IN THE SUPREME COURT OF THE STATE OF NEVADA

ARTHUR ROBLES,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 35198

FILED

JUN 12 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. The district court sentenced appellant Arthur Robles to two consecutive terms of life in prison without the possibility of parole.

Robles first contends that the district court improperly admitted statements he made during a competency evaluation. Robles moved for a mistrial based on the admission of these statements. The district judge determined that his prior ruling allowing the admission of the statements was in error, but that a mistrial was not warranted. Instead, the district judge admonished the jury to disregard the statements. Robles contends that the denial of this motion for a mistrial was an abuse of the trial court's discretion. We disagree.

A court's decision to grant or deny a mistrial will not be disturbed absent a clear showing of an abuse of discretion.[1]

As a general rule, it is error to admit evidence of admissions made to a court-appointed psychiatrist.[2] We adhere

[1]See Mortensen v. State, 115 Nev. 273, 986 P.2d 1105 (1999).

[2]McKenna v. State, 98 Nev. 38, 639 P.2d 557 (1982).

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to the rationale of McKenna that incriminating admissions to a court-appointed psychiatrist can only be used against a defendant in very narrow and limited circumstances. Such circumstances do not exist in this case. We therefore conclude, as did the district court, that it was error to admit the defendant's statements. However, not all error warrants a mistrial. The trial court admonished the jury to disregard the statements and, absent clear evidence to the contrary, a properly instructed jury is presumed to have followed the law.[3] We conclude that Robles' right to a fundamentally fair trial was not impaired. Moreover, any error was harmless because the jury ultimately rejected a sentence of death, and the statements erroneously admitted related to death as an appropriate punishment. The trial court did not abuse its discretion in denying Robles' motion for a mistrial.

Next, Robles contends that the court abused its discretion in allowing the admission of evidence of his juvenile record. Further, Robles argues that the State improperly went into detail regarding the facts of a prior adult robbery conviction, instead of limiting questions to the fact of the conviction.

Generally, evidence of other crimes committed by a defendant is excluded due to its highly prejudicial nature.[4] However,

> a defendant's statements made in response to proper cross-examination reasonably suggested by the defendant's direct examination are subject to otherwise proper impeachment by the government, albeit by evidence that has been illegally

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[3]See State v. Sheeley, 63 Nev. 88, 97, 162 P.2d 96, 100 (1945).

[4]See Shults v. State, 96 Nev. 742, 616 P.2d 388 (1980).

> obtained and that is inadmissible on the government's direct case, or otherwise, as substantive evidence of guilt.[5]

NRS 50.095(4) renders evidence of juvenile adjudications inadmissible for the purpose of impeachment.[6] However, NRS 50.095(4) "was never intended to aid and abet perjury and, as with most statutes, is subject to the doctrine of invited error."[7] A defendant who "voluntarily, and in less than a truthful light, opens his juvenile record to the jury,....may not hide behind the protective shield of the statute."[8]

We conclude that appellant opened the door on direct examination by proffering his expert's testimony about the non-violent nature of the robberies that Robles had committed. Therefore, the trial court did not abuse its discretion in allowing the State to cross-examine the expert with the evidence of the violent nature of these previous robberies. The same rationale applies to the admission of the details of the robbery Robles committed as an adult.

Next, Robles asserts that no circumstances existed to justify the officers' warrantless intrusion of his apartment. Therefore, he urges this court to conclude that the district court improperly denied his motion to suppress the evidence obtained as a result of this search. We disagree.

A warrantless search is ordinarily considered unreasonable, unless it fits within a narrowly prescribed

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[5]United States v. Havens, 446 U.S. 620, 627-628 (1980).

[6]See Rhodes v. State, 91 Nev. 720, 723, 542 P.2d 196, 197 (1975).

[7]Id.; Cutler v. State, 93 Nev. 329, 333, 566 P.2d 809, 812 (1977).

[8]Rhodes, 91 Nev. at 723, 542 P.2d at 197.

exception to the warrant requirement.[9] One such exception is the exigency or "emergency" exception to the warrant requirement.[10] "A recognized exigent circumstance in Nevada is 'the reasonable belief that there is an urgent need to pursue an investigation which involves a substantial and imminent threat of death or bodily injury.'"[11]

"When an exigency gives rise to a search it may be carried through to its completion in whatever area law enforcement officers may reasonably expect to find the object of their search."[12] In addition, other evidence observed by law enforcement officers while they are conducting the search is subject to the plain view doctrine.[13]

> Law enforcement officers may enter private premises without either an arrest or a search warrant to preserve life or property, to render first aid and assistance, or to conduct a general inquiry into an unsolved crime, provided they have reasonable grounds to believe that there is an urgent need for such assistance and protective action, or to promptly launch a criminal investigation involving a substantial threat of imminent danger to either life, health, or property, and provided, further, that they do not enter with an accompanying intent to either arrest or search. If, while on the premises, they inadvertently discover incriminating evidence in plain view, or as a result of some activity on their part

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[9]See Katz v. U.S., 389 U.S. 347, 357 (1967); State v. Taylor, 114 Nev. 1071, 968 P.2d 315 (1998).

[10]See State v. Hardin, 90 Nev. 10, 13, 518 P.2d 151, 153 (1974).

[11]Doleman v. State, 107 Nev. 409, 415, 812 P.2d 1287, 1291 (1991) (citing Johnson v. State, 97 Nev. 621, 624, 637 P.2d 1209, 1211 (1981)); see also Koza v. State, 100 Nev. 245, 681 P.2d 44 (1984); Hardin, 90 Nev. 14-15, 518 P.2d at 153-54.

[12]Geary v. State, 91 Nev. 784, 790, 544 P.2d 417, 421 (1975); see also, Banks v. State, 94 Nev. 90, 575 P.2d 592 (1978) ("The seizure of items in plain view by officers conducting a legitimate emergency search for additional suspects was therefore not in violation of the fourth amendment.").

[13]Geary, 91 Nev. at 789-90, 544 P.2d at 421.

> that bears a material relevance to the initial purpose for their entry, they may lawfully seize it without a warrant.[14]

In the instant case, testimony established that officers were looking for two suspects who were involved in an armed robbery and murder. A car matching the description of the vehicle involved in the offense was located approximately one-half hour after the crime occurred. The owner of the vehicle was traced to Robles' apartment. When the officers knocked on the door of the apartment, Robles fled out a window. Meanwhile, the front door of the apartment was opened by a woman. Officers entered the apartment in search of the other suspect for the purpose of ensuring the safety of anyone in the surrounding areas.

We conclude that the district court did not err in finding that the officers had probable cause to believe that a violent and dangerous suspect was inside the apartment and exigent circumstances supported the entry without a warrant. During this search, the officers seized items that were in plain view in areas where they could have reasonably expected to find the other suspect. Therefore, we further conclude that the district court did not err in finding that the items were properly seized under the plain view doctrine. Accordingly, the trial court properly denied Robles' motion to suppress.

Finally, Robles asserts that the district court erroneously used jury instructions similar to those utilized

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[14] Id. at 790 n.3, 544 P.2d at 421 n.3 (1975) (quoting E. Mascolo, The Emergency Doctrine Exception to the Warrant Requirement Under the Fourth Amendment, 22 Buff. L. Rev. 419, 426-27 (1973)).

in Kazalyn v. State[15] rather than those adopted by this court in Byford v. State.[16]

In Byford, we noted that while Kazalyn instructions were permissible, more detailed instructions were preferable and we therefore advised district courts to use the new instructions discussed in Byford in future cases. In Garner v. State,[17] we provided further clarification, stating that "with convictions predating Byford, neither the use of the Kazalyn instruction nor the failure to give instructions equivalent to those set forth in Byford provides grounds for relief."[18] Appellant's conviction predates this court's decision in Byford. As such, the instructions given by the trial court were sufficient.[19]

Having concluded that all issues raised by appellant lack merit, we

ORDER the judgment of the district court AFFIRMED.

Young, J.

Leavitt, J.

Becker, J.

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[15]108 Nev. 67, 75-76, 825 P.2d 578, 583-84 (1992).

[16]116 Nev. 215, 994 P.2d 700 (2000).

[17]116 Nev. ___, 6 P.3d 1013 (2000).

[18]Id. at ___, 6 P.3d at 1025.

[19]We have also considered Robles' arguments regarding other jury instructions and conclude that they are without merit.

cc: Hon. Donald M. Mosley, District Judge
Clark County District Attorney
Attorney General
Kirk T. Kennedy
Clark County Clerk