IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN DOUGLAS CHARTIER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56725

FILED

FEB 24 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY L. Malone
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of conspiracy to commit murder and two counts of first-degree murder with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

Appellant John Douglas Chartier was charged with various crimes stemming from his alleged involvement in the murders of his ex-wife and her father. The victims were stabbed to death by Chartier's close friend, David Wilcox. Although Chartier did not directly commit the murders, a jury convicted him of three charges based on his alleged role as a conspirator.[1]

Chartier now appeals, arguing that: (1) there was insufficient evidence to support his convictions, (2) the district court erred in two evidentiary rulings regarding the details of Wilcox's mental illness and evidence of Chartier's incarceration, and (3) a jury instruction was improper.

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

Sufficient evidence supports Chartier's convictions

In analyzing the sufficiency of evidence in a criminal case, this court will consider "'whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" Nolan v. State, 122 Nev. 363, 377, 132 P.3d 564, 573 (2006) (emphasis omitted) (quoting McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992)). "'[I]t is the jury's function, not that of the court, to assess the weight of the evidence and determine the credibility of witnesses.'" Id.

Under NRS 199.480, a conspiracy occurs when two or more persons agree to commit a crime. "A person who knowingly does any act to further the object of a conspiracy, or otherwise participates therein, is criminally liable as a conspirator." Bolden v. State, 121 Nev. 908, 920, 124 P.3d 191, 199 (2005) (internal quotation marks omitted) overruled on other grounds by Cortinas v. State, 124 Nev. 1013, 1026-27, 195 P.3d 315, 324 (2008). Conspiracy is rarely shown by direct evidence, and is instead usually inferred by circumstantial evidence and the conduct of the parties. Gaitor v. State, 106 Nev. 785, 790 n.1, 801 P.2d 1372, 1376 n.1 (1990) overruled on other grounds by Barone v. State, 109 Nev. 1168, 1171, 866 P.2d 291, 292 (1993).

Here, the record contains ample evidence from which a rational jury could have concluded that Chartier conspired to have his ex-wife and her father killed. See Nolan, 122 Nev. at 377, 132 P.3d at 573. The record demonstrates that Chartier and Rachel Bernat divorced and began a custody battle over their son, Z.C. At this time, Chartier was living with Wilcox, where Chartier attempted suicide and wrote a private letter to Wilcox, twice urging him to "take out mom and grandpa" in order

for Wilcox to gain custody of Z.C. The suicide attempt failed and Chartier later admitted at trial that he meant the note as an instruction to kill Bernat and her father, Carlos Aragon.[2]

A number of important events occurred after the divorce. First, Bernat moved and did not disclose her new address to Chartier. Chartier then followed Bernat home after picking up Z.C. from school and identified her car parked next to Aragon's in the driveway. Chartier informed Wilcox of Bernat's new address. Next, Bernat filed a motion in family court to move with Z.C. to New Mexico and complained to the Nevada State Board of Accountancy that Chartier (an accountant) was late with his child support payments. Chartier adamantly opposed the move and expressed to Wilcox at least three times that he wanted Bernat to "disappear." Bernat and Chartier ultimately agreed to a temporary move with shared custody; however, one week before the intended move to New Mexico, Bernat was murdered while Z.C. was staying with Chartier.

Moreover, two weeks after the murders, Chartier called the State Board of Accountancy to cancel the child-support complaint, indicating that his ex-wife had been murdered and that the outstanding balance should be dismissed. Also, a witness discovered a book in Chartier's office describing the process for obtaining a new identity and for falsifying official documents. Investigators discovered the fingerprints of Chartier and Wilcox on the book.

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[2]On appeal, Chartier argues that the suicide note alone is insufficient to show evidence of a conspiracy because: (1) it fails to show an agreement, as the killings were contingent on Wilcox choosing to take custody of Z.C., and (2) following the suicide attempt, Chartier retracted the note by telling Wilcox that he had written some "outlandish" and "stupid" things. Considering the abundance of other circumstantial evidence available to the jury, this argument fails.

In light of this evidence, viewed most favorably to the prosecution, a reasonable jury could have concluded beyond a reasonable doubt that Chartier and Wilcox conspired to commit the murders.[3] See Nolan, 122 Nev. at 377, 132 P.3d at 573.

The district court properly determined the admissibility of evidence relating to Wilcox's mental illness and Chartier's incarceration

In Nevada, it is well-settled that a district court has "considerable discretion in determining the relevance and admissibility of evidence," and this court has declined to disturb an evidentiary decision "absent a clear abuse of that discretion." Crowley v. State, 120 Nev. 30, 34, 83 P.3d 282, 286 (2004) (internal quotation marks omitted). In general, "error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected." NRS 47.040(1).

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[3]Because the record provides sufficient evidence to support Chartier's conspiracy conviction, we decline to address whether there was also sufficient evidence to convict him of aiding and abetting. Rhyne v. State, 118 Nev. 1, 10, 38 P.3d 163, 169 (2002) (noting that "a jury may return a general guilty verdict on an indictment charging several acts in the alternative even if one of the possible bases of conviction is unsupported by sufficient evidence").

Chartier also argues that there was insufficient evidence to convict him of use of a deadly weapon, seemingly because he did not know that Wilcox would use a knife. This argument is unpersuasive in light of the circumstantial evidence presented at trial. Namely, Chartier told Wilcox to "take out" the victims, he was aware of Wilcox's former experience as a military sniper, and Wilcox's wife testified that he kept over fifty knives and guns in their home.

Details of Wilcox's mental illness

Chartier argues that the district court erred by excluding specific quotes contained in Wilcox's medical report related to his suffering from post-traumatic stress disorder (PTSD).

At trial, Chartier called a psychiatrist to testify regarding Wilcox's treatment for PTSD due to his time in the military. To supplement this testimony, Chartier proffered a copy of Wilcox's medical file and sought to have the psychiatrist read a number of quotes that were allegedly made by Wilcox to his treating physician, who was not present at trial.

Chartier sought to use these quotes as evidence that Wilcox was paranoid and acted on his own volition to commit the murders, contending that the evidence was admissible as an exception to the hearsay rule to show Wilcox's state of mind. The district court questioned this rationale, commenting that Chartier was instead attempting to show that Wilcox had a propensity for violence, which was improper character evidence. See NRS 48.045(1).

Due to Chartier's perceived failure to provide a sufficient foundation for the quotes or to explain why these quotes were not improper character evidence, the district court excluded them.[4] Because Chartier has still failed to explain why these quotes did not amount to

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[4]On appeal, Chartier also points to an isolated comment by the district court in which the court stated that it was "not sure of that law." A review of the trial transcript demonstrates that this statement was made in response to Chartier's own unsupported assertion that satisfying the requirements of the state-of-mind hearsay exception would preclude any potential NRS 48.045 problem. We therefore reject Chartier's argument that this out-of-context comment was indicative of an abuse of discretion by the district court.

improper character evidence, we conclude that the district court acted within its discretion by excluding this evidence under NRS 48.045(1).[5]

Chartier's incarceration

Chartier contends that he was unfairly prejudiced by the introduction of evidence that he was incarcerated prior to trial and that the district court abused its discretion in admitting this evidence. We disagree.

All relevant evidence is admissible unless it is "substantially outweighed by the danger of unfair prejudice." NRS 48.035(1). Here, the State sought to introduce evidence that Chartier chose to be housed in jail with Wilcox for two years prior to trial. The record demonstrates that the district court carefully balanced the relevance of this evidence against its danger of unfair prejudice. In doing so, the district court recognized that the State was not seeking to introduce evidence of Chartier's incarceration gratuitously, but was doing so only to rebut Chartier's theory that Wilcox was a "lone wolf" who must have acted on his own accord.[6]

In light of this high degree of relevance, the district court also indicated that Chartier was overemphasizing the evidence's prejudicial impact—namely, that Chartier's custodial status could likely be inferred

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[5]Moreover, the district court properly exercised its discretion by excluding reference to the quotes on the ground that they were misleading. See NRS 48.035(1). Here, the relevant issue was whether Wilcox acted on his own volition. In addition to concluding that these quotes were intended to show that Wilcox acted in conformity with his homicidal character, the district court also properly concluded that this evidence was misleading because the proponent of the statements was not clear and some of the quotes appeared to be paraphrased.

[6]In this regard, we find the facts of this case distinguishable from Haywood v. State, 107 Nev. 285, 288, 809 P.2d 1272, 1273 (1991).

from his presence in court. Moreover, the district court was careful to limit the prejudicial effect that this evidence might have by prohibiting the State from referencing Chartier's prior conviction.

In sum, the district court acted within its discretion in concluding that the potential for unfair prejudice did not substantially outweigh the evidence's probative value. See Crowley, 120 Nev. at 34, 83 P.3d at 286.

The jury instruction was proper

Chartier argues that a jury instruction misstated the requisite mens rea for first degree murder. Because Chartier failed to object to this jury instruction at trial, we review this argument for plain error. Valdez v. State, 124 Nev. 1172, 1190, 196 P.3d 465, 477 (2008) (noting that "[w]hen an error has not been preserved, this court employs plain-error review").

On appeal, Chartier challenges Instruction No. 11 (relating to the charges for conspiracy and aiding and abetting), which authorized the jury to determine guilt for first-degree murder under "one or more" of the following principles:

> 1. If you find the Defendant committed a deliberate, willful and premeditated murder, . . . or
>
> 2. If you find the Defendant aided or abetted one or more other persons in the commission of a First Degree Murder and the Defendant possessed the intent to kill the victim, . . . or
>
> 3. If you find that the victim was murdered in furtherance of a conspiracy to commit murder and the Defendant was a party to the conspiracy and possessed the intent to kill the victim . . . .

(Emphasis added.)

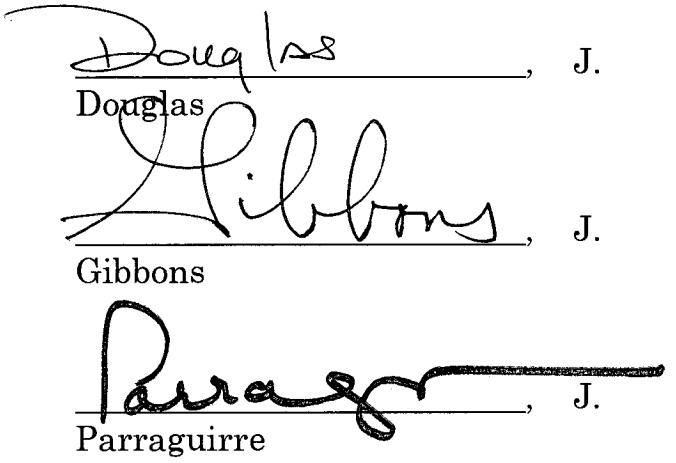
Specifically, Chartier challenges the phrase "intent to kill" in the second and third paragraphs, arguing that this is insufficient mens rea for first-degree murder. We disagree.

The record indicates that the district court properly instructed the jury regarding the mens rea requirements for conspiracy and aiding and abetting throughout the jury instructions. Evans v. State, 112 Nev. 1172, 1204, 926 P.2d 265, 286 (1996) (presuming that "the jury abided by its duty to read and consider all instructions provided by the trial court"). To begin, the district court defined the conspiracy theory for liability in two separate jury instructions as the "inten[t] to commit, or to aid in the commission of, the specific crime agreed to," as well as the "specific intent to commit [murder]." (Emphasis added.) Another jury instruction provided that "[i]n order to find the Defendant guilty of murder under a theory of aiding and abetting, the State must prove beyond a reasonable doubt that the Defendant, with the deliberate intention to commit [murder], aided, abetted, counseled, or encouraged another person with the intent that the other person commit this crime." (Emphasis added.)

Because the individual instructions make reference to specific intent, we conclude that the jury was adequately informed of the requisite mens rea to commit first-degree murder. See Sharma v. State, 118 Nev. 648, 655, 56 P.3d 868, 872, (2002) (concluding that in order for a person to be held accountable for the specific intent crime of another under a vicarious liability theory, the person must have "knowingly aided the other person with the intent that the other person commit the charged crime"). Therefore, any alleged mistake does not rise to the level of plain error to warrant reversal. See Valdez, 124 Nev. at 1190, 196 P.3d at 477.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.



_____, J.
Douglas

_____, J.
Gibbons

_____, J.
Parraguirre

cc: Hon. Donald M. Mosley, District Judge
Mario D. Valencia
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk