

IN THE SUPREME COURT OF THE STATE OF NEVADA

JONATHAN CHRISTIAN MOCCIA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52105

FILED

DEC 03 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction entered pursuant to a jury verdict of one count each of home invasion, false imprisonment, and domestic battery. Eighth Judicial District Court, Clark County; James M. Bixler, Judge. The district court sentenced appellant Jonathan Christian Moccia to serve various concurrent prison and jail terms totaling 24 to 72 months.¹

Probable Cause

Moccia contends that the district court erred by denying his pretrial petition for a writ of habeas corpus. In his petition, Moccia claimed that the evidence presented at the preliminary hearing was insufficient to find probable cause to believe that he had committed any of the crimes alleged in the criminal complaint. On appeal, Moccia specifically claims that “[t]he State failed to prove . . . a criminal state of

¹The district court later entered an amended judgment of conviction that corrected a clerical error.

mind, to each and every count, by any discernable quantum of evidence.” Moccia further argues: (1) a person of ordinary caution and prudence could not conclude that he intended to commit home invasion of his own home, (2) the idea that he could burglarize his own home cannot withstand judicial scrutiny, (3) no evidence was presented that he made a substantial step in a course of conduct intended to culminate in the unlawful killing of the victim, and (4) the district court should have prevented the State from throwing “these baseless charges into [the] mix for juror consideration.”

The justice court is required to hold an accused to answer for a criminal offense in the district court if it appears from the evidence produced at the preliminary hearing “that there is probable cause to believe that an offense has been committed and that the defendant has committed it.” NRS 171.206. Probable cause to support a criminal charge “may be based on slight, even ‘marginal’ evidence, because it does not involve a determination of the guilt or innocence of an accused.” Sheriff v. Hodes, 96 Nev. 184, 186, 606 P.2d 178, 180 (1980) (internal citations omitted). Further, “[t]o commit an accused for trial, the State is not required to negate all inferences which might explain his conduct, but only to present enough evidence to support a reasonable inference that the accused committed the offense.” Kinsey v. Sheriff, 87 Nev. 361, 363, 487 P.2d 340, 341 (1971).

During the preliminary hearing, the State presented evidence that: (1) Moccia and the victim were married, Moccia had moved out of the house, and the victim had changed the alarm system password; (2) Moccia entered the house through the main garage door and used a metal object to pry open the access door; (3) Moccia grabbed the victim by her hair while she was taking a shower, dragged her downstairs, and told her

to give the password to the alarm company; (4) Moccia threw the victim to the ground, undid his pants, got on top of her, and stated that he wanted to make love to her; (5) the victim scratched Moccia, cried, said no, and told him to leave; (6) Moccia hit the victim in the face, threw her on a sofa, and threatened to kill her if she moved; and (7) Moccia tried to suffocate the victim by covering her mouth and nose with tape and told her that he was going to kill her. We conclude that the State presented enough evidence to support a reasonable inference that Moccia committed the crimes of home invasion, burglary, first-degree kidnapping, attempted murder, and attempted sexual assault. See NRS 193.330(1); NRS 200.010; NRS 200.310(1); NRS 200.366(1); NRS 205.060(1); NRS 205.067(1). Accordingly, Moccia has failed to demonstrate that the district court erred by denying his pretrial habeas petition.

Cross-examination

In a related claim, Moccia contends that the justice court committed plain error by allowing the victim's handwritten statement to be entered into evidence during his preliminary hearing. Moccia claims that the admission of this statement violated his statutory right to cross-examine the witnesses against him at the preliminary hearing. See NRS 171.196(5). Moccia argues that without the victim's handwritten statement there was no competent evidence to sustain the justice court's probable cause findings. Moccia acknowledges that he did not object to the admission of the handwritten statement into evidence during the preliminary examination.

In Crowley v. State, we held that "when a trial witness fails, for whatever reason, to remember a previous statement made by that witness, the failure of recollection constitutes a denial of the prior

statement that makes it a prior inconsistent statement pursuant to NRS 51.035(2)(a). The previous statement is not hearsay and may be admitted both substantively and for impeachment.” 120 Nev. 30, 35, 83 P.3d 282, 286 (2004). We conclude that this holding applies to preliminary hearings as well. See Goldsmith v. Sheriff, 85 Nev. 295, 303, 454 P.2d 86, 91 (1969) (observing that the rules of evidence are the same for both trials and preliminary hearings).

During the preliminary hearing, the victim testified on direct examination that she did not recall having contact with her husband in her home, the police coming to her home, or preparing a handwritten statement for the police on October 26, 2007. Further, when shown her handwritten statement, the victim testified that it did not refresh her recollection of the events on that date. The State moved to have the handwritten statement admitted into evidence as a prior inconsistent statement, Moccia stated that he had no objection to the motion, and the justice court granted the motion. Shortly thereafter, Moccia cross-examined the victim; he did not ask her any questions regarding her handwritten statement. Under these circumstances, we conclude that Moccia was not deprived of his statutory right to cross-examine the witness against him, the handwritten statement constituted competent evidence, and the justice court did not err by admitting the statement into evidence.

Expert Testimony

Moccia contends that the district court abused its discretion by admitting the testimony of an expert in the dynamics of domestic abuse and violence. Moccia claims that: (1) the expert was allowed to testify to events that had no basis in the facts of the case and, “when combined with

the unfiltered and grossly exaggerated charges, the testimony was irreparably prejudicial;" (2) inherent in the expert's testimony was the premise that he was also guilty of prior bad acts; and (3) the expert impermissibly vouched for the veracity of the State's version of events.

The decision to admit or exclude expert testimony lies within the sound discretion of the district court and will not be disturbed absent a clear abuse of discretion. Sampson v. State, 121 Nev. 820, 827, 122 P.3d 1255, 1259 (2005). Expert testimony concerning the effect of domestic violence upon a person's beliefs, behavior, and perception is admissible to show the victim's state of mind. NRS 48.061(1); see generally Boykins v. State, 116 Nev. 171, 176-77, 995 P.2d 474, 477-78 (2000).

Prior to the trial, the district court entered findings of fact, conclusions of law, and an order denying Moccia's motion to strike the State's expert witness. The district court found that the victim could not recall the events that took place on October 26, 2007, or the substance of her statement to the police about those events. The district court concluded that the State was statutorily entitled to have an expert witness testify for the purpose of showing that the victim's unwillingness to cooperate or inability to recall Moccia's violence against her was not unlike the behavior of other victims of domestic violence. The district court emphasized that the State and its expert witness were prohibited from introducing evidence of prior bad acts.

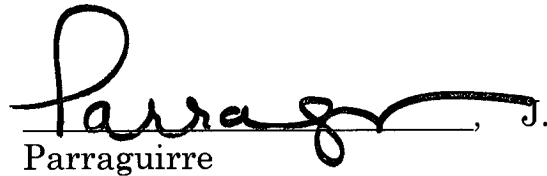
During the trial, the expert witness testified that she had never talked with Moccia or the victim and that she had no first-hand knowledge of the case. She stated that the prime reason victims of a singular incident of domestic violence do not want to come forward and testify is that they still care for the aggressor and do not want to see the

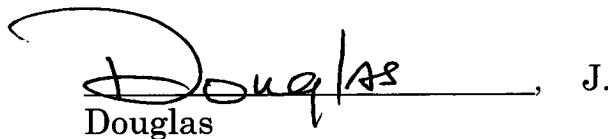
aggressor get into any further legal trouble. A secondary reason is that the victim fears retaliation. The expert further testified that if a victim of a singular incident of domestic violence called the police, the victim is more likely to be truthful at that time.

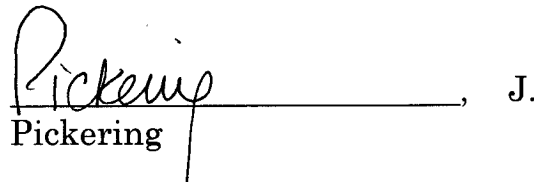
We conclude from these circumstances that the district court did not abuse its discretion by admitting the testimony of an expert in domestic violence and that the expert's testimony did not "irreparably prejudice" Moccia, imply that he had committed other bad acts, or vouch for the veracity of the State's version of events.

Having considered Moccia's contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.

 J.
Parraguirre

 J.
Douglas

 J.
Pickering

cc: Hon. James M. Bixler, District Judge
Cristalli & Saggese, Ltd.
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk