IN THE SUPREME COURT OF THE STATE OF NEVADA

LERLENE EVONNE ROEVER,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 34859

FILED

JAN 30 2001

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 murder with the use of a deadly weapon. Appellant Lerlene Evonne Roever was sentenced to serve two consecutive terms of life imprisonment with the possibility of parole.[1]

Roever raises three issues on appeal. We conclude that Roever has not demonstrated error with regard to any of her claims. We address each in turn.

First, Roever complains that the deadly weapon enhancement, pursuant to NRS 193.165, is inapplicable when the underlying offense is murder because use of a deadly weapon is a necessary element of that crime. Roever further argues that the weapon enhancement was particularly inappropriate in this case because use of a firearm was a necessary fact from which the jury inferred that Roever possessed the requisite intent for first degree murder. In prior cases, this court has concluded

[1]The instant appeal arises out of Roever's third trial and conviction for the murder. In prior appeals, this court reversed and remanded Roever's earlier convictions because of errors that had occurred during the proceedings. Roever v. State, 114 Nev. 867, 963 P.2d 503 (1998), corrected on denial of rehearing, 115 Nev. 31, 979 P.2d 1285 (1999); Roever v. State, 111 Nev. 1052, 901 P.2d 145 (1995).

that use of a deadly weapon is not a necessary element of murder and that a murder conviction may properly be enhanced pursuant to NRS 193.165. See Crew v. State, 100 Nev. 38, 46-47, 675 P.2d 986, 991 (1984); Williams v. State, 99 Nev. 797, 798, 671 P.2d 635, 636 (1983). We decline Roever's invitation to overrule or limit this court's prior holdings.

Second, Roever claims that the district court erroneously admitted testimony describing an essay attributed to Roever that was discovered at Roever's home. The essay purportedly described how "to commit a murder and get away with it." Roever argues, without supporting authority, that testimony about the essay should not have been admitted because the witness lacked a basis to know that Roever was its author and because there was no evidence to show when the essay was written. She claims that the testimony was prejudicial and invaded the province of the jury.

We do not directly address Roever's contention on the merits because she has failed to properly support her contention by providing relevant authority. "It is appellant's responsibility to present relevant authority and cogent argument; issues not so presented need not be addressed by this court." Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987). Further, we conclude that there is no plain error affecting Roever's substantial rights that might warrant relief notwithstanding her failure to properly present the issue.[2] See NRS 178.602 ("Plain errors or defects affecting substantial

[2]There was some evidentiary basis for the jury to conclude that Roever had written the essay, and at trial defense counsel did not specifically argue that the witness was not qualified to testify that Roever had authored the essay. The issue of when the essay was written relates to the weight of the evidence, not its admissibility.

rights may be noticed although they were not brought to the attention of the court.").

Third and finally, Roever complains that the district court erred by permitting the State to present evidence of prior statements of Roever's children, who testified at trial. Roever claims that several of the statements were not admissible as prior inconsistent statements because Roever's children did not testify to the contrary but merely purported to have no recollection of some of the relevant events. Roever further argues that testimony by police concerning her children's prior statements was particularly prejudicial because it improperly emphasized those statements.

Preliminarily, we recognize that other witnesses may testify concerning a witness's prior inconsistent statements. "Pursuant to NRS 51.035(2)(a), an out-of-court statement is not inadmissible as hearsay if the following two conditions are met: (1) the declarant testifies at trial and is subject to cross-examination concerning the statement; and (2) the out-of-court statement is inconsistent with the declarant's testimony." Cheatham v. State, 104 Nev. 500, 503, 761 P.2d 419, 421 (1988). Provided there is an opportunity to cross-examine the testifying witness concerning the statement, other evidence of the prior inconsistent statement may be admitted. See generally id. at 503-04, 761 P.2d at 421-22 (concluding that the trial court properly admitted a sentencing transcript of a testifying witness's prior statements). We now turn to Roever's specific claims.

Despite making many generalizations,[3] Roever includes only two specific citations to relevant portions of the trial transcript to support her claim. First, she cites to the part of the trial transcript wherein defense counsel objected to the admission of prior statements of Roever's son, Raymond, during his testimony. Second, she cites to a portion of the transcript wherein a police officer, Steve Huggins, testified concerning prior statements of another of Roever's children, Dominick.

We conclude that Roever has not demonstrated error. First, we conclude that the district court did not err in deciding that it would allow the State to present prior statements of Raymond as prior inconsistent statements. While a witness's inability to remember cannot normally be characterized as being "inconsistent" with prior statements about an event, "courts do not apply this rule mechanically" and may admit the prior statements as inconsistent if "there is a reasonable basis in the record for concluding that the witness's 'I don't remember' statements are evasive and untruthful." People v. Johnson, 842 P.2d 1, 18-19 (Cal. 1992). Given Raymond's testimony as a whole, there is a reasonable basis to conclude that he was being less than forthcoming.

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[3]For example, Roever refers generally to three witnesses who testified at trial and cites to their testimony as a whole, as well as the testimony of two police officers. Roever argues: "The State presented their witnesses with a number of transcripts and reports regarding prior statements. For the most part, the witnesses simply indicated that they do not have any present recollection regarding making the statements, nor do they have present recollection as to whether the statements were true or false."

It is essential to this court's appellate review that Roever identify with specificity what evidence was allegedly admitted in error and how the issue was preserved for appeal by appropriate objection.

Although a certain amount of difficulty in recalling relevant facts is understandable, it appears that Raymond was genuinely hostile to the State and that he testified against his mother with some reluctance. On one occasion, the prosecutor asked Raymond if he was upset and, subsequently, the prosecutor inquired why Raymond was angry. It was in this context that the prosecutor sought to introduce, over defense objection, evidence of Raymond's prior statements to police. Later still, the district court permitted the prosecutor to treat Raymond as a hostile witness and, at one point, the prosecutor apologized for apparently making Raymond cry.

Further, as previously noted, Roever complains that the State was erroneously permitted to present testimony by Officer Steve Huggins about prior statements made by Dominick, another of Roever's children. We have reviewed the transcript of Huggins' testimony and conclude that Roever did not properly preserve this issue for appeal by making a contemporaneous objection at the time the testimony was presented.[4] This court has emphasized the importance of contemporaneous objection as a prerequisite to appellate review. See, e.g., Rice v. State, 113 Nev. 1300, 1311, 949 P.2d 262, 269 (1997) (stating that it is necessary to make a contemporaneous objection at the time evidence is presented even if an evidentiary matter has been

[4]During Huggins' testimony, the State sought to introduce into evidence, as a prior recollection recorded, a transcript (or in the alternative a tape) of a police interview with Dominick. However, the State withdrew its request after the district court decided that it would allow portions of the prior statement to be admitted subject to review of the transcript by the State and defense counsel. The prosecutor explained that he had decided not to introduce the transcript itself but instead to simply ask Huggins some questions based on it. Defense counsel did not specifically object at that time to questioning Huggins regarding the police interview with Dominick, nor did he raise this objection during questioning by the State.

resolved by a pretrial motion in limine). We further conclude that no plain error occurred that would warrant relief, notwithstanding Roever's failure to properly object. See NRS 178.602.

Having concluded that Roever has not demonstrated error, we affirm Roever's conviction.

It is so ORDERED.

Young, J.

Rose, J.

Becker, J.

cc: Hon. John P. Davis, District Judge
Attorney General
Nye County District Attorney
Rick Lawton
Nye County Clerk