

IN THE SUPREME COURT OF THE STATE OF NEVADA

JUNIOR W. MILLS,

No. 36275

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

**FILED**

**JUL 11 2001**

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *Richard*  
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count each of first-degree murder with the use of a firearm and robbery with the use of a firearm. Appellant Junior W. Mills received two terms of life in prison without the possibility of parole for the first offense and two terms of 72 to 180 months in prison for the second, all terms running consecutively. He was also ordered to pay \$39,582.13 in restitution.

Mills raises three claims. First, he contends that his right to counsel was violated because he was not represented by counsel when the district court determined that he was competent to stand trial.

Both the justice court and the district court granted Mills's request to represent himself. Both found that he waived his right to counsel voluntarily and knowingly and was competent. The district court also appointed the Washoe County Public Defender as standby counsel. A month before the trial, the district court ordered an evaluation of Mills's competency to stand trial. The court did not express any particular concerns or state any reasons for its order. Two experts examined Mills and each reported that he was competent. At a hearing about a week before trial, the court found Mills competent, and he agreed with the finding. Mills

continued to represent himself at the hearing, but standby counsel was present.

Mills now argues that his right to counsel was violated at this hearing. He cites U.S. v. Klat.<sup>1</sup> We conclude that Klat is not apposite.

In Klat, the district court allowed the defendant's counsel to withdraw before trial, consistent with the defendant's request to represent herself.<sup>2</sup> Describing the defendant's behavior as "bizarre," the court also ruled that there was "reasonable cause" to believe she was incompetent and ordered that she undergo a psychological examination.<sup>3</sup> A psychologist examined the defendant and concluded she was competent.<sup>4</sup> At a hearing on the issue, the defendant appeared without counsel, and the court determined she was competent.<sup>5</sup> The D.C. Circuit Court of Appeals held that the district court had violated the defendant's Sixth Amendment right to counsel, stating that "where a defendant's competence to stand trial is reasonably in question, a court may not allow that defendant to waive her right to counsel and proceed pro se until the issue of competency has been resolved."<sup>6</sup>

Our review of the record shows that in the pretrial proceedings and during the trial, Mills often pursued points which were irrelevant and sometimes even foolish, but nothing indicates that his competency to stand trial was ever "reasonably in question." Nor does Mills allege that he was

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<sup>1</sup>156 F.3d 1258 (D.C. Cir. 1998).

<sup>2</sup>Id. at 1261.

<sup>3</sup>Id.

<sup>4</sup>Id. at 1261-62.

<sup>5</sup>Id. at 1262.

<sup>6</sup>Id. at 1263 (footnote omitted).

incompetent or that his waiver of counsel was involuntary or unintelligent. Unlike in Klat, the district court did not find that Mills's behavior was bizarre or that there was reasonable cause to believe he was incompetent. As the State puts it, the district court apparently ordered a competency evaluation out of an "overabundance of caution." We conclude that under these circumstances the court did not err in assuring that Mills was competent without appointing counsel for him.

Second, Mills complains that the district court failed to hold a hearing outside the presence of the jury and determine that statements he made to police were voluntary before allowing the jury to consider them. But Mills never challenged the voluntariness of his statements; therefore, this issue deserves no consideration. The United States Supreme Court held in Jackson v. Denno that a court must determine outside the presence of the jury that a confession was made voluntarily before the jury is allowed to consider the confession.<sup>7</sup> However, a district court

is not obligated to conduct a Jackson v. Denno hearing on its own motion; rather, the onus is on the defendant to challenge the voluntariness of his admissions or confessions and to request the appropriate hearing. Appellant's failure to request a voluntariness hearing below precludes appellate consideration of this matter . . . .<sup>8</sup>

Third, Mills claims that three jury instructions reduced the State's burden to prove willfulness and

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<sup>7</sup>378 U.S. 368, 394-95 (1964).

<sup>8</sup>Wilkins v. State, 96 Nev. 367, 372, 609 P.2d 309, 312 (1980) (citation omitted); see also Lego v. Twomey, 404 U.S. 477, 478 (1972) (stating that Jackson held that "a criminal defendant who challenges the voluntariness of a confession . . . has a due process right to a reliable determination that the confession was in fact voluntarily given") (emphasis added).

premeditation by equating them with deliberation. He cites Byford v. State.<sup>9</sup> However, Mills did not object to the instructions, and he does not demonstrate that they constituted plain error which affected his substantial rights.<sup>10</sup> The instructions are somewhat circular, particularly those defining "premeditate" and "deliberate." But consistent with Byford, the district court did give separate instructions on each mens rea element, and unlike in Byford, no instruction stated that a murder entailing one element necessarily entailed all three. Further, Byford noted that these terms are used in their ordinary sense and instructions defining them are not even required.<sup>11</sup>

Even if we assume that the evidence of willful, deliberate, and premeditated murder was insufficient in this case, the jury could have reasonably found that Mills committed felony murder, an alternative theory of first-degree murder which the State charged. The evidence that Mills killed the victim was overwhelming. The evidence that he did so during the perpetration of a robbery is substantial: the victim made a dying declaration that the shooter took her purse, her purse was never found, and Mills had a motive to take the purse since he believed the victim had stolen money from him. Therefore, felony murder provides a valid basis for the general verdict of first-degree murder. The United States Supreme Court has held that reversal is not required where one basis for a conviction is not supported by sufficient evidence as long as that basis was not legally inadequate and an

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<sup>9</sup>116 Nev. 215, 994 P.2d 700, cert. denied, 121 S. Ct. 576 (2000).

<sup>10</sup>See NRS 178.602.

<sup>11</sup>See 116 Nev. at 236 n.3, 994 P.2d at 714 n.3.

alternative basis was supported by sufficient evidence.<sup>12</sup>

Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Young J.

Leavitt J.

Becker J.  
Becker

cc: Hon. Steven R. Kosach, District Judge  
Attorney General  
Washoe County District Attorney  
Calvert & Wilson  
Washoe County Clerk

<sup>12</sup>See Griffin v. United States, 502 U.S. 46, 56-60 (1991).