IN THE SUPREME COURT OF THE STATE OF NEVADA

SOLOMON MIQUEL STATEN, A/K/A MIGUEL STANTON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 34677

FILED

AUG 21 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of first-degree arson and attempted murder. Appellant Solomon Miquel Staten received concurrent prison terms of 48 to 120 months for the arson and 57 to 144 months for the attempted murder.

Staten committed his crimes in Las Vegas on November 24, 1997. That evening Melano Mason was playing video poker at a convenience store. Staten came into the store and asked Mason where her boyfriend was. Mason lived nearby with her boyfriend. She told Staten that her boyfriend was not at home and that Staten should not go to the home. Although Staten and her boyfriend were friends, Mason did not get along with Staten. They traded some harsh words, and he told her that he would go to her home anyway and left. Mason went home soon after that. She was alone, watching television, when Staten came to her front door. Their verbal wrangling resumed through the locked screen door. Mason refused to let Staten enter, but he continued to wait outside the house. Mason had a kind of nightstick, which she placed by the door. When some friends of Mason's pulled up in a car, she went out to talk with them.

Staten yelled at them, but they ignored him. The friends left, and Mason walked back to her front door. She and Staten continued to exchange words. When he came toward her with a bottle in his hand, she grabbed the stick and hit him, first on the hand and then on the head. He walked across the street, stunned and bleeding from the head wound. Mason watched him pull some paper and napkins from a dumpster, and it appeared that he tried to light them on fire. He eventually went out of sight down an alley. Later that night Mason was dozing in her bedroom with the television on. She heard a loud crash, jumped up, and looked out her window. She was face to face with Staten. She then smelled gasoline, and the back of the house burst into flames. Staten ran off, and Mason fled the house in her underwear and screamed to her neighbor to call 9-1-1. She returned and retrieved a bag of clothes, but her other possessions were destroyed before firefighters put out the blaze. Physical evidence corroborated Mason's testimony and linked Staten to the crime scene.

First, Staten claims that at trial his competency "was called into question numerous times" and the district court erred by not holding a hearing on the subject. He also claims that he lacked the mental capacity to aid adequately in his own defense. Staten stresses the following facts. He directed his counsel to ask the district court not to instruct the jury on the lesser offense of second-degree arson. He later directed her not to make a closing argument. At that point, his counsel told the court that "I have some real concerns about [Staten's] competency, and I am going to probably be submitting a motion in that regard." Finally, the defense presented no evidence. Given these facts, Staten

concludes that the district court was required to hold a competency hearing.

NRS 178.405 provides that "if doubt arises as to the competence of the defendant, the court shall suspend the trial or the pronouncing of the judgment . . . until the question of competence is determined." A person is incompetent if he "is not of sufficient mentality to be able to understand the nature of the criminal charges against him, and because of that insufficiency, is not able to aid and assist his counsel" at his trial or sentencing.[1] A court is required to hold a competency hearing "if there is substantial evidence which raises a reasonable doubt as to a defendant's competency to stand trial. . . . Determining whether such a doubt exists rests within the trial court's discretion."[2]

We conclude that the record does not establish a reasonable doubt as to Staten's competency. Despite suggesting otherwise, defense counsel never requested a competency hearing, so it appears that she did not have a reasonable doubt as to Staten's competency. Dropping the jury instruction on second-degree arson was reasonable and not prejudicial since that offense requires the burning of "any abandoned building or structure"[3] and was therefore inapplicable to this case. (Thus, contrary to another claim raised by Staten, the district court did not err in striking

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[1]NRS 178.400(2).

[2]Baal v. State, 106 Nev. 69, 73, 787 P.2d 391, 394 (1990).

[3]NRS 205.015 (emphasis added).

the instruction.) Staten also fails to show that the decision not to present a defense case was his, and he has not alleged what evidence should have been presented in defense. Though Staten's decision to forgo closing argument was probably not wise, it is not substantial evidence of incompetency, and the record as a whole shows that he was able to understand the nature of the charges against him and able to aid and assist his counsel.

Next, Staten argues that the district court improperly admitted evidence that he committed a separate bad act. Defense counsel asked Mason during cross-examination why she did not like Staten. Mason answered that Staten once tried to kill her by throwing her off a balcony. Defense counsel objected unsuccessfully when on redirect the prosecutor further inquired about the incident. Mason then testified that Staten suspected her of taking $40.00 from him and tried to throw her off a fourth-floor balcony but two other people stopped him. Because defense counsel elicited evidence of the incident first, we conclude that the prosecutor's limited exploration of the details was not error.[4] Moreover, it

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[4]Cf. McKenna v. State, 114 Nev. 1044, 1056, 968 P.2d 739, 747 (1998) (concluding that after defense counsel opened the door to appellant's gang affiliation, the prosecutor's subsequent elicitation that it was a white supremacy group was proper); Barrett v. State, 105 Nev. 356, 359, 776 P.2d 538, 540 (1989) ("A witness may use redirect examination to explain or clarify testimony elicited during cross-examination.").

appears that the evidence was relevant to establish Staten's ill-will toward Mason and motive for his crimes against her.[5]

Finally, Staten complains that the prosecution's repeated showing of photographs of the crime scene to witnesses was improperly cumulative and prejudicial. He cites no apposite authority to support his position, and we conclude that it has no merit. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Young

_____, J.
Agosti

_____, J.
Leavitt

cc: Hon. Ronald D. Parraguirre, District Judge
Connolly & Fujii
Diana D. Montgomery
Attorney General/Carson City
Clark County District Attorney
Clark County Clerk

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[5]See Hogan v. State, 103 Nev. 21, 23, 732 P.2d 422, 423 (1987); NRS 48.045(2).