

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

No. 63381

FILED

JAN 21 2014

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

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Michael Villani, Judge. Appellant Jonathan Vazquez raises two contentions on appeal.

First, Vazquez contends that the district court erred in denying his claim that his counsel was ineffective for failing to call an expert witness on the effects of drugs and alcohol. He further argues that counsel failed to call witnesses who could testify about his condition and the amount and type of intoxicants he ingested on the night of the shooting. We conclude that this argument lacks merit as Vazquez failed to demonstrate prejudice. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984) (requiring showing of deficient performance and prejudice); *Warden v. Lyons*, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984) (adopting the test in *Strickland*). A successful defense of voluntary intoxication requires the defendant show the "consumption of intoxicants, but also the intoxicating effect of the substances imbibed and the resultant effect on the mental state pertinent to the proceedings." *Nevius v. State*, 101 Nev. 238, 249, 699 P.2d 1053, 1060 (1985); *Garner v. State*, 116 Nev. 770, 786, 6 P.3d

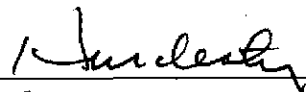
1013, 1024 (2000), *overruled on other grounds by Sharma v. State*, 118 Nev. 648, 56 P.3d 868 (2002). Evidence adduced at trial indicated that Vazquez imbibed intoxicants on the night of the shooting. However, witnesses who spoke to him did not note that he was slurring his words, stumbling, or that the substances he ingested had any significant “resultant effect on [his] mental state.” In light of this evidence, he did not demonstrate that expert testimony about intoxication would have affected the outcome of the trial. Therefore, the district court did not err in denying this claim.

Second, Vazquez argues that the district court erred in denying his claim that his counsel was ineffective for failing to adequately support his self-defense argument at trial. He contends that his counsel should have introduced evidence that he was aware of party crews, informal groups of people who threw parties for money, and the dangers they posed and called witnesses who could testify to his condition. Vazquez asserts that failure to support the defense was particularly damaging because pursuing such a defense relieved the State of the burden of proving that he was the shooter. We conclude that this argument lacks merit because Vazquez failed to demonstrate prejudice. *See Strickland*, 466 U.S. at 687; *Lyons*, 100 Nev. at 432-33, 683 P.2d at 505. The evidence at trial showed that the victim died as a result of multiple gunshot wounds to his back. Some of the exit wounds indicated that the victim was shot several times while he was lying face down. *See* NRS 200.200(1) (requiring showing that person killed created urgent and pressing danger that necessitated the killing to save the killer’s life or prevent him from receiving great bodily harm). Thus, he failed to demonstrate that, had counsel showed that he was aware of a heightened

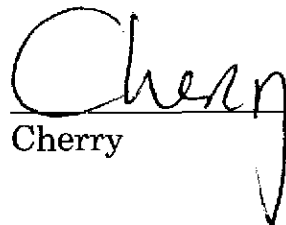
danger at parties hosted by party crews, the district court would have concluded that the shooting was justified. In addition, as Vazquez admitted to the police that he shot the victim and another witness testified that he saw Vazquez shoot the victim, Vazquez did not demonstrate that the State would not have been able to prove that he was the shooter absent the defense conceding it. Therefore, the district court did not err in denying this claim.

Having considered Vazquez's claims and concluded that they lack merit, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Cherry

cc: Hon. Michael Villani, District Judge
Justice Law Center
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk