

IN THE SUPREME COURT OF THE STATE OF NEVADA

COREY JAMES MALCOLM PEARCE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54006

FILED

FEB 03 2011

ORDER OF AFFIRMANCE

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

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

Appellant Corey Pearce contends that (1) the district court erred in several evidentiary rulings during his trial, and (2) the State engaged in prosecutorial misconduct during its closing argument. For the following reasons, we conclude that Pearce's contentions fail, and we therefore affirm.¹

The district court did not err in its evidentiary rulings

Pearce contends that the district court erred by (1) admitting into evidence gruesome photographs of the victim's body, (2) admitting evidence of Pearce's bad character, and (3) excluding evidence that was relevant to his theory of defense.

Standard of review

¹As the parties are familiar with the facts, we do not recount them further except as necessary to our disposition.

We review a district court's decision to admit or exclude evidence for an abuse of discretion. Crowley v. State, 120 Nev. 30, 34, 83 P.3d 282, 286 (2004). "An abuse of discretion occurs if the district court's decision is arbitrary or capricious or if it exceeds the bounds of law or reason." Jackson v. State, 117 Nev. 116, 120, 17 P.3d 998, 1000 (2001).

Photographs of the victim's body were relevant

The district court admitted into evidence several photographs of the decomposed remains of the victim, Michael McClain, in which maggots were depicted. Pearce asserts that these photos were irrelevant and unfairly prejudicial.

All relevant evidence is admissible unless its probative value is substantially outweighed by the danger of unfair prejudice. NRS 48.025(1); NRS 48.035(1). Here, the photos were relevant because, while gruesome, they showed how McClain was killed and how long after death his body was found. Although Pearce's confession clearly described his involvement in McClain's murder and the disposal of his body, Pearce's insinuations throughout trial that portions of his confession were fabricated entitled the State to introduce evidence that corroborated the confession's accuracy.

Moreover, the danger of unfair prejudice was slight. By the point in the trial at which the maggot-containing photos were introduced, the jury had already heard accounts of how Pearce had jabbed a pencil into the back of McClain's neck and had hammered a screwdriver into his temple. It had also heard testimony describing the "decomposition fluid," hair, and sloughed skin that investigators found in the Las Vegas condominium.

In short, gruesome murders often require the proof of gruesome facts. Consequently, we conclude that the district court did not abuse its discretion in admitting these photographs into evidence.

Pawn shop receipts were admitted to establish whereabouts

Second, Pearce asserts that the district court erred when it permitted the State to present evidence that he had pawned property after McClain died. He maintains that the State introduced this evidence to prove his bad character, which is prohibited under NRS 48.045, and that, even if there was a permissible purpose for introducing this evidence, it should not have been admitted without a hearing first and a limiting instruction. See Tinch v. State, 113 Nev. 1170, 1176, 946 P.2d 1061, 1064–65 (1997) (describing three-pronged inquiry district courts must make outside the jury’s presence prior to admitting bad-act evidence); Mclellan v. State, 124 Nev. 263, 269–70, 182 P.3d 106, 110–11 (2008) (discussing Tavares v. State, 117 Nev. 725, 30 P.3d 1128 (2001)).

The pawn shop receipts were introduced to establish Pearce’s presence in Las Vegas at the time of the murder before his cross-country flight—not to prove character. The act of pawning property does not constitute a “wrong” or “bad” act to which NRS 48.045 applies. While some pawned property may be stolen, pawning property is simply a way of selling property when the seller does not have the time to take certain steps that might otherwise enable him to obtain a higher sales price. Cf. State v. Heistand, 687 P.2d 1001, 1002 (Idaho Ct. App. 1984) (“Selling or pawning personal property is a neutral act which does not by itself attest to criminal propensity likely to inflame the average juror against a defendant.”); Nelson v. State, 914 S.W.2d 670, 671 (Tex. Crim. App. 1996) (concluding that pawn shop receipts introduced into evidence “did not

connect [the defendant] with any extraneous offenses or bad acts”). Thus, the district court did not abuse its discretion in admitting the receipts into evidence without a Tinch hearing or a Tavares limiting instruction.²

The Schwandt affidavit was irrelevant

Pearce next contends that the district court erred by excluding evidence that was relevant to his theory of defense. Specifically, he argues that the district court erroneously prohibited him from introducing an affidavit that recounted an instance in which the victim, McClain, had acted violently toward a woman. Pearce contends that this evidence was relevant to his theory of defense because it supported his belief that McClain posed a threat to Pearce’s girlfriend.

We conclude that the district court properly excluded this affidavit as irrelevant. NRS 48.025(2) (“Evidence which is not relevant is not admissible.”). Our review of the record gives us no indication that Pearce ever tried to advance a defense-of-others theory or a voluntary-manslaughter defense theory at trial. Pearce never requested a defense-of-others jury instruction, and in any event, no evidence supports the inference that McClain posed an imminent threat to Pearce’s girlfriend. Cf. NRS 193.250 (“Any other person, in aid or defense of a person about to be injured, may make resistance sufficient to prevent the offense.” (emphasis added)). Likewise, Pearce’s vague suspicion that McClain posed a threat to his girlfriend does not present the type of “serious and highly

²Although testimony regarding the specific items that Pearce pawned was likely unnecessary in establishing his whereabouts, these few isolated references in the course of an eight-day trial were innocuous, particularly in light of Pearce’s detailed confession.

provoking injury . . . sufficient to excite an irresistible passion in a reasonable person” that conceivably could have provided the basis for a voluntary-manslaughter defense. NRS 200.050.

To the extent Pearce argues that the affidavit was relevant to mitigating his culpability from first-degree to second-degree murder, we disagree. Cf. NRS 200.030(1)(a) (“Murder of the first degree is . . . [a] deliberate and premeditated killing . . .”). Pearce’s own confession recounted how he methodically drove a pencil into the back of McClain’s neck and hammered a screwdriver into his temple. Thus, even if the proffered affidavit may have helped Pearce establish that he viewed McClain as a threat, the affidavit would not have helped Pearce establish that he somehow acted without premeditation and deliberation in killing McClain. Accordingly, the district court properly excluded this evidence as irrelevant.

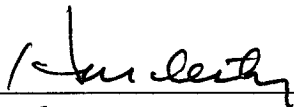
The State did not engage in prosecutorial misconduct

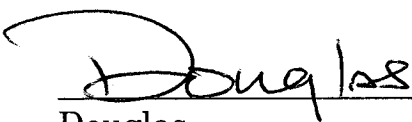
Pearce argues that the State engaged in prosecutorial misconduct by arguing facts not in evidence when it suggested that McClain took several days to die. The first step in reviewing a claim of prosecutorial misconduct is determining whether the conduct at issue was improper; only if the conduct was improper do we then determine if reversal is warranted. Valdez v. State, 124 Nev. 1172, 1188, 196 P.3d 465, 476 (2008). Although a prosecutor is prohibited from arguing facts not in evidence, a “prosecutor may ‘argue inferences from the evidence and offer conclusions on contested issues.’” Miller v. State, 121 Nev. 92, 100, 110 P.3d 53, 59 (2005) (quoting Jones v. State, 113 Nev. 454, 467, 937 P.2d 55, 63 (1997)).

In his confession, Pearce indicated that it took McClain some time to die: "It's like I knew he was gonna die, you know what I mean, but he just, he wouldn't die" Pearce also confirmed that he did not know exactly when McClain died because he was kept locked in an upstairs room. Based on the record before us, we conclude that the State simply asked the jury to draw a permissible inference based upon the existing evidence and that this conduct was not improper.³

Because the district court did not err in any of its rulings, Pearce's cumulative-error argument is without merit. For the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Pickering

³For similar reasons, we believe that the State properly argued the inference that Pearce must have sobered up from his drug-induced craze during the time it took McClain to die.

cc: Hon. Valerie Adair, District Judge
Attorney General/Carson City
Clark County District Attorney
Special Public Defender
Eighth District Court Clerk