (concluding that evidence of prior drug transactions were admissible under NRS 48.035(3) since the nature of the dispute could not be accurately described without reference to them).

<sup>7</sup>NRS 48.045(1)(b) (allowing the admission of evidence to rebut evidence of the victim's good character).

<sup>8</sup>Rather, any impeachment value that the methamphetamine evidence had was fully realized by allowing the jury to hear that methamphetamine was discovered in the victim's system.

Moreover, as proffered, the excluded evidence would have contributed little to substantiating Deyerle's defense theory since the nature of the victim's behavior could have been adequately gleaned from Deyerle's testimony. Therefore, since nothing would have been gained from attributing the victim's behavior to her methamphetamine use, error in excluding this evidence, if any, is harmless.

#### Prosecutorial misconduct

Deyerle claims that his conviction should be reversed due to three instances of alleged prosecutorial misconduct, one that occurred in opening statements and two others that occurred during closing arguments. Reviewing these remarks in context, and against the evidence as a whole, we disagree.<sup>9</sup>

In his opening statement, the prosecutor asked the jury to do its "duty as jurors, for yourselves, for your community." And during closing arguments, the prosecutor stated that, instead of Deyerle, the jury was now in control. However, because the first remark exhorted the jury to adhere to its oath rather than suggest that it had a duty to return a particular verdict, and the second did not urge the jury to convict on a basis other than the evidence, neither is problematic.<sup>10</sup>

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<sup>9</sup>Rose v. State, 123 Nev. \_\_\_, \_\_\_, 163 P.3d 408, 418 (2007) (prejudicial misconduct is determined by whether the misconduct permeated the proceedings).

<sup>10</sup>Cf. Pantano v. State, 122 Nev. 782, 793, 138 P.3d 477, 484 (2006) (concluding that the prosecutor's closing remarks—"[t]his is a parent's worst nightmare. Make them feel better"—improperly appealed to juror sympathies since alleviating the parents' suffering diverted attention from evidence relevant to the elements of the crime).

On the other hand, the prosecutor's final challenged remark that "[Deyerle] doesn't deserve your sorrow, and he does not deserve your mercy" was an improper appeal to sympathy for the victim. Nevertheless, although improper, we conclude that the remark was harmless in light of overwhelming evidence that Deyerle premeditated and willfully and deliberately carried out this murder.<sup>11</sup>

Sentencing—retroactivity of NRS 193.165

Although Deyerle argues that he was entitled to the benefit of the amended deadly weapon enhancement statute that became effective on July 1, 2007, four months before his sentencing, since the murder in this case occurred on May 4, 2006, Deyerle was properly sentenced under the version of NRS 193.165 that was in effect at the time that the crime was committed. Accordingly, we decline to disturb his sentence.<sup>12</sup>

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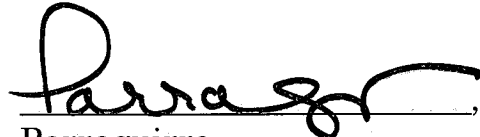
<sup>11</sup>See Sherman v. State, 114 Nev. 998, 1010, 965 P.2d 903, 911 (1998). Given the overwhelming nature of the evidence, we also reject Deyerle's separate assertion that cumulative error warrants reversal. See Rose, 123 Nev. at \_\_\_, 163 P.3d at 419.

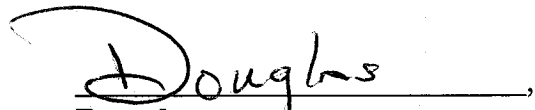
<sup>12</sup>State v. Dist. Ct. (Pullin), 124 Nev. \_\_\_, 188 P.3d 1079 (2008) (concluding that, for reasons of legislative intent, prior precedent, and public policy, the newly enacted amendments to NRS 193.165 do not apply to offenders who committed their crimes prior to—but were sentenced after—these amendments became effective, and reaffirming that an offender will be subject to the sentencing scheme in effect at the time that a crime is committed). Given the recency of the decision, and there being no persuasive reason for doing so, we decline Deyerle's invitation to reconsider Pullin.

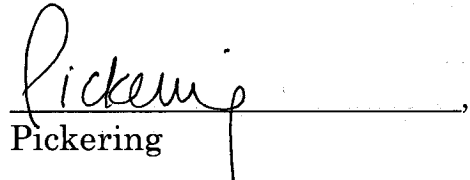
Conclusion

Based on the above, we conclude that each of Deyerle's arguments on appeal fails. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
Parraguirre J.

  
Douglas J.

  
Pickering J.

cc: Hon. Robert E. Estes, District Judge  
Law Offices of John P. Schlegelmilch, Ltd.  
Attorney General Catherine Cortez Masto/Carson City  
Lyon County District Attorney  
Lyon County Clerk