

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TEAG LANIER FOX,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 74333

FILED

SEP 24 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Teag Lanier Fox appeals from a judgment of conviction, pursuant to a jury verdict, of attempted murder with use of a deadly weapon; battery with use of a deadly weapon resulting in substantial bodily harm; and discharging a firearm at or into an occupied structure. Eighth Judicial District Court, Clark County; William D. Kephart, Judge.

Fox exchanged gunfire with Officer Greg Sedminik at Emerald Suites, a weekly-rental housing complex in Las Vegas.¹ Sedminik was wounded in the exchange, and Fox was later arrested and indicted for the aforementioned crimes. At trial, during cross-examination, the State asked Fox whether he had “rehearsed . . . or at least discussed . . . what you’d say today” Fox objected to the question on grounds that it violated attorney-client privilege. The court overruled Fox’s objection. Fox was later convicted on all counts and sentenced to 132-480 months’ incarceration.

On appeal, Fox argues that the State violated the attorney-client privilege by asking whether he had “rehearsed” with his attorney what he would say at trial, which implicated his Sixth Amendment right to the assistance of counsel. He further argues that the error was not harmless

¹We do not recount the facts except as necessary to our disposition.

because the State made a clear implication that he was committing perjury, which prejudiced him because his credibility was a key issue at trial.

At his jury trial, Fox testified; on cross-examination, the following exchange occurred:

Q So let's get to that. Mr. Sanft asked you to walk through what happened on the crime scene--

A Yes.

Q -- do you remember that? You, I presume, have rehearsed that before, or at least discussed, you know, what you'd say today, right?

A Rehearsed what?

Q Your story?

A I'm not sure what you're saying.

Q You didn't think about what you were going to say today, talk about it, look at the evidence and strategize?

A No, I didn't --

MR. SANFT: Objection, Your Honor, I think --

THE WITNESS: -- strategize.

MR. SANFT: I think it traipses into attorney/client privilege.

MR. GIORDANI: I'm not asking for that.

MR. SANFT: Okay. Well, once again, I think he's asking for --

THE COURT: I think the question is did he -- did he discuss with you his testimony here today.

MR. SANFT: Once again, traipsing into attorney/client privilege.

MR. GIORDANI: No, I'm not asking for the content of his --

THE COURT: Right.

MR. GIORDANI: -- protected conversations. I'm asking did you discuss it, yes or no?

THE COURT: Yeah, that's overruled.

BY MR. GIORDANI:

Q Yes or no?

A No, I did not.

Q Did not?

A No.

Q You have a lot on the line today, right?

A Correct.

Q I mean, these are serious charges; you understand that?

A Yes.

Q And you did not discuss what happened on that night -- on that morning with your attorney?

A Well, you mean talk about the events that led to it?

Q Yes.

A Yes. I did discuss factual information with him.

The State did not further pursue the line of questioning.

A client has a privilege to refuse to disclose confidential communications between the client and his attorney made for the purpose of providing professional legal services to that client. NRS 49.095. "Although the attorney-client privilege has been termed merely a rule of evidence and not a constitutional right, government interference with the attorney-client relationship may implicate Sixth Amendment rights." *Manley v. State*, 115 Nev. 114, 121, 979 P.2d 703, 707 (1999). But "[g]overnmental intrusion violates the Sixth Amendment only when it 'substantially prejudices' the defendant." *Id.* at 122, 979 P.2d at 707 (quoting *Clutchette v. Rushen*, 770 F.2d 1469, 1471 (9th Cir. 1985)). This court reviews such violations for harmless error, meaning it will only affirm convictions where it concludes

beyond a reasonable doubt that the violation did not contribute to the conviction. *Id.* at 121-23, 979 P.2d at 707-09.

Here, even if the State's questions violated the privilege, error would be harmless because Fox fails to show that he was substantially prejudiced, as required to conclude that an attorney-client privilege violation rises to the level of a Sixth Amendment violation.² Fox employs the supreme court's decision in *Manley* to support his argument to the contrary. In *Manley*, the court concluded that the State's questioning damaged Manley's credibility by implying that he "had not been entirely truthful even with his own attorneys, and had either omitted information detrimental to him or simply lied to them regarding what happened the night of the shooting." 115 Nev. at 122, 979 P.2d at 708. The supreme court determined the issue of Manley's credibility crucial because "[Manley] claimed the shooting was accidental and only [he] and [the victim] were present when she was shot." *Id.*

Fox argues that his credibility suffered similar damage, claiming that the State clearly implied that he was committing perjury. He asserts that this substantially prejudiced him because of competing witness testimony as to whether the officer was justified in drawing his weapon. But Fox does not demonstrate that the State's single mention of rehearsal resulted in damage to his credibility severe enough to deprive him of his right to counsel. Further, the State produced other evidence at trial that called Fox's credibility into question.³ Moreover, at trial, Fox denied rehearsing or

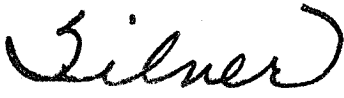
²Generally, prosecutors should avoid questions that suggest an intent to undermine the defendant's right to consult with counsel.

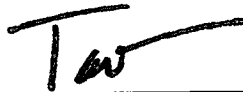
³An eyewitness testified that Fox approached Sedminik and drew a gun, supporting Sedminik's testimony and refuting Fox's contention that he was


strategizing with his counsel, so that testimony further undercuts his argument. Thus, we conclude that Fox was not substantially prejudiced, thereby precluding a Sixth Amendment violation. Therefore, no error warranting reversal occurred.

Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. William D. Kephart, District Judge
Sanft Law, P.C.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

holding his six-inch, fluorescent orange e-cigarette, not a gun, at his initial encounter with Sedminik. Also, Fox's employer testified that Fox had exhibited erratic behavior and had expressed extreme, negative perceptions of police and government, reportedly claiming that police had attempted to poison him, made threatening gestures to him by pulling up next to him in traffic and revving their engines, and cut his phone lines. Additionally, Fox himself testified to his 14-year grievance with the government and police regarding a custody dispute.