

IN THE SUPREME COURT OF THE STATE OF NEVADA

JONATHAN VAZQUEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56345

FILED

MAR 17 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *T. Shoop*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, entered after a bench trial, of murder with the use of a deadly weapon and attempted murder with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

Appellant Jonathan Vazquez contends that insufficient evidence supports his convictions because the State did not prove that he possessed the requisite intent to commit the crimes. Vazquez asserts that the evidence showed he was intoxicated at the time of the offenses and that intoxication, combined with his antisocial personality disorder, prevented him from acting with premeditation, deliberation, and the intent to kill. We disagree 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 tier of fact. See Jackson v. Virginia, 443 U.S. 307, 319 (1979); Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998).

The judge heard testimony that Vazquez was drinking and taking drugs on the night of the shooting. However, two of Vasquez's friends testified that he was not acting unusual that night. The judge heard that the victim and Vazquez's good friend had been in an altercation

a few weeks before the shooting, on the night of the shooting Vazquez told his friend to tell him if the victim "messes with him," Vazquez shot the victim at least ten times in the back, and was "towering over" the victim shooting as he lay face-down on the ground. Six of the wounds were potentially fatal. Directly after the shooting, Vazquez admitted that he just shot a guy nine times and stated that "nobody was going to mess with . . . him or his crew." Vazquez told someone in the car with him that "you never saw me here tonight," and was able to give someone directions to his house. A few days after the shooting, Vazquez admitted to his friend that he had shot the victim, stating that "I had to do what I had to do," and "I thought that [the victim] was going to mess with us." Finally, although the defense psychologist testified that Vazquez had an antisocial personality disorder that when combined with drugs and alcohol could cause him to become disinhibited and act impulsively, he also testified that the specific facts of this shooting suggest that Vazquez knew what he was doing. Based on this evidence a rational trier of fact could reasonably infer that Vazquez possessed the requisite intent at the time of the shooting. See NRS 193.200 (manifestation of intent); NRS 193.220 (consideration of voluntary intoxication); NRS 200.030(1)(a) (first-degree murder); NRS 193.330(1) (attempt); King v. State, 80 Nev. 269, 272, 392 P.2d 310, 311 (1964) (whether intoxication precludes the capacity to intentionally kill is a question of fact for the fact-finder to resolve). It is for the finder of fact to determine the weight and credibility to give to conflicting testimony, and the verdict will not be disturbed on appeal, where, as here, substantial evidence supports the verdict. Cf. Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981).

Vazquez also contends that the district court erred by denying his motion to suppress his confession because it was involuntary and obtained in violation of Miranda v. Arizona, 384 U.S. 436 (1966). We disagree.

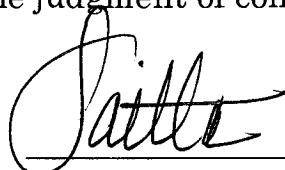
The district court's factual findings regarding an interrogation are reviewed for clear error; however, its ultimate determination regarding the voluntariness of a confession is reviewed de novo. Rosky v. State, 121 Nev. 184, 190, 111 P.3d 690, 694 (2005). The State bears the burden of proving the voluntariness of a confession by a preponderance of the evidence.¹ Id. at 193, 111 P.3d at 696. Here, the district court conducted a hearing and made some factual findings. Although some of those factual findings are not supported by the record, we conclude that the totality of the circumstances indicate that Vazquez's confession was voluntary and the district court did not err by denying the motion to suppress on this basis. See Passama v. State, 103 Nev. 212, 214, 735 P.2d 321, 323 (1987); Elvik v. State, 114 Nev. 883, 890-91, 965 P.2d 281, 286 (1998).

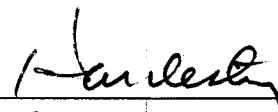
We also conclude that the district court did not err by denying the motion to suppress based on Miranda violations. Vazquez's vague references to getting a lawyer did not "unambiguously request counsel."

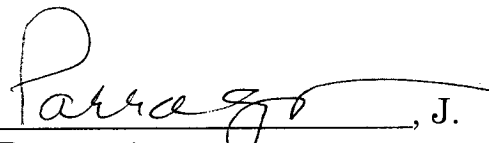
¹Vazquez contends that this standard is inappropriate and the State should have to prove the voluntariness of a confession beyond a reasonable doubt. We decline to address this contention as it is not supported by any cogent argument. See Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987); cf. NRAP 28(e)(2) (parties shall not refer this court to briefs or memoranda of law submitted to the district court for arguments on the merits of the appeal).

Davis v. United States, 512 U.S. 452, 459 (1994). Instead, his statements were such that a reasonable officer would have understood only that he might be invoking the right to counsel. See id.; Harte v. State, 116 Nev. 1054, 1066, 13 P.3d 420, 428 (2000). Similarly, when placed in context, Vazquez's statements about not talking anymore did not constitute an unambiguous invocation of his right to remain silent. See Berghuis v. Thompkins, 560 U.S. ___, ___, 130 S. Ct. 2250, 2259-60 (2010). Accordingly, we conclude that the district court's determination is supported by substantial evidence and it did not err by denying the motion to suppress on this basis, Dewey v. State, 123 Nev. 483, 489, 169 P.3d 1149, 1153 (2007); Harte, 116 Nev. at 1065, 13 P.3d at 427-28, and we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Saitta


_____, J.
Hardesty


_____, J.
Parraguirre

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