

IN THE SUPREME COURT OF THE STATE OF NEVADA

PORFIRIO DUARTE-HERRERA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 55471

**FILED**

**OCT 05 2011**

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 first-degree murder with the use of a deadly weapon, attempted murder with the use of a deadly weapon, two counts of possession of an explosive or incendiary device, and one count of transportation of explosives for an unlawful purpose with substantial bodily harm. Eighth Judicial District Court, Clark County; Michael Villani, Judge. Appellant Porfirio Duarte-Herrera raises three issues.

First, Duarte-Herrera contends that the district court violated his right to present a defense by refusing to order the disclosure of the identity of a confidential informant who had provided information about Duarte-Herrera's codefendant, Omar Rueda-Denvers. We conclude that the district court's conclusion that the confidential informant was not a material witness in the case is supported by the record. See Sheriff v. Vasile, 96 Nev. 5, 8, 604 P.2d 809, 810 (1980) ("The identity of an informant need not be disclosed where he is not a material witness, because he can neither supply information constituting a defense nor rebut a necessary element of an offense."). The informant did not participate in the events giving rise to the criminal charge. The record

indicates that the informant's knowledge of Rueda-Denvers comes solely from a conversation he overheard regarding explosives that involved Rueda-Denvers and occurred ten years prior to the instant crime. While the evidence suggests that Rueda-Denvers is familiar with some explosives, the informant's testimony is not necessary to a "fair determination of guilt or innocence" where Duarte-Herrera admitted to detectives that he constructed the explosive. See NRS 49.365; Vasile, 96 Nev. at 8, 604 P.2d 810.


Second, Duarte-Herrera contends that the district court abused its discretion in instructing the jury concerning the proof required of his state of mind at the time of the crime and refusing to give his proffered instruction concerning reasonable doubt as to his state of mind. We discern no abuse of discretion. See Crawford v. State, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005) (reviewing district court's decision regarding jury instructions for abuse of discretion). The given instructions were legally correct and did not impermissibly reduce the burden of proof. See Sharma v. State, 118 Nev. 648, 659, 56 P.3d 868, 874 (2002) (observing that "intent can rarely be proven by direct evidence of a defendant's state of mind, but instead is inferred by the jury from the individualized, external circumstances of the crime, which are capable of proof at trial"); Keys v. State, 104 Nev. 736, 740-41, 766 P.2d 270, 273 (1988) (providing that State need not prove premeditation or deliberation to prove attempted murder); Moser v. State, 91 Nev. 809, 812, 544 P.2d 424, 426 (1975) ("[T]he intention to kill may be ascertained or deduced from the facts and circumstance of the killing, such as the use of a weapon calculated to produce death, the manner of use, and the attendant circumstances characterizing the act."). Further, the subject matter of the

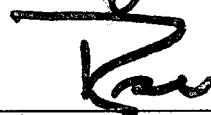
proffered instruction was substantially covered by the given instructions. See Earl v. State, 111 Nev. 1304, 1308, 904 P.2d 1029, 1031 (1995). The district court instructed the jury that the State bore the burden of proof and gave the statutory reasonable doubt instruction. See NRS 175.211.

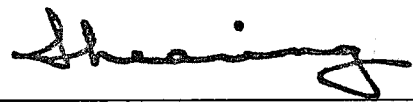
Third, Duarte-Herrera argues that there was insufficient evidence of attempted murder as there was no evidence that he intended to kill Caren Chali. This claim lacks merit because the evidence, when viewed in the light most favorable to the State, is sufficient to establish guilt beyond a reasonable doubt as determined by a rational trier of fact. Jackson v. Virginia, 443 U.S. 307, 319 (1979); McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992). The jury heard evidence that Rueda-Denvers had a falling out with his current girlfriend, Rosa Alfonso, and former girlfriend, Chali, when Chali arrived in Las Vegas. Rueda-Denvers acknowledged he was also aware that Chali had begun dating the victim, Willebaldo Dorantes Antonio. Duarte-Herrera admitted to police that he constructed a bomb and disguised it in a coffee cup. He and Rueda-Denvers travelled to the Luxor casino parking garage and planted the bomb on Antonio's car. Based on this evidence, particularly the evidence of motive and nature of the weapon used, we conclude that a rational juror could reasonably find that Duarte-Herrera deliberately intended to take Chali's life. See NRS 193.200 (intent); NRS 193.330(1) (defining attempt); NRS 200.020(1) (defining express malice); NRS 200.030 (murder); Sharma, 118 Nev. at 659, 56 P.3d at 874 (intent is generally inferred from the circumstances of the crime that are capable of proof at trial).

Having reviewed Duarte-Herrera's contentions and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.<sup>1</sup>

  
\_\_\_\_\_, J.  
Pickering

  
\_\_\_\_\_, Sr.J.  
Rose

  
\_\_\_\_\_, Sr.J.  
Shearing

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

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<sup>1</sup>The Honorables Robert Rose and Miriam Shearing, Senior Justices, participated in the decision of this matter under general orders of assignment.