

IN THE SUPREME COURT OF THE STATE OF NEVADA

DONEALE L. FEAZELL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53628

FILED

SEP 09 2010

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of attempted robbery with the use of a deadly weapon and first-degree murder with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

Appellant Doneale Feazell obtained post-conviction relief and was granted a new penalty hearing. Following the hearing, the jury deadlocked on a sentence. Without objection, the district court dismissed the jury pursuant to NRS 175.556(2) and imposed a sentence of life without the possibility of parole. On appeal, Feazell raises four claims pertaining to the new penalty hearing.

First, Feazell argues that the district court's failure to rule on his motion in limine was reversible error. After the district court refused to rule in advance that a defense witness could not be questioned about a recent arrest, and instead ruled that it would make a determination before cross-examination, Feazell declined to call the witness. We see no error. See Deveroux v. State, 96 Nev. 388, 390-91, 610 P.2d 722, 724 (1980).

Second, Feazell claims that the introduction of a field interview card and accompanying photo was reversible error. The district court held a hearing prior to the evidence's admission, and sufficient evidence was adduced that the encounter that produced the card and the photo was consensual. Therefore, it was not error for the district court to admit it. See Somee v. State, 124 Nev. 434, 443, 187 P.3d 152, 159 (2008).

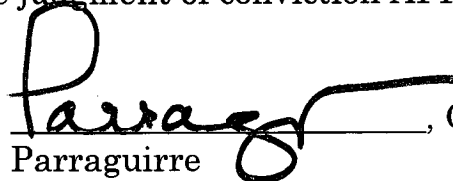
Third, Feazell argues that the district court erred by failing to strike the State's improper cross-examination of a defense expert. We disagree. After the expert testified to statistics purportedly showing the low probability of recidivism after parole for someone convicted of murder, the State countered with statistics that suggested otherwise. The argument was not improper, as the prosecutor made no individualized argument. See Blake v. State, 121 Nev. 779, 790, 121 P.3d 567, 574 (2005). Further, Feazell's argument that this cross-examination led the jury to infer that it might be responsible for any crime Feazell might commit if paroled is rendered moot by the intervening dismissal of the jury.

Fourth, Feazell alleges several instances of prosecutorial misconduct in the State's rebuttal argument. To the extent Feazell argues that such misconduct may have influenced the jury, that claim is also moot. Even so, the instances of alleged misconduct—stating that there was “no parole” for the victim or his mother in her grief and arguing that sentencing was the time to make Feazell accountable for what he had done—were not improper. See Kaczmarek v. State, 120 Nev. 314, 338-39, 91 P.3d 16, 33 (2004) (victim-impact argument not improper); Domingues


v. State, 112 Nev. 683, 698-99, 917 P.2d 1364, 1375 (1996) (accountability argument not improper).

Having considered Fezell's contentions, and for the reasons discussed above, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Parraguirre


_____, J.
Hardesty


_____, J.
Pickering

cc: Hon. Jackie Glass, District Judge
Law Office of Patricia M. Erickson
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk