IN THE SUPREME COURT OF THE STATE OF NEVADA

CLIFFORD E. MCCLAIN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53625

FILED

DEC 27 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of first-degree murder. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

The charges against appellant Clifford McClain stem from the murder of his ex-wife, Allainna McClain. On appeal, McClain asserts that the district court erred in: (1) admitting hearsay statements offered by the State; (2) excluding hearsay statements offered by the defense; (3) admitting evidence of his bad acts; (4) excluding evidence of Allainna's bad acts; and (5) providing erroneous jury instructions regarding proximate cause. He also asserts that cumulative error warrants reversal of his conviction.

For the reasons set forth below, we affirm the district court's judgment of conviction. As the parties are familiar with the facts of this case, we do not recount them further except as necessary for our disposition.

DISCUSSION

The district court did not err in admitting hearsay statements offered by the State

McClain asserts that the district court erred in admitting a host of hearsay statements offered by the State.

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The district court's decision to admit or exclude evidence is generally reviewed for an abuse of discretion. Thomas v. State, 122 Nev. 1361, 1370, 148 P.3d 727, 734 (2006). Plain error review may be employed, however, when an alleged error has not been preserved. Green v. State, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003). "In conducting plain error review, [this court] must examine whether there was 'error,' whether the error was 'plain' or clear, and whether the error affected the defendant's substantial rights." Id. The appellant bears the burden of establishing that his substantial rights were affected by showing actual prejudice or a miscarriage of justice. Id.

Shannon Allen's testimony

McClain contends that the district court abused its discretion in admitting, over his objection, hearsay statements introduced at trial through Shannon Allen, a friend and neighbor of Allainna. In particular, he asserts that Allen should not have been permitted to testify that before Allainna's death Allainna said that she "'was going to go pick [her children] up from [McClain's] family.'"[1]

Hearsay is generally inadmissible. NRS 51.065. Hearsay is defined as an out-of-court statement "offered in evidence to prove the truth of the matter asserted." NRS 51.035. "A statement of the declarant's then existing state of mind, emotion, sensation or physical condition, such as intent, plan, motive, design, mental feeling, pain and bodily health, is not

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[1]McClain also argues that the district court erred in not providing the jury with a limiting instruction informing the jury that this statement was only admissible for the limited purpose of showing Allainna's state of mind. McClain did not request such an instruction at trial, and has failed to demonstrate plain error. See Green, 119 Nev. at 545, 80 P.3d at 95.

inadmissible under the hearsay rule." NRS 51.105(1) (emphasis added). This evidentiary principle is commonly known as the "[s]tate of mind exception." Lisle v. State, 113 Nev. 679, 691, 941 P.2d 459, 467 (1997), overruled on other grounds by Middleton v. State, 114 Nev. 1089, 1117 n.9, 968 P.2d 296, 315 n.9 (1998).

Allainna's statement was made out of court, and was offered for its truth. The statement, however, was relevant to demonstrating that she had plans to go to McClain's mother's house, and did not go there unannounced as McClain claimed. See Lisle, 113 Nev. at 691, 941 P.2d at 467 (declarant's stated intention to perform an act was admissible under NRS 51.105(1) "as direct evidence that [the declarant] did, indeed, carry out that intent"). Allen's testimony was thus admissible under NRS 51.105(1). Accordingly, we conclude that the district court did not abuse its discretion in admitting Allen's hearsay testimony.

Brandy Dipietro's testimony

McClain asserts that the district court abused its discretion in admitting, over his objection, hearsay statements introduced at trial through Brandy Dipietro, a friend of Allainna. Specifically, he asserts that Dipietro should not have been permitted to testify that Allainna told her that in July 2006, McClain broke into Allainna's house, argued with her, and choked her until she passed out. He also asserts that Dipietro should not have been permitted to testify that, during a phone conversation on the day of Allainna's death, Allainna told her that she needed to get off of the phone to get ready to pick up her children.

"A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition is not inadmissible under the hearsay rule." NRS 51.095. "The proper focus of the excited utterance inquiry is whether the

declarant made the statement while under the stress of the startling event." Medina v. State, 122 Nev. 346, 352, 143 P.3d 471, 475 (2006).

Allainna told Dipietro about the July 2006 choking incident the morning after it occurred. Allainna was very upset and crying when she spoke with Dipietro. Allainna's statement to Dipietro related to the startling event and was made while Allainna was under the stress of the event. Thus, although the statement was offered for its truth, that is, to show that McClain had in fact choked Allainna in July 2006, the statement was admissible under the excited utterance exception.

Next, Allainna's statement to Dipietro regarding her plan to pick up her children was admissible to show that Allainna went to McClain's mother's house in accordance with her stated intent and that she did not go there unannounced or to attack McClain, as he claims. Accordingly, we conclude that the district court did not abuse its discretion in admitting Dipietro's hearsay testimony.

Richard Trujillo's testimony

McClain contends that the district court abused its discretion in admitting, over his objection, hearsay statements introduced at trial through Richard Trujillo, one of Allainna's co-workers. Specifically, he argues that Trujillo should not have been allowed to testify that Allainna told him that she had an argument with McClain.

Allainna's statement was made out of court and was offered for its truth, that is, to show that Allainna did in fact have an argument with McClain. Allainna's statement related to the fearful condition that McClain caused. Although the startling event occurred the night before Allainna made the statement, the district court could reasonably conclude she was still under the stress of the event. See Medina, 122 Nev. at 352, 143 P.3d at 475 ("The elapsed time between the event and the statement

is a factor to be considered but only to aid in determining whether the declarant was under the stress of the startling event when he or she made the statement."). The statement was therefore admissible as an excited utterance, and accordingly, we conclude that the district court did not abuse its discretion in admitting Trujillo's hearsay testimony.

Sharon Langford's testimony

McClain contends that the district court abused its discretion in admitting, over his objection, hearsay statements introduced at trial through Sharon Langford, Allainna's mother. Specifically, he asserts that Langford should not have been permitted to testify that, during a phone conversation a few days before her death, Allainna said that McClain called and threatened her because he had discovered that she was going to file for sole custody of their children.

Allainna's statement was made out of court and was offered for its truth, specifically, to show that McClain had indeed threatened Allainna during a phone conversation. Although the State asserts that Allainna's hearsay statements fall within the excited utterance exception, we disagree because the State did not show that Allainna made the statements while under the stress of a startling event. Thus, the district court abused its discretion in admitting Langford's hearsay testimony.

Nonetheless, while we agree with McClain that this testimony was improperly admitted, we conclude that its admission constituted harmless error. See Weber v. State, 121 Nev. 554, 579, 119 P.3d 107, 124 (2005) (improperly admitted hearsay evidence is subject to harmless error review). First, the jury had already learned, through properly admitted evidence, that McClain was often abusive and threatening toward Allainna. Next, there was overwhelming evidence of McClain's guilt, including testimony that Allainna was strangled to death, which

completely undermined McClain's self-defense theory. We are certain that even if Langford's hearsay testimony had been excluded, the verdict would have been the same. Therefore, we conclude that this error was harmless beyond a reasonable doubt.

Dr. Irene Zucker's and Dr. Dennis Hanson's testimony

McClain contends that the district court erred in admitting hearsay statements introduced at trial through two of the State's experts, Dr. Irene Zucker and Dr. Dennis Hanson. McClain argues that Dr. Zucker should not have been permitted to testify that she "did not find any signs that there was any propensity toward violence" in Allainna because, in order to reach such a conclusion, Dr. Zucker had to rely on hearsay statements made by Allainna. McClain further argues that Dr. Hanson should not have been allowed to testify that as a result of his evaluation, he concluded that Allainna should be referred to counseling "[a]s a victim."

Because McClain did not object to the introduction of this evidence at trial, we review for plain error. See Green, 119 Nev. at 545, 80 P.3d at 95. An expert witness is permitted to rely upon hearsay statements to form the opinion presented at trial, provided those statements are the type of evidence relied upon by experts in forming opinions on the subject. NRS 50.285(2). An expert witness may not, however, be used as a mere conduit to introduce the statements of a non-testifying individual. See, e.g., McCathern v. Toyota Motor Corp., 23 P.3d 320, 327 (Or. 2001) (while experts may rely upon hearsay in forming their opinion, that "does not render otherwise inadmissible evidence admissible merely because it was the basis for the expert's opinion").

To reach her conclusion that Allainna did not have a propensity for violence, Dr. Zucker relied upon an interview of Allainna conducted in August 2007. Although this interview contained statements

that Allainna made to Dr. Zucker, the statements were not introduced at trial, and thus, Dr. Zucker's testimony did not run afoul of the hearsay rule. Moreover, Dr. Zucker was permitted to rely on hearsay statements under NRS 50.285(2) because clinical psychologists in the field rely upon such statements to form their medical opinions and diagnoses.

To reach his conclusion that Allainna should be referred to victims' counseling, Dr. Hanson relied upon an evaluation of Allainna conducted in July 2007. To form his opinion, Dr. Hanson relied upon statements made by Allainna that implicated McClain, but no such statements were introduced at trial. Under NRS 50.285(2), Dr. Hanson was permitted to rely on hearsay statements made by Allainna because psychologists rely on such statements to make a diagnosis. Accordingly, we conclude that the district court did not err in admitting Dr. Zucker's and Dr. Hanson's testimony.[2]

The district court did not err in excluding hearsay statements offered by the defense

McClain asserts that the district court erred in excluding a multitude of hearsay statements that he offered.

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[2]McClain also argues that the district court erred in admitting hearsay statements introduced through Mary Langford, Allainna's grandmother, and Boyse Francis, an officer who was dispatched to a July 2006 domestic violence incident between McClain and Allainna. McClain did not object to this testimony at trial, and has failed to demonstrate plain error. See Green, 119 Nev. at 545, 80 P.3d at 95.

In addition, McClain claims, for the first time on appeal, that admission of the various statements discussed above violated his right to confrontation. We conclude that this argument lacks merit.

McClain's testimony

McClain argues that the district court abused its discretion in excluding his testimony that during the July 2006 domestic violence incident with Allainna, she told him that the police were coming and that he should leave. He also argues that he should have been permitted to testify that an unspecified person told Allainna that if she had anything to say to McClain, she had to say it to Melody Nelson, McClain's mother.

Embedded within Allainna's statement that the police were coming and that McClain should leave was the assertion that she, not McClain, was at fault in the July 2006 domestic violence incident. McClain was offering this assertion for its truth; otherwise, Allainna's statement was not relevant. Thus, the statement was hearsay.

The statement made to Allainna that if she had anything to say to McClain, she had to say it to Nelson, was offered to show that Allainna, in fact, had to communicate with McClain through Nelson. McClain was offering this to show that Allainna was forbidden from speaking directly with him and, therefore, had done something wrong. Thus, McClain was offering this statement for its truth. McClain fails to point to any hearsay exception under which this statement would be admissible. Accordingly, we conclude that the district court did not abuse its discretion in excluding this testimony.

Brad Coffey's testimony

McClain asserts that the district court abused its discretion in excluding testimony that he attempted to introduce through Brad Coffey, a caseworker for child protective services who evaluated McClain and Allainna and made shared-custody recommendations regarding their children. McClain contends that he should have been permitted to ask Coffey whether Allainna told him during custody negotiations that she

wanted to exchange the children at a McDonald's restaurant, not Nelson's house. According to McClain, this statement was relevant to show that because Allainna did not like going to Nelson's house, she must have gone to Nelson's house on the night of her death to attack him. He further contends that this testimony was admissible under the catchall hearsay exception contained in NRS 51.315(1).

"All relevant evidence is admissible . . . ." NRS 48.025(1). "'[R]elevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence." NRS 48.015. Under the catchall hearsay exception, a hearsay statement may be admitted if "(a) [i]ts nature and the special circumstances under which it was made offer strong assurances of accuracy; and (b) [t]he declarant is unavailable." NRS 51.315(1).

It requires an incredible inferential leap to conclude that because Allainna told Coffey that she would rather exchange the children at McDonald's than Nelson's house, she must have gone to Nelson's to attack McClain on the night of her death. As the district court determined, simply because Allainna may not have wanted to pick the children up at Nelson's house does not make it any more likely that she went to Nelson's house for some nefarious purpose on the night she was killed.

Even if Allainna's statement was relevant, it was hearsay that did not fall within an exception. Allainna's statement that she did not want to pick her children up at Nelson's house was offered by McClain to prove that she, in fact, did not want to pick the children up at Nelson's. McClain fails to explain how the context and circumstances of the custody negotiation provide "strong assurances of the accuracy" of the statement

as required by NRS 51.315(1). Accordingly, we conclude that the district court did not abuse its discretion in excluding this testimony.

Officer Matthew Ware's testimony

McClain asserts that the district court abused its discretion in excluding testimony that he attempted to introduce through Matthew Ware, a LVMPD officer who called Allainna following a domestic violence incident that occurred between McClain and Allainna in July 2007. McClain contends that he should have been permitted to elicit testimony from Officer Ware regarding a phone call that Officer Ware placed to Allainna following the incident, wherein she hung up on him.[3]

The district court correctly determined that McClain offered Allainna's act of hanging up on Officer Ware to show that she intended to convey the assertion, "'I'm not talking to the cops.'" See NRS 51.045(2) ("'Statement' [includes] . . . [n]onverbal conduct of a person, if it is intended as an assertion."). McClain introduced this nonverbal conduct to show that Allainna did not wish to speak to the police because she had done something wrong; otherwise, the assertion simply had no relevance. Therefore, McClain wished to offer this assertion for its truth. McClain did not direct the district court to any exception under which this hearsay was admissible, and fails to do so on appeal. Accordingly, we conclude

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[3]McClain further contends that the district court erroneously excluded Officer Ware's identification of Allainna as the culprit of the July 2007 domestic violence incident. McClain further argues that the district court erroneously prevented Officer Ware from testifying that on the night of the incident, McClain stated that Allainna hit him and injured his leg. McClain misstates the record—the district court did not exclude this testimony.

that the district court did not abuse its discretion in excluding this testimony.[4]

Officer Chad Ruff's testimony

McClain argues that the district court abused its discretion by excluding testimony that he attempted to introduce through Chad Ruff, an officer from the Spokane Police Department, who responded to a domestic violence incident between McClain and Allainna in April 2003. Specifically, he asserts that Officer Ruff should have been permitted to testify that Allainna contacted him after the incident and told him that she was the aggressor.

Allainna's out-of-court statement that she was the aggressor in the April 2003 altercation was hearsay because it was offered for its truth, namely, to show that it was she, not McClain, who was the aggressor in the altercation. Because this statement does not fall within a hearsay exception, we conclude that the district court did not abuse its discretion in excluding this testimony.[5]

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[4]McClain contends that the State incorrectly argued at trial that Allainna's act of hanging up on Officer Ware was not admissible because she had a Fifth Amendment right to decline to speak. Because the district court properly excluded this evidence on the ground that it was hearsay, we need not address this contention.

[5]McClain also asserts that the district court erred in excluding testimony that he attempted to introduce through Dipietro, Tiffany Simmons (his sister), and Maureen Waters (his ex-girlfriend). We have carefully reviewed the record and conclude that this argument is meritless.

The district court did not err in admitting evidence of McClain's bad acts

McClain asserts that the district court erred in admitting, over his objections, unfairly prejudicial evidence of his prior bad acts.

The district court's decision to admit or exclude bad act evidence "rests within its sound discretion and will not be reversed on appeal absent manifest error." Ledbetter v. State, 122 Nev. 252, 259, 129 P.3d 671, 676 (2006).

McClain asserts that the district court should not have admitted evidence that during the April 2003 domestic violence incident, he punched Allainna in the face and choked her.[6] He also asserts that the district court should not have admitted evidence that during the July 2006 domestic violence incident, he broke into Allainna's house and choked her until she passed out.[7]

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[6]McClain further asserts that the State acted improperly and compounded the unfairly prejudicial effect of this evidence when, during its closing, it stated: "Listen, folks, the State of Nevada isn't saying that we shouldn't convict a guy because he's a bad guy that has strangled her twice before. We're saying that the fact that he has strangled her twice before shows you his modus operandi and his intent and that this was not an accident." We conclude that the State's comment was not improper. See NRS 48.045(2); Valdez v. State, 124 Nev. 1172, 1188, 196 P.3d 465, 476 (2008) (explaining that the first step in analyzing alleged prosecutorial misconduct is to consider whether the conduct was improper).

[7]In addition, McClain argues that the district court should not have admitted evidence that Allainna's name was saved as "worthless bitch" in his cell phone. This is not a bad act, but rather a statement made by McClain, which was admissible against him as a party statement. See NRS 51.035(3)(a).

Admissible character evidence is governed by statute. NRS 48.045(2) prohibits the admission of evidence of a person's "other crimes, wrongs or acts" for the purpose of proving that he or she "acted in conformity therewith." Such evidence, "may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." NRS 48.045(2).

Following a Petrocelli[8] hearing, the district court admitted evidence of McClain's prior domestic violence incidents. As the district court determined, evidence of these incidents was admissible for permissible purposes. First, it negated McClain's claim that he did not intend to harm Allainna by choking her. Because McClain had previously used choking as a method to hurt Allainna, it revealed that his intent on the night of her death was to cause her harm. Next, it negated his claim that her death was an accident because he had knowledge that by choking her, he could cause her to go unconscious and seriously injure her. Thus, although such evidence was prejudicial to McClain, it was highly probative as to his intent and knowledge on the night of Allainna's death, and was therefore admissible under NRS 48.045(2). In addition, the district court twice instructed the jury on the limited purpose of the evidence of McClain's prior bad acts before the evidence was introduced. See Chavez v. State, 125 Nev. 328, 345, 213 P.3d 476, 488 (2009) (a limiting instruction can cure any unfair prejudice associated with the

[8]Petrocelli v. State, 101 Nev. 46, 692 P.2d 503 (1985), superseded by statute on other grounds as stated in Thomas v. State, 120 Nev. 37, 83 P.3d 818 (2004).

introduction of bad act evidence). Accordingly, we conclude that the district court did not abuse its discretion in admitting evidence of McClain's prior bad acts.

The district court did not err in excluding evidence of Allainna's bad acts

McClain contends that the district court erred in excluding instances of Allainna's bad acts.

Evidence that Allainna abused their child

McClain contends that his mother, Melody Nelson, should have been permitted to testify that in 2007, Allainna kicked their three year-old son into a wall.[9]

"Evidence of a person's character or a trait of his or her character is not admissible for the purpose of proving that the person acted in conformity therewith on a particular occasion . . . ." NRS 48.045(1). However, "[e]vidence of the character or a trait of character of the victim" may be offered by the accused. NRS 48.045(1)(b). As this court has explained, "evidence of specific acts showing that the victim was a violent person is admissible if a defendant seeks to establish self-defense and was aware of those acts." Daniel v. State, 119 Nev. 498, 515, 78 P.3d 890, 902 (2003). Furthermore, "when a defendant claims self-defense and

[9]McClain also asserts that Nelson should have been permitted to testify that Allainna was "a stalker" and that he should have been permitted to introduce evidence that Allainna had stopped taking her bi-polar medication at age 14. These arguments are meritless. See NRS 48.035(1) ("Although relevant, evidence is not admissible if its probative value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues or of misleading the jury.").

knew of relevant specific acts by a victim, evidence of the acts can be presented through the defendant's own testimony, through cross-examination of a surviving victim, and through extrinsic proof." Id. at 516, 78 P.3d at 902.

At trial, McClain claimed he acted in self-defense. He also asserted that he witnessed Allainna kick their son into a wall. Thus, Nelson's testimony about the incident was admissible because it would have: (1) tended to show that Allainna was violent, (2) corroborated McClain's claim that Allainna kicked their son, and (3) supported McClain's self-defense theory that he was fearful of Allainna because of her violent nature. Accordingly, we conclude that the district court abused its discretion in not permitting Nelson to testify about the incident.

Although we agree with McClain that this testimony should have been admitted, we conclude that its exclusion was harmless error. See id. at 517, 78 P.3d at 902 (indicating that the district court's improper exclusion of evidence of the victim's propensity for violence is subject to harmless error review). McClain and Maureen Waters were both permitted to provide extensive testimony about the incident. Thus, the jury learned about the incident despite the exclusion of Nelson's testimony. Moreover, the evidence of McClain's guilt was overwhelming. We are confident that Nelson's testimony would not have altered the jury's verdict. Therefore, we conclude that this error was harmless beyond a reasonable doubt.

Whether the district court provided erroneous instructions regarding proximate cause

McClain contends that the district court erred in providing Jury Instruction Nos. 27 and 28 because they were duplicative and inaccurately described proximate cause.[10]

The district court's decision regarding jury instructions is reviewed for an abuse of discretion. Crawford v. State, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005).

This court has explained that "a criminal defendant can only be exculpated where, due to a superseding cause, he was in no way the 'proximate cause' of the result." Etcheverry v. State, 107 Nev. 782, 785, 821 P.2d 350, 351 (1991). "[A]n intervening cause must be a superseding cause, or the sole cause of the injury in order to completely excuse the prior act." Id. Furthermore, "[a] defendant will not be relieved of criminal liability for murder when his action was a substantial factor in bringing about the death of the victim." Lay v. State 110 Nev. 1189, 1192-93, 886 P.2d 448, 450 (1994).[11]

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[10]McClain also asserts that the district court erred in providing Jury Instructions Nos. 5, 17, 19, and 41. McClain did not object to these instructions at trial, and has failed to demonstrate plain error. See Green v. State, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003).

[11]McClain argues that Lay has been superseded by this court's decisions in Ramirez v. State, 126 Nev. ___, 235 P.3d 619 (2010), and Labastida v. State, 115 Nev. 298, 986 P.2d 443 (1999), and that under those decisions, the district court should have instructed the jury that there must be an "immediate and direct casual [sic] relationship" between his acts and Allainna's death. Contrary to McClain's argument, Ramirez and Labastida did not abrogate Lay, and are inapposite because they involved instructions on proximate cause for second-degree felony-murder.

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Jury Instruction No. 27 provided:

> If a person unlawfully inflicts upon another person a physical injury which is a proximate cause of the latter's death, such conduct of the former constitutes an unlawful homicide even though the injury thus inflicted was not the only cause of the death, and although the person thus injured had been already enfeebled by disease, injury, physical condition or other cause and although it is probably [sic] that a person in sound physical condition thus injured would not have died from the injury.

Jury Instruction No. 28 provided:

> By proximate cause is meant a direct cause, that is, a cause which, by direct and natural sequence, produced the death in question. To say it differently, the proximate cause of a thing is that cause which produces it and without which it would not have happened. A proximate cause is a real cause, as opposed to a remote cause.
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> This does not mean that the law seeks and recognizes only one proximate cause of a result, consisting of only one factor, one act, one element of circumstance, or the conduct of only one person. To the contrary, the acts and omissions of two or more persons or causes may work concurrently as the efficient cause of death, and in such a case, each of the participating acts or causes is regarded in law as a proximate cause.

We conclude that Jury Instruction Nos. 27 and 28 accurately distilled proximate cause and were not duplicative. See Lay, 110 Nev. at

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. . . continued

See Ramirez, 126 Nev. at ___, 235 P.3d at 622; Labastida, 115 Nev. at 307, 986 P.2d at 448-49.

1192-93, 886 P.2d at 450; Etcheverry, 107 Nev. at 785, 821 P.2d at 351; see also 40 C.J.S. Homicide § 9 (2006) (providing a comprehensive overview of proximate cause that is nearly identical to Jury Instruction Nos. 27 and 28). Accordingly, we conclude that the district court did not abuse its discretion in providing Jury Instruction Nos. 27 and 28.

Cumulative error does not warrant reversal

In addressing a claim of cumulative error, this court considers: "(1) whether the issue of guilt is close, (2) the quantity and character of the error, and (3) the gravity of the crime charged." Mulder v. State, 116 Nev. 1, 17, 992 P.2d 845, 854-55 (2000). The question of McClain's guilt is not close, particularly in light of the evidence showing that Allainna was strangled to death, which completely undercut McClain's self-defense/accidental death theories. There were two errors at trial, but they do not amount to cumulative error. Thus, we conclude that cumulative error does not warrant reversal.[12]

ORDER the judgment of the district court AFFIRMED.

_____, J.
Douglas

_____, J.
Hardesty

_____, J.
Parraguirre

[12]We have thoroughly reviewed all of McClain's remaining arguments and conclude that they are without merit.

cc: Hon. Michelle Leavitt, District Judge
Christopher R. Oram
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk