IN THE SUPREME COURT OF THE STATE OF NEVADA

STERLING POGIEN BEATTY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51522

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 (Count 1), conspiracy to commit robbery (Count 2), two counts of attempted robbery with the use of a deadly weapon (Counts 3 and 4), attempted murder with the use of a deadly weapon (Count 5), and assault with a deadly weapon (Count 6). Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

The district court sentenced appellant Sterling Pogien Beatty to serve two consecutive terms of life in prison without the possibility of parole on Count 1, seven definite terms of years for Counts 2 through 5, and struck Count 6.

Beatty raises six claims on appeal: (1) there was insufficient evidence to support his convictions, (2) the district court erred in admitting ammunition evidence, (3) the district court erred in suppressing potential alibi testimony, (4) the district court erred by instructing the jury on flight, (5) the felony-murder rule is unconstitutional, and (6) he was prejudiced by the cumulative impact of the errors at trial. Because none of Beatty's claims have merit, we affirm the judgment of conviction.

Sufficiency of the evidence

Beatty claims that there was insufficient evidence to support his convictions. Specifically, he claims that because (1) the prosecution did not produce the murder weapon, (2) no bullets or shell casings were recovered from the crime scene, and (3) the only witness to place him at the scene admitted smoking marijuana just prior to the incident and made inconsistent statements to police, there was insufficient evidence to convict him. Beatty's claim is wholly without merit.

The standard of review for a challenge to the sufficiency of the evidence is "'whether, after viewing the evidence in the light most favorable to the prosecution, any rational [juror] could have found the essential elements of the crime beyond a reasonable doubt.'" McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992) (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979)).

When viewed in the light most favorable to the State, the testimony of Tamika Walker and Corey Simms established that Simms and the victim, Paul Brown, traveled to an apartment complex near the intersection of Lake Mead Boulevard and Jones Boulevard in Las Vegas to purchase marijuana from an individual named C-dog. They had been referred to C-dog by their coworker, Walker, who had purchased marijuana from him about a week prior. Walker told C-dog that Simms and Brown wanted to spend about $250. After Simms and Brown parked their car, Beatty approached the vehicle, pointed a gun at Brown's stomach and said, "Give us everything you got." A moment later, Simms was attacked by an accomplice who also had a firearm. As Simms was wrestling on the ground with his attacker, he glanced over and saw Brown fighting with Beatty. A moment later, he heard a gunshot. While Simms

was trying to keep his attacker from shooting him, Beatty walked over, pointed a gun at him, and pulled the trigger at least twice but nothing happened. The attackers fled. Simms called 911, and although the police arrived in about five minutes, it was too late to save Brown.

The testimony of the police, expert, and lay witnesses further established Beatty's guilt. The autopsy showed that Brown died from a single gunshot wound to his right collarbone. Forensic experts determined that although the bullet had fragmented and the exact caliber could not be determined, the jacket was "of nominal .38 caliber," which included a range of calibers including .38 and .357. Similar ammunition was found during a search of Beatty's home. In addition, the police recovered Beatty's cell phone and a hat with a stain matching his DNA from the crime scene. Finally, Simms' testimony that both guns he saw during the crime were revolvers explained the absence of any shells at the crime scene.

Viewed in the light most favorable to the State, there was sufficient evidence for a rational juror to find the essential elements of the charged crimes beyond a reasonable doubt. Therefore, we conclude that Beatty's challenge to the sufficiency of the evidence is without merit.

Ammunition evidence

Beatty claims that the district court erred by admitting evidence of various bullets, shell casings, and live rounds that were found in his garage because they were obtained in violation of the Fourth Amendment and because the evidence was more prejudicial than probative. Beatty's claims are without merit.

Fourth Amendment claim

Beatty claims that the district court erred in denying his motion to suppress the ammunition evidence because that evidence was obtained as the result of an illegal search. Although the ammunition evidence was obtained pursuant to a proper search warrant, Beatty contends that it was inadmissible because the warrant was only obtained after the police initially discovered the evidence illegally. The district court considered Beatty's contentions and found that because the discovery of the ammunition evidence was inevitable, there was no reason to suppress it. We conclude that the district court did not err.

When reviewing a district court's Fourth Amendment determination, this court "review[s] the district court's findings of historical fact for clear error but review[s] the legal consequences of those factual findings de novo." Somee v. State, 124 Nev. ___, ___, 187 P.3d 152, 157-58 (2008). When the decision to obtain a search warrant is prompted by an initial illegal search, the warrant and its fruits are not admissible. Murray v. United States, 487 U.S. 533, 542 (1988). However, even if evidence is obtained through unconstitutional means, that evidence can still be admitted at trial if the discovery of the evidence was inevitable. Camacho v. State, 119 Nev. 395, 402, 75 P.3d 370, 375-76 (2003).

In this case, it is not clear whether the evidence was discovered illegally. The record indicates that officers initially spotted the ammunition when they conducted a protective sweep of Beatty's house during the execution of a warrant for his arrest. The officers left the home, obtained a search warrant telephonically, and returned to execute the search. Beatty's assertion that this process was illegal rests solely on the fact that the search warrant return states that the ammunition was found "wrapped in [a] blanket" on the garage floor. Essentially, Beatty

claims that because the bullets and shell casings were found in a blanket, they could not have been in plain view during the original protective sweep.

The district court did not make any findings regarding Beatty's plain view argument but instead resolved the issue on the basis that Beatty's home would inevitably have been searched. Because the question of whether the initial search was illegal is not necessary to our decision we decline to reach that issue. Rather, because Beatty was arrested for first-degree murder, we agree with the district court that a subsequent search of Beatty's home for evidence of the murder was inevitable. Accordingly, suppression of the evidence was not required by the Fourth Amendment.

Claim of prejudice

Beatty claims that even if the evidence was obtained legally, it should still have been suppressed because its probative value was outweighed by its prejudicial impact. Specifically, he claims that because no murder weapon was found and the experts could only narrow the type of bullet used in the murder to a broad class that included .38 and .357 caliber ammunition, the evidence that a variety of ammunition falling in that class was found in his house was unduly prejudicial. Beatty's claim is without merit.

"[W]e review a district court's decision to admit or exclude evidence for [an] abuse of discretion." Chavez v. State, 125 Nev. ___, ___, 213 P.3d 476, 487 (2009). Here, the district court found that the evidence was not "the strongest evidence that might be presented to a jury" but concluded that its probative value was not substantially outweighed by the danger of unfair prejudice. One of Beatty's main points of emphasis at

trial was the State's failure to produce a murder weapon and that no firearms were recovered from his home. In light of those contentions, we conclude that evidence showing that Beatty owned ammunition that could not be excluded as the type used in the murder was highly probative. Therefore, we conclude that the district court did not abuse its discretion in admitting the evidence.

Potential alibi testimony

Beatty claims that the district court erred in suppressing potential alibi testimony. Beatty's claim is without merit.

NRS 174.233(1) requires a defendant who intends to offer alibi evidence to file written notice including the names and last known addresses of any witnesses by which he intends to establish an alibi. NRS 174.233(4) gives the district court discretion to exclude evidence offered by a defendant to prove an alibi if the defendant fails to comply with the notice requirements. However, if a defendant can demonstrate good cause for non-compliance, a trial court should exercise its discretion to allow the presentation of the alibi evidence. Williams v. State, 97 Nev. 1, 3, 620 P.2d 1263, 1265 (1981).

On the final day of testimony, Beatty asked the court to permit him to call his sister-in-law, Beatrice Haynes,[1] as an alibi witness. Beatty claimed that Haynes would testify that he was in California on the day of the crime. Beatty had never previously notified the State of his intent to call her as an alibi witness. In fact, she was listed as a potential witness for the State—the prosecutor informed the district court that he

[1]The record indicates that the State knew her by the name Beatrice English.

had considered her an "anti-alibi" witness because she had contacted investigators and told them that Beatty's wife had asked her to prepare a false alibi. The district court found that Beatty had not complied with the notice requirements and denied the request.

In light of Beatty's familial relationship with Haynes and the nature of the proposed alibi, we conclude that he did not have good cause for his failure to name her as an alibi witness until the fourth day of trial. Furthermore, the record reveals a strong possibility that the alibi was fabricated. Therefore, we conclude that the district court did not abuse its discretion in denying Beatty's request.

Flight instruction

Beatty claims that the district court erred by instructing the jury on flight.[2] He asserts that the instruction was prejudicial and lacked relevance because there was no evidence that he fled the scene of the crime. Beatty fails to show error.

"This court generally reviews a district court's decision settling jury instructions for an abuse of discretion or judicial error." Berry v. State, 125 Nev. ___, ___, 212 P.3d 1085, 1091 (2009). Here, the

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[2]The instruction at issue read:

> The flight of a person immediately after the commission of a crime, or after he is accused of a crime, is not sufficient in itself to establish guilt, but is a fact which, if proved, may be considered by you in light of all other proved facts in deciding the question of his guilt. Whether or not evidence of flight shows a consciousness of guilt and the significance to be attached to such a circumstance are matters for your deliberation.

district court considered Beatty's objection to the instruction and found that the instruction "tracked the State's theory of the case" and that it was up to the jury to determine whether Beatty fled the crime scene. In light of Simms' testimony that Beatty was one of the three attackers and that all three fled after Brown was shot, we conclude that the district court did not err in giving the flight instruction to the jury.

Constitutionality of the felony-murder rule

Beatty claims that the felony-murder rule is unconstitutional because it (1) violates due process by eliminating the presumption of innocence, the traditional defenses to first-degree murder, and the specific intent element of first-degree murder and (2) violates the Eighth Amendment by resulting in punishment grossly disproportionate to the crimes committed and allowing "unequally involved" parties to receive the same sentence.[3] Beatty's claims are without merit.

"The felony-murder rule simply stated is that any homicide, committed while perpetrating or attempting a felony, is first degree murder." Payne v. State, 81 Nev. 503, 505, 406 P.2d 922, 924 (1965); NRS 200.030(1)(b). This rule has been long recognized in Nevada. See State v.

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[3]Beatty also contends that punishing a defendant for both an underlying felony and first-degree murder based on the felony-murder rule violates the Double Jeopardy Clause. Because Beatty first raised this claim in his reply brief, we decline to consider it. See Diomampo v. State, 124 Nev. ___, ___ n.25, 185 P.3d 1031, 1039 n.25 (2008). However, we note that this court has repeatedly rejected such claims. See State v. Contreras, 118 Nev. 332, 337, 46 P.3d 661, 664 (2002); Talancon v. State, 102 Nev. 294, 300-01, 721 P.2d 764, 768-69 (1986); Koza v. State, 100 Nev. 245, 255, 681 P.2d 44, 50 (1984); Brimmage v. State, 93 Nev. 434, 443, 567 P.2d 54, 59-60 (1977); Carmody v. District Court, 81 Nev. 83, 85, 398 P.2d 706, 707 (1965).

Contreras, 118 Nev. 332, 334, 46 P.3d 661, 662 (2002). In fact, the felony-murder rule is so well-established that fifteen years ago, the Ninth Circuit Court of Appeals denied a challenge to the constitutionality of California's felony-murder rule by stating that "[t]he felony murder rule is too deeply rooted in Anglo-American jurisprudence to be questioned now." McMillan v. Gomez, 19 F.3d 465, 470 (9th Cir. 1994). We concur.

The felony-murder rule evinces a legislative intent to eliminate the need to prove the traditional factors of willfulness, premeditation, or deliberation when a defendant intentionally engages in criminal activity that is inherently dangerous and that activity results in death. See Nay v. State, 123 Nev. 326, 332, 167 P.3d 430, 434 (2007) ("The purpose of the felony-murder rule is 'to deter dangerous conduct by punishing as a first degree murder a homicide resulting from dangerous conduct in the perpetration of a felony, even if the defendant did not intend to kill.'") (quoting State v. Allen, 875 A.2d 724, 729 (Md. 2005)). That the intent to commit an enumerated felony can be substituted for the intent element of first-degree murder is a principle long accepted in this country. See U.S. v. Thomas, 34 F.3d 44, 49 (2d Cir. 1994); U.S. v. Browner, 889 F.2d 549, 552 n.2 (5th Cir. 1989). And there is nothing unusual about "punish[ing] individuals for the unintended consequences of their unlawful acts." Dean v. U.S., ___ U.S. ___, ___, 129 S. Ct. 1849, 1855 (2009). We conclude that the inherent consequences of the felony-murder rule—that a defendant can be convicted of, and punished for, first-degree murder without intending to kill—do not violate the United States or Nevada Constitutions. We therefore reject Beatty's claims in this regard.

Cumulative error

Beatty claims that his convictions should be reversed due to cumulative error. "The cumulative effect of errors may violate a defendant's constitutional right to a fair trial even though errors are harmless individually." Hernandez v. State, 118 Nev. 513, 535, 50 P.3d 1100, 1115 (2002). However, a defendant is not entitled to a perfect trial, merely a fair one. Ennis v. State, 91 Nev. 530, 533, 539 P.2d 114, 115 (1975). Based on the foregoing discussion of Beatty's claims of error, we conclude that any error in this case, when considered either individually or cumulatively, does not warrant relief.

Having considered Beatty's claims and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.[4]

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

[4]We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.

cc: Hon. Donald M. Mosley, District Judge
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