IN THE SUPREME COURT OF THE STATE OF NEVADA

THEODORE JOSEPH PAFUNDI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 90706

FILED
APR 17 2026
ELIZABETH A. BROWN
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 voluntary manslaughter with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Jacqueline M. Bluth, Judge. Appellant Theodore Pafundi raises four issues on appeal.

The district court did not engage in judicial misconduct during voir dire

Pafundi argues the district court deprived him of an impartial jury by threatening the venire during voir dire and thereby deterring candid answers from them.

Because Pafundi failed to object to the district court's remarks to the venire, we review for plain error. *See Oade v. State*, 114 Nev. 619, 622, 960 P.2d 336, 338 (1998); *see also Green v. State*, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003) ("This court has the discretion to address an error if it was plain and affected the defendant's substantial rights." (citation modified)). A criminal defendant has a constitutional right to be tried by a fair and impartial jury. U.S. Const. amend. VI; Nev. Const. art. 1, § 3. Judicial conduct during voir dire can deprive a defendant of an impartial jury "when jurors are given reason to fear reprisals for truthful responses."

Azucena v. State, 135 Nev. 269, 273-74, 448 P.3d 534, 539 (2019) (quoting *United States v. Rowe*, 106 F.3d 1226, 1229 (5th Cir. 1997)).

At the beginning of voir dire, the district court warned prospective jurors to "be careful what you wish for" in any attempts to "get out" of jury duty. The district court emphasized that, should the veniremembers be excused from Pafundi's trial, they would be reassigned to other trials that might last considerably longer. And on the second day of voir dire, the district court described a veniremember's statement that he was not "up to the task" of jury duty under any circumstances as "ridiculous" and "not acceptable" before sending the veniremember to jury services for reassignment to a civil case.

We are not convinced the district court intimidated the venire and deprived Pafundi of an impartial jury. *Azucena*, 135 Nev. at 273, 448 P.3d at 538 (quoting *State v. Miller*, 49 P.3d 458, 467 (Kan. 2002)). This is in part because we recognize that veniremembers' attempts to evade jury duty often require district courts to conduct voir dire with a certain realism. *Id.*

Any potential chilling effect of the district court's comments was also ameliorated by the district court's statement just before the warning. The district court opened voir dire by encouraging the venire to approach the proceedings with open minds, noting that prior juries had found jury duty enjoyable and rewarding. The tone of the warning appears far less harsh given this context. *See Parodi v. Washoe Med. Ctr., Inc.*, 111 Nev. 365, 369, 892 P.2d 588, 590 (1995) (analyzing the totality of judicial conduct to determine whether a district court's statements resulted in a partial jury). Reviewing the voir dire as a whole, we discern no plain error in the district court's conduct. No relief is therefore warranted on this ground.

The district court did not empanel a biased juror

Pafundi argues the district court plainly erred in empaneling a biased juror, denying Pafundi an impartial jury. Pafundi did not challenge the juror for cause. An unpreserved challenge to an empaneled juror is reviewed for plain error. *Nelson v. State*, 123 Nev. 534, 543, 170 P.3d 517, 524 (2007). A defendant has a constitutional right to a "jury capable and willing to decide the case solely on the evidence before it." *Smith v. Phillips,* 455 U.S. 209, 217 (1982). A prospective juror should be removed for cause when that "juror's views would prevent or substantially impair the performance of his duties as a juror in accordance with his instructions and his oath." *Weber v. State*, 121 Nev. 554, 580, 119 P.3d 107, 125 (2005) (citation modified); NRS 175.036(1) (grounds for challenges for cause).

Pafundi claims that because the prospective juror equivocated about rendering a verdict based on the facts alone by saying "I kind of sort of believe I can be fair and impartial," the prospective juror was biased. Although the prospective juror did to some degree equivocate on the subject, he was subsequently rehabilitated when he later stated that he would base his conclusion upon the facts presented at trial. A review of the record does not otherwise indicate that the prospective juror was plainly biased. *Snow v. State,* 101 Nev. 439, 446, 705 P.2d 632, 637-38 (1985) (holding that a juror need not be removed if they are subsequently rehabilitated); *Young v. State*, 141 Nev., Adv. Op. 47, 577 P.3d 691, 699 (2025) ("[T]he trial court must look at the totality of the circumstances to determine if the juror meets the criteria for bias."). No relief is therefore warranted on this ground.

The district court did not err in excluding references to the victim's drug dealing

Pafundi argues the district court abused its discretion in excluding other act evidence of the victim's drug dealing. NRS 48.045(2) prohibits admission of evidence of "other crimes, wrongs, or acts" to prove a person acted in conformance with a particular character trait. "Other act evidence carries a presumption of inadmissibility." *Dickey v. State*, 140 Nev. 8, 11, 540 P.3d 442, 448 (2024). But such evidence may be admitted for non-propensity purposes when "(1) the incident is relevant to the crime charged; (2) the act is proven by clear and convincing evidence; and (3) the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice." *Tinch v. State*, 113 Nev. 1170, 1176, 946 P.2d 1061, 1064-65 (1997), *holding modified by Bigpond v. State*, 128 Nev. 108, 270 P.3d 1244 (2012); *see also* NRS 48.045(2) (listing purposes for which other act evidence may be admissible). "When it is necessary to show the state of mind of the accused at the time of the commission of the offense for the purpose of establishing self-defense, specific acts which tend to show that the deceased was a violent and dangerous person may be admitted." *Burgeon v. State*, 102 Nev. 43, 45, 714 P.2d 576, 578 (1986). The district court's decision to admit or exclude other act evidence "rests within its sound discretion and will not be reversed on appeal absent manifest error." *Ledbetter v. State*, 122 Nev. 252, 259, 129 P.3d 671, 676 (2006).

Here, Pafundi contends that evidence of Pafundi's knowledge of the victim's drug dealing was admissible under NRS 48.045(2) because it established that Pafundi reasonably believed the victim was dangerous and armed. We agree that such evidence may be relevant to Pafundi's self-defense theory if the victim's status as a drug dealer exacerbated Pafundi's reasonable fear of the victim. *See Pineda v. State*, 120 Nev. 204, 213, 88

P.3d 827, 834 (2004) (noting testimony describing the violent nature of gang culture relevant to the defendant's self-defense theory when the victim was a gang member). But Pafundi failed to demonstrate that drug dealing equated to a violent character and was therefore relevant. *See id.* Furthermore, evidence that the victim sold drugs had the potential to "entic[e] jurors to resolve the case based on emotion, sympathy, or another improper reason" by cultivating jurors' antipathy toward the victim. *Randolph v. State*, 136 Nev. 659, 665, 477 P.3d 342, 348-49 (2020) (citation modified). Because of this, we cannot say the district court committed manifest error in excluding evidence of the victim's drug dealing. And any error in excluding this evidence was harmless, given the admitted evidence of the victim's methamphetamine intoxication during the confrontation and frequent carrying of a firearm. Accordingly, no relief is warranted on this ground.

The district court did not err in imposing a deadly weapon enhancement

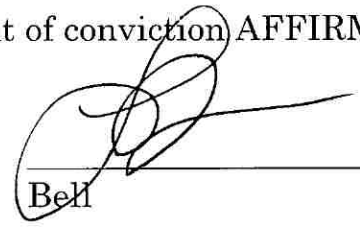
Lastly, Pafundi argues the district court erred in imposing the sentence for the deadly weapon enhancement to the manslaughter conviction because use of a deadly weapon is an essential element of homicide and thus the enhancement does not apply. Pafundi contends that because any object or instrument that causes death is a deadly weapon under NRS 193.165(6)(b), any homicide crime inherently includes the use of a deadly weapon.

Pafundi did not object to the deadly weapon enhancement below, and we conclude that he has failed to demonstrate plain error. The deadly weapon enhancement in NRS 193.165 does not apply "where the use of a firearm, other deadly weapon or tear gas is a necessary element" of the charged crime. NRS 193.165(4). The use of a deadly weapon is not essential

to the definition of a homicide because the State may prove a defendant committed homicide without having to prove the defendant used a deadly weapon. NRS 200.040 (defining manslaughter); *cf. Cordova v. State*, 116 Nev. 664, 668, 6 P.3d 481, 484 (2000) (affirming a deadly weapon enhancement for a felony murder conviction predicated on the crime of shooting into an occupied building). Accordingly, "the use of a deadly weapon is not a necessary element of murder or attempted murder within the meaning of NRS 193.165(3)." *Williams v. State*, 99 Nev. 797, 798, 671 P.2d 635, 636 (1983) (citation modified). The district court therefore did not err in imposing the deadly weapon enhancement and no relief is warranted on this ground.

Having determined that none of the issues raised on appeal warrant relief, we

ORDER the judgment of conviction AFFIRMED.



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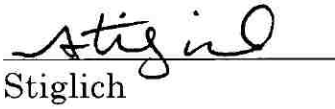

_____, J.
Stiglich

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cc: Hon. Jacqueline M. Bluth, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk