IN THE SUPREME COURT OF THE STATE OF NEVADA

SCOTT RAYMOND DOZIER A/K/A CHAD WYATT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50817

FILED

JAN 20 2012

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ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

This is an appeal from a judgment of conviction in a death penalty case. Eighth Judicial District Court, Clark County; Jennifer Togliatti, Judge.

Appellant Scott Raymond Dozier killed Jeremiah Miller at the La Concha Inn in Las Vegas, Clark County, Nevada. Dozier dismembered Miller's body, put his torso, which was cut into two pieces, into a suitcase, and dumped the suitcase into an apartment complex dumpster. Miller's head, lower arms, and lower legs were never recovered. Dozier took money from Miller that Miller had intended to use to purchase precursor chemicals for the production of methamphetamine. A jury convicted Dozier of first-degree murder with the use of a deadly weapon and robbery with the use of a deadly weapon and sentenced him to death. On appeal,

Dozier raises several issues related to the guilt and penalty phases of trial.

Guilt-phase issues

Dozier argues that insufficient evidence supports his convictions and the deadly weapon enhancements. He also contends that the district court made numerous erroneous rulings on matters related to (1) whether a senior judge could preside over pretrial matters, (2) the admission of evidence, (3) jury instructions, and (4) prosecutorial misconduct.

Sufficiency of the evidence of premeditation and deliberation

Dozier argues that the State failed to put forth sufficient evidence to demonstrate that he acted with premeditation or deliberation. In this, he contends that the evidence produced at trial showed that he was a frequent user of methamphetamine and the State failed to demonstrate that he was not under the influence of the drug at the time of the shooting. We disagree.

The evidence adduced at trial shows that Dozier expressed his intention to "jack" a drug dealer prior to Miller's murder. Miller had carried $12,000 to Las Vegas for a drug deal. When Miller was kicked out of the hotel and Dozier could not contact him, Dozier became upset and said that he "lost $13,000." This evidence implied that Dozier had intended to take Miller's money. In addition, several witnesses testified that Dozier admitted to killing Miller and one witness testified that he saw Miller's partially dismembered body in Dozier's bathtub. We conclude

that this evidence was sufficient for a rational juror to find beyond a reasonable doubt that Dozier committed the murder with premeditation and deliberation. See Jackson v. Virginia, 443 U.S. 307, 319 (1979); McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992); NRS 200.030(1)(a).

Sufficiency of the evidence for robbery and felony murder

Dozier argues that there was insufficient evidence introduced to support his convictions for robbery and felony murder based on robbery because the State failed to show that he was in possession of any sum of money near the $12,000 that the State alleged he stole from Miller. We disagree.

In addition to the evidence described above supporting premeditated murder, Dozier, who had to borrow twenty dollars upon arriving in Las Vegas, began spending significant sums of money on clothes, drugs, and electronics after Miller's death. We conclude that this evidence was sufficient for a rational juror to find beyond a reasonable doubt that Dozier robbed Miller or killed him during the course of a robbery. See Jackson, 443 U.S. at 319; McNair, 108 Nev. at 56, 825 P.2d at 573; NRS 200.380(1); NRS 200.030(1)(a).

Sufficiency of the evidence of the weapon enhancement

Dozier argues that there was insufficient evidence to support the jury's verdict that a deadly weapon was used to rob and kill Miller. He asserts that there was no physical evidence supporting the verdict, which was based entirely on testimony that Dozier admitted that he shot Miller.

While he recognizes that this court held that the corpus delicti rule does not apply to deadly weapon enhancements in Domingues v. State, 112 Nev. 683, 692, 917 P.2d 1364, 1371 (1996), he urges us to overrule that precedent based on Apprendi v. New Jersey, 530 U.S. 466 (2000). While we decline to revisit our prior precedent, we nevertheless agree that there was insufficient evidence presented at trial to sustain the deadly weapon enhancements.

At trial, the district court admitted evidence that when Dozier was arrested, officers seized a firearm, which was not proven to be the murder weapon, from his possession. The medical examiner testified that is was likely that the victim had been shot but could not say with any certainty that the victim had been shot. Further, her testimony was inconsistent with prior testimony at the preliminary hearing where she was not as certain as to the cause of death. Although two witnesses testified that Dozier admitted that he shot the victim, both witnesses abused methamphetamine and admitted that they had ingested drugs before Dozier spoke with them. Although there is some evidence that Dozier used a deadly weapon in the commission of these crimes, we cannot conclude that the seizure of an unrelated firearm, inconsistent testimony from the medical examiner concerning a part of the victim's body that was never recovered, and admissions heard under the influence of illicit drugs rises to proof beyond a reasonable doubt. See McNair, 108 Nev. at 56, 825 P.2d at 573. However, this conclusion does not undermine our confidence

in the sufficiency of the evidence supporting the conviction for first-degree murder in light of additional witnesses' testimony that Dozier stated that he intended to rob a drug dealer, considered Miller's money to be his own and began to spend considerable sums of money after Miller disappeared, admitted that he killed Miller and had not done enough to prevent the police from identifying his body, and had seen Miller's partially dismembered remains in Dozier's hotel bathtub. Accordingly, we reverse the judgment of conviction in part and remand to the district court to strike the deadly weapon enhancements attendant to the robbery and murder convictions.

Senior judge

Dozier argues that his right to a fair trial was violated by the district court permitting a senior judge to preside over the hearing on his pretrial petition for a writ of habeas corpus. We disagree. Senior judges are not precluded from presiding over capital trials. Browning v. State, 124 Nev. 517, 529-30, 188 P.3d 60, 69 (2008). As to Dozier's claim that he was prejudiced by the senior judge's ruling on his pretrial challenge to the sufficiency of the evidence produced at the preliminary hearing, the guilty verdict at trial cured any error during the preliminary hearing. See Echavarria v. State, 108 Nev. 734, 745, 839 P.2d 589, 596 (1992).

Evidentiary rulings

Dozier contends that the district court erred by admitting (1) unreliable testimony as to the victim's cause of death, (2) irrelevant

evidence that he had a gun when he was arrested, and (3) unreliable testimony about unproduced physical evidence. We conclude that the district court did not err in any of these matters.

First, Dozier contends that the district court abused its discretion in permitting the medical examiner to offer unreliable testimony concerning the cause of Miller's death. We conclude that the district court did not abuse its discretion in admitting this testimony. See Mulder v. State, 116 Nev. 1, 12-13, 992 P.2d 845, 852 (2000). The grounds upon which the medical examiner's opinion was based affect the weight that the jury should give the testimony, not the admissibility of it. The proper recourse for Dozier to challenge the medical examiner's credibility was to engage in cross-examination pursuant to NRS 50.115(2), which he did.

Second, Dozier argues that the district court erred in admitting evidence of a firearm that was in Dozier's possession when he was arrested because the State failed to establish a chain of custody for the weapon and the possession of the weapon was unrelated to the charged offense. We conclude that the district court did not abuse its discretion in admitting the gun. See Mclellan v. State, 124 Nev. 263, 267, 182 P.3d 106, 109 (2008). The officer who impounded the weapon testified at trial, identified the weapon as the one that was seized during Dozier's arrest, noted that the weapon had a Phoenix ID tag that contained his and another officer's name, and stated that the weapon and ammunition

appeared substantially the same as when he impounded them. See Sorce v. State, 88 Nev. 350, 352-53, 497 P.2d 902, 903 (1972) (providing that proper chain of custody is established where it is "reasonably certain that no tampering or substitution took place, and the doubt, if any, goes to the weight of the evidence"). Further, the firearm seized during Dozier's arrest several months after the murder was relevant and not unduly prejudicial, see NRS 48.035(1), as the State introduced evidence that Dozier admitted to several witnesses that he killed the victim and that he was in possession of a weapon with similar coloring immediately after the murder.

Third, Dozier contends that the district court erred in admitting testimony about a note he gave to a police informant and drawings depicting dismembered bodies even though the note and drawings were never produced. He also contends that the State failed to introduce sufficient foundation testimony concerning the drawings. We discern no abuse of discretion. See Mclellan, 124 Nev. at 267, 182 P.3d at 109. The failure to produce the actual note and drawings goes to the credibility of the evidence and not its admissibility. Further, as the witness who discussed the drawings testified concerning what he personally observed and heard, there was a sufficient foundation for the testimony. See NRS 50.025(1)(a).

Instructions

Dozier challenges the district court's failure to give his proposed instructions regarding (1) a lesser-included offense, (2) the intent required for robbery, (3) circumstantial evidence, and (4) the State's failure to produce evidence. He also challenges the equal and exact justice instruction. We conclude that the district court did not err in any of these matters.

First, Dozier argues that the district court erred in refusing to instruct the jury on the lesser-included offense of voluntary manslaughter. We discern no abuse of discretion. See Crawford v. State, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005). While Dozier was entitled to jury instructions on his theory of the case so long as some evidence, "no matter how weak or incredible," existed to support it, Brooks v. State, 103 Nev. 611, 613, 747 P.2d 893, 895 (1987), the record was devoid of any evidence of provocation by the victim that would be sufficient under the voluntary manslaughter statute, see NRS 200.050(1); Leaders v. State, 92 Nev. 250, 251-52, 548 P.2d 1374, 1374-75 (1976) (providing that evidence of intoxication or drug use is insufficient to reduce murder to manslaughter).

Second, Dozier argues that the district court erred when it refused to instruct the jury that robbery was a specific intent offense. We discern no abuse of discretion because robbery is a general intent crime. Litteral v. State, 97 Nev. 503, 508, 634 P.2d 1226, 1228-29 (1981), disapproved on other grounds by Talancon v. State, 102 Nev. 294, 301, 721

P.2d 764, 769 (1986). It does not become a specific intent crime merely because it is used as a predicate felony for the purposes of the felony murder rule. See State v. Contreras, 118 Nev. 332, 334, 46 P.3d 661, 662 (2002).

Third, Dozier contends that the district should have given the instruction set forth in Fulghum v. Ford, 850 F.2d 1529, 1535 (11th Cir. 1988), regarding the sufficiency of circumstantial evidence to support a finding of guilt. We discern no abuse of discretion as the district court instructed the jury on the State's burden of proof and gave the statutory reasonable doubt instruction. See Doyle v. State, 112 Nev. 879, 901-02, 921 P.2d 901-02, 915-16 (1996), overruled on other grounds by Kaczmarek v. State, 120 Nev. 314, 333, 91 P.3d 16, 29 (2004).

Fourth, Dozier argues that he was entitled to an instruction that the State failed to gather evidence that was favorable to him. He asserts that the officers investigating the victim's murder acted in bad faith and gross negligence when they failed to examine or test certain evidence. We conclude that this claim lacks merit because he failed to demonstrate gross negligence or bad faith regarding the failure to test the evidence he identified. See Randolph v. State, 117 Nev. 970, 987, 36 P.3d 424, 435 (2001). The evidence he contends that the State failed to examine could not have been tested in the manner Dozier asserts or was otherwise available for testing by the defense. Moreover, he failed to demonstrate that the evidence would have affected the outcome of trial in light of the evidence establishing his guilt, including his admissions to

killing the victim for money, witnesses who saw tools and a gun in Dozier's room, and a witness who saw the victim's decapitated body in the bathtub. Therefore, the district court did not abuse its discretion in this regard.

Fifth, Dozier contends that the district court plainly erred in giving the "equal and exact justice" instruction. See Gallego v. State, 117 Nev. 348, 365, 23 P.3d 227, 239 (2001), abrogated on other grounds by Nunnery v. State, 127 Nev. ___, 263 P.3d 235 (2011). We have rejected challenges to this instruction where, as here, the jury has been instructed that the defendant is presumed innocent and the State bears the burden of proving the defendant's guilt beyond a reasonable doubt. See Leonard v. State, 114 Nev. 1196, 1209, 969 P.2d 288, 296 (1998).

Prosecutorial misconduct

Dozier identifies four arguments by the prosecutor that he contends constitute prosecutorial misconduct: the prosecutor improperly (1) argued for jury nullification, (2) commented on a witness's opinion, (3) argued facts not in evidence, and (4) argued that Dozier dared the jury not to convict him. With the exception of the last claim, Dozier did not object to the challenged arguments. Therefore, we review for plain error affecting his substantial rights. Valdez v. State, 124 Nev. 1172, 1190, 196 P.3d 465, 477 (2008).

First, Dozier contends that the State's argument minimized the legitimacy of the defense of voluntary intoxication by arguing that the jurors could disregard evidence of intoxication. We disagree. The essence of the State's argument was that the defense of voluntary intoxication was

not applicable because the evidence did not support it. While the State may have made this point imprecisely and employed language suggesting that the jury was free to disregard the jury instructions, any errors in language do not significantly stand out in the context of the entire argument. See Miller v. State, 121 Nev. 92, 99, 110 P.3d 53, 58 (2005) (providing that prosecutor's comments must be viewed in context in which they are made).

Second, Dozier argues that the State impermissibly usurped the jury's function by commenting on a witness's conclusion that Dozier was guilty. We conclude that the comment did not prejudice Dozier's substantial rights. The statement came amidst the State's recitation of the course of the investigation and how it came to focus on Dozier. While the State could have chosen its language more carefully, the error does not significantly stand out in the context of the entire argument. See id.

Third, Dozier contends that the State's argument that another individual dumped Miller's body lacked a basis in fact. We disagree. At trial, the jury heard testimony that a witness, who looked up to Dozier, had attempted to set up a deal for ephedrine but was unable to secure a seller. He also acknowledged that his girlfriend lived in an apartment complex across the street from the Copper Sands apartments, where Miller's body was discovered. The State's argument merely inferred from the information presented at trial that the witness may have participated in dumping Miller's body in the dumpster.

Fourth, Dozier contends that the State committed misconduct by arguing that Dozier was "dar[ing]" the jury not to convict him. We conclude that this argument lacks merit. Dozier objected to the comment, and the district court sustained the objection and instructed the jury to disregard it. Summers v. State, 122 Nev. 1326, 1333, 148 P.3d 778, 783 (2006) ("[T]his court generally presumes that juries follow district court orders and instructions.").

Penalty-phase issues

Dozier argues that the district court made numerous erroneous rulings on matters related to (1) whether to bifurcate the penalty hearing, (2) the admission of evidence, (3) jury instructions, (4) preclusion of defense argument, and (5) prosecutorial misconduct. He also argues that the aggravating circumstances alleged were constitutionally infirm, the jury failed to find certain mitigating circumstances, and the death penalty is unconstitutional. We conclude that these arguments lack merit for the reasons discussed below.

Failure to bifurcate penalty hearing

Dozier contends that the district court abused its discretion in denying his motion to bifurcate the penalty hearing, which resulted in the introduction of prejudicial character evidence that was not relevant to the eligibility determination. We disagree. The district court is not obligated to bifurcate the penalty phase. See Johnson v. State, 118 Nev. 787, 806, 59 P.3d 450, 462 (2002), overruled on other grounds by Nunnery, 127 Nev.

___, 263 P.3d 235. Further, the jury received appropriate instructions on the use of the evidence admitted during the penalty hearing.

Admission of evidence

Dozier contends that the district court improperly permitted the State to introduce improper evidence related to (1) his prior investigations and convictions, (2) his Arizona murder conviction, (3) victim impact testimony, and (4) matters not included in the State's Notice of Evidence in Aggravation. He also claims that the low evidentiary threshold at the penalty hearing violated his right to due process. We conclude that these claims lack merit for the reasons discussed below.

First, Dozier contends that the district court erred in admitting evidence concerning his prior arrests, searches, and convictions during the eligibility phase of the penalty hearing as the evidence was irrelevant, impalpable, and highly suspect. We disagree. The evidence of police investigations concerning Dozier was properly admissible at the penalty hearing. See Gallego, 117 Nev. at 369, 23 P.3d at 241; see also Leonard, 114 Nev. at 1214, 969 P.2d at 299; Homick v. State, 108 Nev. 127, 138, 825 P.2d 600, 607 (1992). Further, the evidence was not impalpable or highly suspect. See Gallego, 117 Nev. at 369, 23 P.3d at 241; see also Leonard, 114 Nev. at 1214, 969 P.2d at 299; Homick, 108 Nev. at 138, 825 P.2d at 607. And there is no indication that the witness engaged in unfounded speculation or spoke to facts not supported by their files or personal knowledge.

Second, Dozier contends that the district court erred in permitting evidence concerning the facts underlying his Arizona murder conviction during the eligibility phase of the penalty hearing because the evidence was impalpable and highly suspect. He further argues that an Arizona prosecutor's testimony about the conviction should have been excluded under Crawford v. Washington, 541 U.S. 36 (2004). We disagree.

Evidence of Dozier's prior murder conviction was relevant because it illustrated Dozier's propensity to make calculated decisions in his own self-interest resulting in the deaths of others and was not unduly prejudicial. See Johnson v. State, 122 Nev. 1344, 1353, 148 P.3d 767, 774 (2006) In addition, the district court instructed the jury that it was not to consider the character evidence in determining whether aggravating factors exist, whether mitigating factors exist, or whether the mitigating circumstances outweighed the aggravating circumstances. See Summers, 122 Nev. at 1333, 148 P.3d at 783. And there is no indication that the Arizona prosecutor engaged in unfounded speculation or spoke to facts not supported by their files or personal knowledge. Regarding Dozier's hearsay argument, Crawford does not apply during capital penalty hearings. See Browning v. State, 124 Nev. 517, 536-37, 188 P.3d 60, 74 (2008); Thomas v. State, 122 Nev. 1361, 1367, 148 P.3d 727, 732 (2006); Summers, 122 Nev. at 1331, 148 P.3d at 781-82.

Third, Dozier argues that Miller's mother's testimony exceeded the scope of testimony permitted by Payne v. Tennessee, 501 U.S. 808 (1991). We agree that her testimony briefly exceeded the bounds

of permissible victim impact evidence by describing the impact on society at large instead of merely the impact upon Miller's family. See id. at 823. However, considering the length of the penalty hearing, the number of witnesses who testified, and the brevity of the statement, the statement did not render the proceeding fundamentally unfair. See Leonard, 114 Nev. at 1214, 969 P.2d at 300.

Fourth, Dozier contends that the district court erred in permitting evidence of threats that he made to two witnesses as the evidence was not included in the State's Notice of Evidence in Aggravation.

We agree that the district court erred in admitting the evidence of the letters, which were not included in the State's notice of evidence in aggravation. See SCR 250(4)(f); Mason v. State, 118 Nev. 554, 561-62, 51 P.3d 521, 525-26 (2002). Because the introduction of the evidence was in violation of the plain language of SCR 250(4)(f), that error was plain from the record. However, we conclude that Dozier failed to demonstrate that the introduction of the letters affected his substantial rights. While some of the evidence offered in mitigation, such as Dozier's sexual molestation as a child, honorable discharge from the military, and continuing relationships with family were compelling, other evidence did not appear as influential against the aggravating circumstances. And the jury heard the facts underlying both the instant conviction and the Arizona murder conviction. Therefore, Dozier failed to demonstrate that

the jury would not have found him death eligible or sentenced him to death had the letters been excluded.

Fifth, Dozier argues that the low evidentiary threshold for evidence presented at the penalty hearing violated his constitutional rights, and thus, the penalty phase must comply with the standards set forth in Apprendi v. New Jersey, 530 U.S. 466 (2000).

We conclude that this claim lacks merit. NRS 175.552 provides the district court with wider discretion to admit evidence in a capital penalty hearing. In addition, this court has repeatedly held that evidence that would not be admissible during trial is properly admissible during a penalty hearing. See, e.g., Summers, 122 Nev. at 1332, 148 P.3d at 783; Johnson, 122 Nev. at 1353, 148 P.3d at 774; Gallego, 117 Nev. at 369, 23 P.3d at 241. Dozier has not cited any persuasive authority that undermines the wider discretion afforded the district court to admit evidence during sentencing proceedings, therefore we decline his invitation to overturn our prior precedent.

Instructions

Dozier challenges the district court's decision refusing a proposed instruction concerning character evidence and the weighing equation instruction that was given. We discern no error for the reasons discussed below.

First, Dozier argues that the district court abused its discretion in refusing to provide a proposed instruction limiting the evidence the jury could consider in proving the prior Arizona conviction to

only the judgment of conviction. He contends that the instructions given permitted the jury to consider testimony regarding the underlying facts of the conviction, which was not relevant to the jury's determination regarding the existence of the aggravating circumstance. While the proposed instruction more specifically addressed the situation, the instruction that was given, which directed the jury to consider only evidence relevant to proving the existence of the aggravating circumstance and not consider other evidence until after the determination of death eligibility, was sufficient to instruct the jury on what evidence to consider. See Vallery v. State, 118 Nev. 357, 372, 46 P.3d 66, 77 (2002). Therefore, the district court did not abuse its discretion in refusing to provide the proposed instruction. See Crawford v. State, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005).

Second, Dozier contends that the district court erred in giving a weighing instruction that did not require that the aggravating circumstances must outweigh the mitigating circumstances beyond a reasonable doubt. He asserts such an instruction is required by the United States Supreme Court decisions Blakely v. Washington, 542 U.S. 296, 301-02 (2004), and Apprendi v. New Jersey, 530 U.S. 466, 490 (2000). We disagree.

We recognize that this court's jurisprudence has created confusion regarding whether the weighing of circumstances must be beyond a reasonable doubt. Compare McConnell v. State, 125 Nev. 243, 254, 212 P.3d 307, 314-15 (2009) ("[N]othing in the plain language of [the

relevant statutory] provisions requires a jury to find, or the State to prove, beyond a reasonable doubt that no mitigating circumstances outweighed the aggravating circumstances in order to impose the death penalty" and that "this court has imposed no such requirement.") with Johnson v. State, 118 Nev. 787, 802, 59 P.3d 450, 460 (2002) (noting that the weighing requirement is part of a factual determination that must be found by a jury beyond a reasonable doubt in accordance with Ring v. Arizona, 536 U.S. 584 (2002)), overruled by Nunnery v. State, 127 Nev. ___, 263 P.3d 235 (2011). However, we recently resolved this conflict in Nunnery v. State, 127 Nev. at ___, 263 P.3d at 250-53 (2011), concluding that the weighing of aggravating and mitigating circumstances is not a factual determination and thus it is not subject to the proof-beyond-a-reasonable-doubt standard as mandated by Apprendi and Ring. Therefore, Dozier was not entitled to an instruction that the weighing determination must be beyond a reasonable doubt, and the district court did not plainly err in failing to give the instruction. See Gallego v. State, 117 Nev. 348, 365, 23 P.3d 227, 239 (2001) (reviewing for plain error where party fails to object at trial), abrogated on other grounds by Nunnery, 127 Nev. ___, 263 P.3d 235.

Preclusion of defense argument

Dozier argues that his counsel was improperly precluded from discussing the process by which the State elects to pursue the death penalty. We conclude that the district court did not abuse its discretion in limiting counsel's argument. See Young v. District Court, 107 Nev. 642,

646, 818 P.2d 844, 846 (1991) (recognizing court's inherent power "to control proceedings before it"); see also Mitchell v. State, 124 Nev. 807, 813-16, 192 P.3d 721, 725-27 (2008) (recognizing that court's actions pursuant to its inherent authority are reviewed for abuse of discretion). Such evidence would not have been admissible as it was not "relevant to the offense, the defendant, or the victim." Gallego, 117 Nev. at 364, 23 P.3d at 238; see also Harte v. State, 116 Nev. 1054, 1069-70, 13 P.3d 420, 430-31 (2000) (providing that general evidence related to merits of death penalty is properly excluded from penalty phase of capital trial).

Prosecutorial misconduct

Dozier identifies five arguments by the prosecutor that he contends constitute misconduct. We conclude that no relief is warranted for the reasons discussed below.

First, Dozier argues that the prosecutor misstated the role of the jury by arguing, "[b]y your verdict in this case, you place a value judgment on what Scott Dozier did." We conclude that Dozier failed to demonstrate that the remark prejudiced him in any way amounting to reversible error. Dozier's objection to the statement was sustained, and the district court instructed counsel to rephrase his argument. Further, the jury was properly instructed that statements, arguments, and opinions of counsel were not to be considered as evidence. See Summers v. State, 122 Nev. at 1333, 148 P.3d at 783.

Second, Dozier contends that the prosecutor misstated the role of mitigating circumstances by suggesting that Dozier proffered evidence

supporting the mitigating circumstance concerning his relationship with his family as a way of justifying the murder. We discern no plain error. See Green v. State, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003) (reviewing for plain error where party fails to object below). The prosecutor's comment merely rebutted the significance of the defense's mitigating evidence and constituted a fair comment on the evidence. See Thomas v. State, 122 Nev. 1361, 1368, 148 P.3d 727, 732 (2006) (providing that State is entitled to rebut evidence relating to defendant's "character, childhood, mental impairments, etc.").

Third, Dozier contends that the prosecutor impermissibly argued that the jury could consider the death penalty appropriate based on the Arizona murder. We discern no plain error. See Green, 119 Nev. at 545, 80 P.3d at 95. The argument was not inappropriate as it addressed both Dozier's prior murder conviction and the instant case. Further, it does not misstate the law as the Arizona murder supported one of the aggravating circumstances. See NRS 200.033(2).

Fourth, Dozier contends that the prosecutor's argument, in which he stated that the law did not require a certain number of murders before a defendant is eligible for the death penalty, improperly implied that the victim's life would only be meaningful if Dozier was given the death penalty. We disagree. The prosecutor correctly described the applicable law. See NRS 200.033. Further, the prosecutor disavowed any implication that the law required several killings for death eligibility or that victims' lives were less meaningful if those murders do not render a

defendant death eligible. Therefore, Dozier failed to demonstrate plain error. Green, 119 Nev. at 545, 80 P.3d at 95.

Fifth, Dozier asserts that the prosecutor made an erroneous legal argument concerning the weight of the aggravating and mitigating evidence by arguing that the jurors were not entitled to make their own individual decision on the weight of the aggravating and mitigating evidence. As the jury was properly instructed that each juror had to conclude, on his or her own, that the mitigating circumstances did not outweigh the aggravating circumstances in order to consider sentencing Dozier to death, he failed to demonstrate plain error in this regard. See id.

Constitutionality of aggravating circumstances

Dozier contends that the aggravating circumstances alleged in his case are unconstitutional. We conclude that these arguments lack merit for the reasons discussed below.

First, Dozier contends that this court has read the under-sentence-of-imprisonment aggravator too broadly to include those serving a probation sentence. While he recognizes that we have previously rejected this contention, see Parker v. State, 109 Nev. 383, 393, 849 P.2d 1062, 1068 (1993), he asserts that the decision should be overruled. We decline to do so.

Second, Dozier argues that the district court erred in instructing the jury about the mutilation aggravator. He challenges the instruction on three grounds: (1) the instruction is unconstitutionally

vague, (2) the instruction is vague and overbroad as applied to postmortem mutilation, and (3) the instruction fails to include a mens rea element.

We conclude that these arguments lack merit. The "core meaning" of the mutilation aggravating factor is obvious from the definitions provided to the jury, and this court has held that mutilation instructions like the one given in this case are not unconstitutionally vague. See, e.g., Hernandez v. State, 118 Nev. 513, 530, 50 P.3d 1100, 1112 (2002); Browne v. State, 113 Nev. 305, 315-16, 933 P.2d 187, 193 (1997); accord Deutscher v. Whitley, 884 F.2d 1152, 1162 (9th Cir. 1989) (upholding as constitutional same instruction defining mutilation under NRS 200.033(8)), vacated on other grounds sub nom. Angelone v. Deutscher, 500 U.S. 901 (1991). Further, the instruction is not vague and overbroad as applied to post-mortem mutilation. See Byford v. State, 116 Nev. 215, 241, 994 P.2d 700, 717 (2000). In addition, although the mutilation must be for some purpose other than causing the victim's death, this court has never required that the mutilation be solely for the purpose of mutilating the victim's body as opposed to destroying evidence. See e.g., id. ("[T]he legislative intent in making mutilation an aggravating circumstance was to discourage the desecration of a fellow human being's body." (internal quotation omitted)).

Third, Dozier argues that his death sentence may be invalid because his conviction in Arizona is pending on appeal and may be

overturned. Because there is no indication that Dozier's Arizona conviction has been disturbed on appeal, we conclude that this argument lacks merit.

Failure to find mitigating circumstance

Dozier contends his sentencing verdict is unreliable because the jury failed to find the mitigating factor that he did not engage in any acts of serious misconduct or violence while he was incarcerated and only had minor infractions while in custody, although the jury received uncontroverted evidence of this fact. We conclude that this argument lacks merit. Jurors are not required to find proffered mitigating circumstances simply because there is unrebutted evidence to support them. Gallego v. State, 117 Nev. 348, 366-67, 23 P.3d 227, 240 (2001), abrogated on other grounds by Nunnery v. State, 127 Nev. ___, 263 P.3d 235 (2011); Thomas v. State, 114 Nev. 1127, 1149, 967 P.2d 1111, 1125 (1998); see also Thomas, 122 Nev. at 1370, 148 P.3d at 733; Hollaway v. State, 116 Nev. 732, 744, 6 P.3d 987, 995-96 (2000). Moreover, the jury's finding that Dozier "[d]oes well in [a] structured environment," is broad enough to include a lack of serious infractions in prison or custody.

Constitutionality of the death penalty

Dozier contends that the death penalty is unconstitutional on four grounds: (1) the death penalty scheme is unconstitutional as it fails to genuinely narrow death eligibility, a contention we have rejected, see State v. Harte, 124 Nev. 969, 972-73, 194 P.3d 1263, 1265 (2008); (2) the

weighing equation is constitutionally infirm due to conflicting opinions describing the weighing equation, which lacks merit because the jury in the instant case was repeatedly given instructions consistent with NRS 200.033(4)(a); (3) the death penalty is cruel and unusual, an argument we have rejected, see Gallego, 117 Nev. at 370, 23 P.3d at 242; and (4) the death penalty is unconstitutional because executive clemency is unavailable, an argument we have rejected, see Colwell v. State, 112 Nev. 807, 812, 919 P.2d 403, 406-07 (1998). Dozier's death sentence is not unconstitutional on any of these grounds.

Mandatory review

NRS 177.055(2) requires that this court review every death sentence and consider whether (1) sufficient evidence supports the aggravators found, (2) the verdict was rendered under the influence of passion, prejudice or any arbitrary factor, and (3) the death sentence is excessive. First, sufficient evidence supports the three aggravators—one of which involves a prior murder conviction. Second, nothing in the record indicates that the jury reached its verdict under the influence of passion, prejudice, or any arbitrary factor. And third, considering the calculated nature in which Dozier murdered the victim and then severed his body into pieces and disposed of it, the prior murder, and the evidence in

mitigation, we conclude that Dozier's death sentence was not excessive.

Having considered Dozier's contentions, we

ORDER the judgment of conviction AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court to strike the deadly weapon enhancements attendant to the robbery and murder convictions.[1]

_____, C.J.
Saitta

_____, J.
Douglas

_____, J.
Cherry

_____, J.
Gibbons

_____, J.
Pickering

_____, J.
Hardesty

_____, J.
Parraguirre

cc: Hon. Jennifer Togliatti, District Judge
Special Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

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[1]We reject Dozier's contention that cumulative error necessitates reversal of his convictions and death sentence. Although Dozier's trial was not free from error, no error, considered individually or cumulatively, rendered his trial unfair. See Valdez v. State, 124 Nev. 1172, 1195-96, 196 P.3d 465, 481 (2008).