

IN THE SUPREME COURT OF THE STATE OF NEVADA

TAMIR HAMILTON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51739

FILED

MAR 03 2010

ORDER OF AFFIRMANCE

TRACE K. LINDEMAN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

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 and sexual assault with the use of a deadly weapon and a death sentence. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

In 2006, appellant Tamir Hamilton raped and killed 16-year-old Holly Quick. A jury sentenced Hamilton to death for first-degree murder, and the district court sentenced him to two consecutive terms of ten years to life for sexual assault with a deadly weapon. On appeal, Hamilton raises numerous claims challenging his convictions and death sentence. We conclude that Hamilton's claims lack merit and affirm the judgment of conviction.

Batson claims

Hamilton claims that the district court erred in denying his objections to the prosecution's use of peremptory challenges against the only two African-American prospective jurors on the panel. See Batson v. Kentucky, 476 U.S. 79 (1986). We review the district court's ruling for an

abuse of discretion. See Thomas v. State, 114 Nev. 1127, 1136-37, 967 P.2d 1111, 1118 (1998); Washington v. State, 112 Nev. 1067, 1071, 922 P.2d 547, 549 (1996).

The district court denied Hamilton's Batson challenges concluding that the prosecution had proffered race-neutral reasons for excusing the jurors. Because the prosecution's stated reasons for excusing the two contested jurors are supported by the record and the record does not show that the offered reasons were pretexts for racial discrimination, we conclude that the district court did not abuse its discretion in this instance.

Insanity defense

Hamilton claims that he was unable to adequately present an insanity defense because the district court (1) made erroneous evidentiary rulings that precluded him from admitting his own out-of-court statements through the testimony of an expert witness, (2) improperly precluded effective cross-examination of one of the State's expert witnesses, and (3) incorrectly instructed the jury on insanity. Hamilton's claims are meritless.¹

The statements that Hamilton sought to admit through his psychological expert were hearsay and did not fit into any recognized

¹Hamilton also claims that the district court precluded him from presenting a consent defense to the charge of sexual assault when it ruled that he could not introduce evidence that unused condoms were found in a wallet in the victim's dresser. That evidence was not relevant to the question of consent and therefore the district court did not err. See NRS 48.025(3).

exception to the hearsay rule. “A defendant’s right to present relevant evidence is not unlimited, but rather is subject to reasonable restrictions.” United States v. Scheffer, 523 U.S. 303, 308 (1998). While a defendant has a due process right to introduce evidence that would tend to prove his theory of the case, that due process right “is subject to the rules of evidence,” Rose v. State, 123 Nev. 194, 205 n.18, 163 P.3d 408, 416 n.18 (2007), and hearsay evidence may be properly excluded without infringing on a defendant’s right to present a defense. See Montana v. Egelhoff, 518 U.S. 37, 42 (1996).

Although Hamilton has not specifically identified his statements that were at issue or provided this court with a copy of the expert’s report containing the statements, it appears that the statements involved Hamilton’s descriptions of the hallucinations and delusions that he experienced. While the psychologist was not allowed to relate verbatim what Hamilton had stated to him, he was allowed to testify that he based his opinion on the results of a battery of psychological tests that he administered, his review of Hamilton’s prior medical records, and Hamilton’s descriptions of the hallucinations and delusions that he experienced. It further appears that those descriptions were, at least in part, cumulative of other, independently admissible evidence concerning statements Hamilton made to the police and others after the crime. Of note, the expert testified that he did not have an opinion on whether Hamilton understood the nature of his actions. This demurrer by the expert diminished the value of his testimony to Hamilton, with or without the admission of Hamilton’s hearsay statements to him. Given the evidence that was admitted concerning Hamilton’s statements and medical history and the latitude the district court allowed the expert in

stating the basis for his opinions, which did not reach the ultimate issue in the case, we find no abuse of discretion under NRS 50.285 or denial of due process in the limitations the district court imposed. Therefore, we conclude that the district court did not err in this regard.

Likewise, we conclude that the district court did not err in precluding cross-examination of a State's expert witness about alleged inconsistencies in his testimony. The expert's conclusion that Hamilton suffered from drug-induced psychosis was consistent with his testimony that Hamilton was not a schizophrenic. Even assuming error, Hamilton cannot show prejudice. The evidence of his guilt was overwhelming and he failed to meet his burden of proving insanity. See Finger v. State, 117 Nev. 548, 576, 27 P.3d 66, 84-85 (2001) ("To qualify as being legally insane, a defendant must be in a delusional state such that he cannot know or understand the nature and capacity of his act, or his delusion must be such that he cannot appreciate the wrongfulness of his act"); NRS 174.035(5) (stating that defendant bears burden of establishing insanity).

Finally, the jury instructions on insanity were correct statements of Nevada law. See Finger, 117 Nev. at 576, 27 P.3d 84-85; NRS 174.035(5). Absent a request, the district court was not required to instruct the jury further. See McKenna v. State, 114 Nev. 1044, 1052, 968 P.2d 739, 745 (1998).

Imposition of the death penalty on a schizophrenic

Hamilton claims that his execution will violate the Eighth Amendment because he is an "incurable" schizophrenic. Hamilton fails to demonstrate that he is incompetent to be executed and provides no authority indicating that schizophrenics as a class cannot be executed.

Moreover, the record reflects that Hamilton's mental defects have been effectively treated with medication in the past. Therefore, we conclude that this claim is without merit.

911 recording

Hamilton claims that the district court erred when it permitted the State to play a 911 recording of the victim's mother at the penalty hearing. We conclude that while the recording was poignant and emotionally compelling, the district court did not abuse its discretion in determining that it was not unduly prejudicial. See Harte v. State, 116 Nev. 1054, 1069, 13 P.3d 420, 430 (2000) ("The decision to admit particular evidence during the penalty phase is within the district court's sound discretion and will not be overturned absent abuse of that discretion."). Moreover, because the jury was instructed not to allow its decision to be influenced by sympathy or prejudice and this court presumes that a jury follows jury instructions, see Lisle v. State, 113 Nev. 540, 558, 937 P.2d 473, 484 (1997), Hamilton fails to show prejudice.²

Financial costs of the death penalty

Hamilton claims that his constitutional rights were violated when the district court prevented him from offering mitigating evidence on the cost of the death penalty. Hamilton's claim is without merit because the proper focus of a penalty hearing is the defendant's character and the circumstances of the offense. General evidence of the merits of

²To the extent that Hamilton challenges the district court's decision to permit the victim's mother to remain on the stand while the recording was played, Hamilton did not object and he fails to show plain error. See Archanian v. State, 122 Nev. 1019, 1031, 145 P.3d 1008, 1017 (2006).

the death penalty is irrelevant and properly excluded from a capital sentencing hearing. Harte, 116 Nev. at 1069-70, 13 P.3d at 430-31.

Constitutionality of Nevada's death penalty statutes

Hamilton claims that Nevada's death penalty statutes are unconstitutional because they fail to narrow the class of persons eligible for the death penalty. We conclude that Hamilton's claims that further narrowing is required are patently without merit. See State v. Harte, 124 Nev. ___, ___, 194 P.3d 1263, 1267-68 (2008) (Hardesty, J., concurring), cert. denied, ___ U.S. ___, 129 S. Ct. 2431 (2009). Moreover, we have previously held that challenges to the scope of Nevada's death penalty statutes can be rejected where, as here, the defendant failed to argue that any aggravator was misapplied in his own case. Gallego v. State, 117 Nev. 348, 370, 23 P.3d 227, 242 (2001).

Mandatory appellate review of the death sentence

Finally, NRS 177.055(2) requires that this court review every death sentence and consider (1) whether the evidence supports the aggravating circumstances; (2) "[w]hether the sentence of death was imposed under the influence of passion, prejudice or any arbitrary factor;" and (3) whether, in light of the crime and defendant, the sentence of death is excessive.

First, we conclude that the four aggravating circumstances found by the jury—(1) the murder involved the torture or mutilation of the victim; (2) Hamilton had a prior conviction for a felony involving the use or threat of violence to the person of another (battery with the use of a deadly weapon); (3) Hamilton had a second prior conviction for a felony involving the use or threat of violence to the person of another (sexual assault); and (4) Hamilton subjected or attempted to subject the victim to

nonconsensual sexual penetration immediately before, during, or immediately after the commission of the murder—were proven beyond a reasonable doubt.

The first aggravator was supported by evidence that the victim suffered at least 40 separate sharp force injuries and that a number of her wounds—including blunt trauma, strangulation, and many of her cutting injuries—were inflicted prior to the wound that resulted in death, would have been painful, and were unnecessary to cause death. See Dominguez v. State, 112 Nev. 683, 702, 917 P.2d 1364, 1377 (1996).

The second aggravator was supported by evidence that Hamilton entered an apartment and attacked two residents with a knife. Hamilton subsequently pleaded guilty to attempted robbery and battery with the use of a deadly weapon.

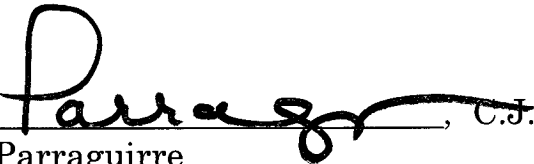
The third aggravator was supported by evidence that Hamilton had sexually assaulted a UNR student and repeatedly struck her in the face and battered her. Hamilton subsequently entered a plea of nolo contendere to sexual assault.

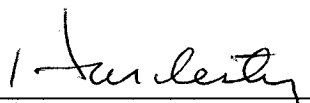
The final aggravator was supported by DNA evidence showing that Hamilton's seminal fluid was deposited in the victim's body prior to her death, as well as evidence of defensive wounds on her hands and arms and blunt force injuries to her chest; the victim had also been throttled.


Next, we conclude that Hamilton's sentence was not imposed under the influence of prejudice, passion, or any arbitrary factor. Although the evidence showed him to be a man with a violent criminal history who sexually assaulted and killed a 16-year-old girl, there is nothing in the record demonstrating that the jury's verdict was the result of passion, prejudice, or any other arbitrary factor.


Finally, we conclude that the death sentence is not excessive in this case. The evidence in this case shows that two weeks after sexually assaulting a woman in her brother's apartment, Hamilton sexually assaulted and cut the throat of 16-year-old Quick in her own bedroom. While some of the mitigating evidence was credible, it carried little weight considering the viciousness of the murder and Hamilton's history of committing violent crimes. Therefore, we conclude that in this case, "the crime and defendant . . . [are] of the class or kind that warrants imposition of death." Dennis v. State, 116 Nev. 1075, 1085, 13 P.3d 434, 440 (2000).

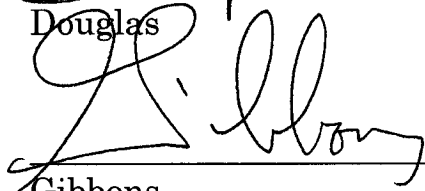
Having concluded that Hamilton's claims are without merit and that the jury's imposition of the death sentence was not improper, we
ORDER the judgment of conviction AFFIRMED.



Parraguirre, C.J.


Hardesty, J.


Douglas, J.


Saitta, J.

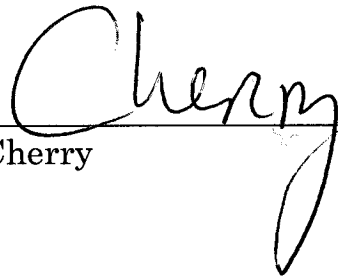

Gibbons, J.


Pickering, J.

cc: Hon. Connie J. Steinheimer, District Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

CHERRY, J., dissenting:

I dissent because I am convinced that the reasons offered by the State for excusing the only two African-American potential jurors were pretexts for racial discrimination, especially in light of the State's decision to excuse one juror based on its characterizations of his demeanor. Because discriminatory jury selection is structural error mandating reversal, see Diomampo v. State, 124 Nev. ___, ___, 185 P.3d 1031, 1037 (2008), I would reverse Hamilton's convictions and remand for a new trial.

 _____, J.
Cherry