IN THE SUPREME COURT OF THE STATE OF NEVADA

SHAWN BRIENT PRITCHETT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 57291

FILED

MAY 10 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of conspiracy to commit murder, first-degree murder with the use of a deadly weapon, and robbery with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge. Appellant Shawn Brient Pritchett raises four issues on appeal.

Admission of evidence

Pritchett contends that the district court abused its discretion by admitting evidence of his extra-marital affair with the victim's wife and by admitting phone calls he made from the Clark County Detention Center. We disagree.

Extra-marital affair

Pritchett contends that the district court erred by admitting testimony that he was involved in an extra-marital affair with the victim's wife because this testimony was prejudicial evidence of an uncharged bad act and the district court did not conduct a hearing pursuant to Petrocelli v. State, 101 Nev. 46, 692 P.2d 503 (1985), or provide the jury with a limiting instruction. We disagree. We review the district court's decision to admit evidence of other bad acts for an abuse of discretion and will not reverse that decision absent manifest error. Ledbetter v. State, 122 Nev.

252, 259, 129 P.3d 671, 676 (2006). Although the district court failed to conduct a Petrocelli hearing, we conclude that allowing the State to proffer this evidence was not manifestly wrong and reversal is not warranted because the evidence was admissible under the test announced in Tinch v. State, 113 Nev. 1170, 1176, 946 P.2d 1061, 1064-65 (1997) modified by Bigpond v. State, 128 Nev. ___, ___, 270 P.3d 1244, 1249-50 (2012). First, the affair was relevant because it demonstrated Pritchett's motive for the killing and helped explain why Pritchett and the victim's wife would conspire. Second, the affair was clearly and convincingly proven by statements Pritchett made to several witnesses. Finally, the probative value of explaining why Pritchett would kill a man who had befriended him and let him live in his home outweighed the danger, if any, of unfair prejudice resulting from the jury learning of the affair.

As to the lack of a limiting instruction, we ask "whether the error 'had substantial and injurious effect or influence in determining the jury's verdict.'" Tavares v. State, 117 Nev. 725, 732, 30 P.3d 1128, 1132 (2001) (quoting Kotteakos v. United States, 328 U.S. 750, 776 (1946)). Here, Pritchett told several people that he wanted to kill the victim. His guilt is supported by the cellular phone site data, pawn shop sales, and various pieces of the victim's vehicle which were traced back to Pritchett. Because the issue of guilt in this case is not close and overwhelming evidence supported the jury's verdict, we conclude that the lack of a limiting instruction was harmless error.

Admission of telephone calls

Pritchett argues that the district court erred by admitting testimony and a phone call that indicated that he was incarcerated. Mentioning that Pritchett was incarcerated and eliciting that information

from the detective was improper. McNelton v. State, 115 Nev. 396, 407, 990 P.2d 1263, 1270 (1999). Informing the jury that a defendant is in jail raises an "inference of guilt" and can be severely prejudicial. Id. (internal quotation marks omitted) (quoting Haywood v. State, 107 Nev. 285, 288, 809 P.2d 1272, 1273 (1991)). However, we have held this error harmless when overwhelming evidence of guilt is produced at trial. Haywood, 107 Nev. at 288, 809 P.2d at 1273. In the instant case, Pritchett told several people that he wanted to kill the victim. Pritchett's phone records revealed that on the night the victim went missing he drove to the area where the body was eventually discovered. The motor and steering column from the victim's truck were both found by police. Pritchett had sold the motor to a man in Oregon and given a friend the steering column. Several of the victim's rings had been pawned by Pritchett. And Pritchett instructed the victim's daughter to remove jewelry boxes from his truck and throw them in a separate trash can. We conclude that in light of the overwhelming evidence of guilt produced at trial, the jury being told that Pritchett had been incarcerated did not unfairly prejudice him.

Cell phone site search warrant

Pritchett contends that the district court erred in denying his motion to suppress the cellular phone site records because the warrant was not supported by probable cause. We disagree. The defendant must prove that a search warrant is invalid by a preponderance of the evidence, see U.S. v. Richardson, 943 F.2d 547, 548 (5th Cir. 1991), and this court will pay great deference to a lower court's finding of probable cause, see Illinois v. Gates, 462 U.S. 213, 236 (1983).

We conclude that the phone calls between Pritchett and his accomplices, the ensuing investigation, and Pritchett's puzzling behavior

regarding the victim's disappearance sufficiently established probable cause for the issuance of the warrant. The warrant sought archived data from Pritchett's cell phone that would establish his general location on the night of the murder. In the application for the warrant, the detective noted that the victim's wife did not report him missing, that the victim's wife and Pritchett had been involved in an extramarital affair, and that on the night of the victim's disappearance, Pritchett and the victim's wife had spoken multiple times into the early morning hours. The victim's body was found in California and Pritchett had given specific information on his whereabouts on the night the victim disappeared. Additionally, Pritchett and the victim's wife accepted and then declined a polygraph examination. Accordingly, we conclude that the district court relied on "trustworthy facts and circumstances" that reasonably led it to conclude that the cell site data would have evidentiary value. Keesee v. State, 110 Nev. 997, 1002, 879 P.2d 63, 66-67 (1994).

Batson challenge

Pritchett contends that the district court erred in denying his Batson[1] challenge to a peremptory strike based on racial discrimination. We disagree. We use a three-pronged test for determining whether illegal discrimination has occurred. See Diomampo v. State, 124 Nev. 414, 422, 185 P.3d 1031, 1036 (2008) (explaining the three-pronged test for determining whether illegal discrimination has occurred). First, the district court found that there was a prima facie case of racial discrimination. Second, the district court found that the State had given legitimate non-discriminatory reasons for their challenge. Namely, the

[1]Batson v. Kentucky, 476 U.S. 79 (1986).

State explained that prospective juror number 17 stated that she would not look at the crime scene photos until she was pressed by the defense counsel. Further, the State claimed to regularly strike jurors who have a familiarity with psychology. Here, juror number 17 had a related degree and her husband was a psychology professor. Finally, the district court found that the potential juror was not eliminated based on race. We conclude that these explanations for exercising the State's peremptory challenge were race-neutral, and Pritchett has not demonstrated that those explanations were pretext for racial discrimination. See Hawkins v. State, 127 Nev. ___, ___, 256 P.3d 965, 967 (2011). Therefore, the district court did not err by rejecting Pritchett's Batson challenge.

Cumulative error

Pritchett argues that cumulative error warrants reversal in this case. We conclude, however, that any errors considered cumulatively are not of such significance to require reversal of his convictions or sentence. See Valdez v. State, 124 Nev. 1172, 196 P.3d 465 (2008) (stating that this court will not reverse a conviction unless a defendant's constitutional right to a fair trial was violated by the cumulative effect of errors, even if the individual errors are harmless).

Having considered Pritchett's contentions and concluded that they do not warrant reversal, we

ORDER the judgment of conviction AFFIRMED.

Douglas, J.

Gibbons, J.

Parraguirre, J.

cc: Hon. Elissa F. Cadish, District Judge
Oronoz Law Offices
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk