IN THE SUPREME COURT OF THE STATE OF NEVADA

EMERY SLAYDEN,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 34605

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction pursuant to a jury verdict of one count of child abuse and neglect and one count of first degree murder.

On appeal, Slayden contends the following: (1) his rights against self-incrimination were violated by police interrogation conducted without procedural safeguards mandated in Miranda v. Arizona;[1] (2) the district court committed reversible error in denying his motion to suppress evidence obtained in a search of his residence pursuant to a warrant in which the affidavit failed to demonstrate probable cause; (3) his right to fair trial was violated when the district court allowed the State to adduce excessive evidence of prior bad acts unrelated to the charged crime without proper balancing of prejudicial and probative value; (4) the evidence adduced at his trial was insufficient to support his conviction; (5) the district court abused its discretion in denying a mistrial when the

[1]384 U.S. 436 (1966).

prosecutor asked an expert an improper question that solicited an improper response; and (6) the jury instruction on malice aforethought created an unconstitutionally mandatory presumption which incorrectly relieved the prosecution of its burden to prove every element of the charge of first degree murder. We disagree.

First, Slayden argues that his Fifth Amendment right against self-incrimination was violated when the police performed a custodial interrogation without administering Miranda warnings. More specifically, Slayden contends that under the totality of the circumstances, his interrogation was custodial because the interrogation took place in an interview room at the police station, the objective indicia of arrest were present, the investigation had focused on him, and the questioning was lengthy. We disagree.

To begin with, it is well settled that Miranda warnings are not required simply because questioning takes place at the police station.[2] Moreover, under the facts before us, there are no objective indicia of an arrest because Slayden voluntarily drove to the police station, was not handcuffed, was not placed in a holding cell, and left freely after he gave the statement. Additionally, contrary to Slayden's argument, assuming he was the focus of the investigation, this court has clearly stated that an individual is not in custody where the "individual questioned is merely the focus of a criminal investigation."[3] Finally, we find that the questioning was not lengthy. Accordingly, we conclude that the district court properly denied Slayden's motion to suppress the statement because a reasonable

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[2]Silva v. State, 113 Nev. 1365, 1370, 951 P.2d 591, 594 (1997).

[3]State v. Taylor, 114 Nev. 1071,1082, 968 P.2d 315, 323 (1998).

person in Slayden's position would have felt free to leave the police station.[4]

Second, Slayden argues that the district court committed reversible error in denying his motion to suppress evidence obtained from his residence. More specifically, Slayden contends that the search warrant was obtained by an affidavit that failed to demonstrate probable cause because the affidavit was based upon hearsay allegations and that the affidavit does not contain any foundation that Carmel Gadsen is reliable. In addition, Slayden contends that there was no probable cause nexus to search his residence simply because he lived there, that the items found in the residence were the fruit of the poisonous tree, and that the United States v. Leon[5] good faith rule did not apply. We disagree.

We find that there was substantial basis for the magistrate's finding of probable cause. The Las Vegas police, specifically Detective Johnson, were not required to rigorously scrutinize Gadsen's information.[6] Moreover, the affidavit contained corroborating statements by Sandy Doram that Slayden had told her that he had written and kept such records and that she observed Slayden write in his Bible about every-day occurrences involving her and Yazmine. Hence, the allegations within the affidavit were reliable and, looking at the evidence in its entirety and

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[4]Id.

[5]468 U.S. 897 (1984).

[6]Illinois v. Gates, 462 U.S. 213, 233-34 (1983) (noting that rigorous scrutiny of the basis of knowledge of an unquestionably honest citizen who comes forward with information regarding a crime is unnecessary).

under the totality of the circumstances, there was substantial basis for the magistrate to issue the warrant.[7]

In addition, there was sufficient nexus to believe that the evidence sought would be found in Slayden's residence. Based on the statements of Doram and Gadsen, a person of reasonable caution would believe that it is more likely than not that the writings and the Bible would be found among Slayden's personal property at his home.[8] Consequently, Slayden's fruit of the poisonous tree argument lacks merit. Finally, the exclusionary rule and the Leon good faith exception thereto are not an issue in this case because there was no police misconduct.[9] Accordingly, we conclude that the district court did not abuse its discretion in denying Slayden's motion to suppress the evidence.

Third, Slayden argues that he was deprived a fair trial because the district court failed to find that the prior bad acts were more probative than prejudicial as required by NRS 48.035(1). We disagree.

The State concedes that the district court failed to specifically state that it found the probative value was not substantially outweighed by unfair prejudice. However, this court has held that the rule of automatic reversal for failure to conduct a proper Petrocelli hearing is not warranted where there is a lack of prejudicial effect caused by the

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[7]Garrettson v. State, 114 Nev. 1064, 1068-69, 967 P.2d 428, 431 (1998).

[8]Keesee v. State, 110 Nev. 997, 1002, 879 P.2d 63, 66 (1994).

[9]Leon, 468 U.S. at 916 (noting that the exclusionary rule is designed to deter police misconduct rather than to punish the errors of judges and magistrates).

admission of the evidence.[10] Thus, the trial court's error "may be cause for reversal but does not mandate reversal in all cases."[11] Reversal on appeal is appropriate unless

> (1) the record is sufficient for this court to determine that the evidence is admissible under the test for admissibility of bad acts evidence set forth in Tinch; or (2) where the result would have been the same if the trial court had not admitted the evidence.[12]

Applying the Tinch criteria, a reversal on this ground is not required. The evidence was highly relevant to show intent, common scheme, or absence of mistake or accident. Additionally, the district court's determination that the acts of abuse were proven by clear and convincing evidence is not being challenged. Finally, Slayden was not unfairly prejudiced because the fact that he abused Yazmine and the other children in a similar manner was more probative than prejudicial to rebut an anticipated defense of lack of intent or absence of mistake or accident. Accordingly, we conclude that a reversal is not required.[13]

Moreover, after reviewing the evidence in a light most favorable to the prosecution, we conclude that a reasonable jury could have found that Slayden committed murder and child abuse and neglect

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[10]Qualls v. State, 114 Nev. 900, 903, 961 P.2d 765, 767 (1998).

[11]Id.

[12]Id. at 903-04.

[13]Alternatively, we conclude that a reversal is not required because even if the district court had not admitted the evidence, the testimony by Doram and the medical examiners, coupled with the autopsy results, were sufficient to convict Slayden of murder.

beyond a reasonable doubt.[14] We also conclude that the district court did not abuse its discretion in failing to declare a mistrial. The expert witness was not testifying about an ultimate issue in the case; and assuming he did, the plain language of NRS 50.295 and case law allow an expert to opine on ultimate issues to be decided.[15] Finally, we conclude that the erroneous jury instruction on malice aforethought was harmless beyond a reasonable doubt because it is clear beyond a reasonable doubt that a rational jury would have found Slayden guilty absent the error.[16] Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Young

_____, J.
Agosti

_____, J.
Leavitt

cc: Hon. Lee A. Gates, District Judge
Attorney General
Clark County District Attorney
Special Public Defender
Clark County Clerk

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[14]McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

[15]Alford v. State, 111 Nev. 1409, 1411 n.1, 906 P.2d 714, 715 n.1 (1995).

[16]Collman v. State, 116 Nev. 687, 722, 7 P.3d 426, 449 (2000).