



IN THE SUPREME COURT OF THE STATE OF NEVADA

DENNIS EDWARD LOVE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 90393

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of first-degree murder with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Tierra Danielle Jones, Judge. Appellant Dennis Love raises seven issues on appeal.

The district court properly denied Love's motion to dismiss the venire

Love argues the district court erred in denying his motion to dismiss the venire because African Americans were underrepresented. "Both the Fourteenth and the Sixth Amendments to the United States Constitution guarantee a defendant the right to a trial before a jury selected from a representative cross-section of the community." *Evans v. State*, 112 Nev. 1172, 1186, 926 P.2d 265, 274 (1996). A defendant alleging a violation of the right to a jury selected from a fair cross-section of the community must first establish a prima facie violation of the right by showing:

(1) that the group alleged to be excluded is a "*distinctive*" group in the community; (2) that the *representation of this group in venires* from which juries are selected *is not fair and reasonable* in relation to the number of such persons in the community; and (3) that this underrepresentation is *due to systematic exclusion* of the group *in the jury-selection process*.

Id. at 1186, 926 P.2d at 275. We review the district court’s denial of Love’s motion for an abuse of discretion. *See Valentine v. State*, 135 Nev. 463, 464, 454 P.3d 709, 713 (2019) (reviewing for abuse of discretion district court’s denial of fair cross-section challenge without an evidentiary hearing).

The district court found that Love failed to meet the second prong of the fair cross-section analysis because the disparity of African Americans in the venire relative to the Clark County population was insufficient to show underrepresentation. We agree. “Under the second prong, to determine whether the representation of African-Americans in the venire is fair and reasonable, this court calculates the absolute and comparative disparities.” *Morgan v. State*, 134 Nev. 200, 208 & n.10, 416 P.3d 212, 221-22 & n.10 (2018) (“Unlike the absolute disparity, the comparative disparity takes into account the size of the group in addition to the absolute difference between the group’s proportionate representation in the community and its representation in the jury pool.” (citation omitted)). Because the venire contained a 2.8% absolute disparity and a 20% comparative disparity of African Americans, Love failed to demonstrate underrepresentation in the venire. *See Evans*, 112 Nev. at 1187, 926 P.2d at 275 (stating that “a comparative disparity well below 50% is unlikely to be sufficient to show underrepresentation” (citation modified)); *see also Williams v. State*, 121 Nev. 934, 940 n.9, 125 P.3d 627, 631 n.9 (2005).

Furthermore, Love’s bare assertion that the 20% comparative disparity was evidence of systemic exclusion failed to articulate the specific allegations required under the third prong. *See Valentine*, 135 Nev. at 466, 454 P.3d at 714 (requiring evidentiary hearing on fair cross-section challenge only “when a defendant makes specific allegations that, if true, would be sufficient to establish a prima facie violation”); *Williams*, 121 Nev.

at 940, 125 P.3d at 631 (“[A]s long as the jury selection process is designed to select jurors from a fair cross section of the community, then random variations that produce venires without a specific class of persons or with an abundance of that class are permissible.”). Accordingly, no relief is warranted on this issue.

The district court did not err in denying Love’s motion for a mistrial based on other act testimony

Love contends the district court erred in denying his motion for a mistrial after two witnesses testified to inadmissible other act evidence. A defendant’s motion for a mistrial may be granted “where some prejudice occurs that prevents the defendant from receiving a fair trial.” *Rudin v. State*, 120 Nev. 121, 144, 86 P.3d 572, 587 (2004). “Denial of a motion for a mistrial is within the trial court’s sound discretion.” *Parker v. State*, 109 Nev. 383, 388, 849 P.2d 1062, 1066 (1993) (quoting *Owens v. State*, 96 Nev. 880, 883, 620 P.2d 1236, 1238 (1980)).

First, Love argues that a witness’s identification of him as “the crazy guy” was inadmissible other act evidence under NRS 48.045(2). Love did not object to this testimony and fails to demonstrate plain error. *Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48 (2018) (“Before this court will correct a forfeited error, an appellant must demonstrate that: (1) there was an ‘error’; (2) the error is ‘plain,’ meaning that it is clear under current law from a casual inspection of the record; and (3) the error affected the defendant’s substantial rights.”). The witness’s reference to a pejorative nickname did not describe any conduct by Love. Love therefore fails to demonstrate that it was inadmissible under NRS 48.045(2).

Second, Love argues that a witness’s references to prior verbal exchanges between Love and the victim was prejudicial other act evidence that necessitated a mistrial. The witness testified that just before the

killing, Love threatened the victim and other neighbors. The witness also testified that Love made similar comments during previous arguments with individuals at the apartment complex. Love then moved for a mistrial based on these references to Love's earlier comments. The district court denied the motion but allowed Love to renew the motion if the defense did not explore the past problematic encounters between Love, the victim, and the witness. Because Love's defense ultimately did explore those interactions and Love failed to renew the motion for mistrial, the issue is forfeited. *Turner v. State*, 136 Nev. 545, 550, 473 P.3d 438, 445 (2020) (defining forfeiture as "the intentional failure to object, having full knowledge of the relevant facts"); *Jeremias*, 134 Nev. at 50, 412 P.3d at 48 ("The failure to preserve an error, even an error that has been deemed structural, forfeits the right to assert it on appeal."). And, to the extent Love argues that the district court should have admonished the jury after Carr's inadvertent, unsolicited references to past threats, Love declined such an instruction and thus waived any argument about it. *Id.* Accordingly, no relief is warranted on this ground.

The district court did not plainly err in failing to sua sponte issue a curative instruction regarding a detective's testimony

Love argues the district court should have issued a curative instruction sua sponte when a detective indirectly remarked on Love's invocation of the right to remain silent. The detective testified that police "attempted" to question Love. Love did not object to this testimony and fails to demonstrate plain error. In particular, Love gave a voluntary statement to the detective and did not invoke the right to remain silent. Accordingly, no curative instruction was necessary.

The district court did not err in settling jury instructions

Love argues the district court erred in settling jury instructions. “The district court has broad discretion to settle jury instructions, and this court reviews the district court’s decision for an abuse of that discretion or judicial error.” *Crawford v. State*, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005). Whether a jury instruction is an accurate statement of the law is reviewed de novo. *Nay v. State*, 123 Nev. 326, 330, 167 P.3d 430, 433 (2007).

Love first argues that Nevada’s mandatory reasonable doubt instruction under NRS 175.211(2) infringes on the presumption of innocence. We have repeatedly approved the constitutionality of NRS 175.211(2), as has the Ninth Circuit Court of Appeals in the face of similar challenges. *See, e.g., Rodriguez v. State*, 117 Nev. 800, 32 P.3d 773 (2001); *Ramirez v. Hatcher*, 136 F.3d 1209, 1214 (9th Cir. 1998). And because Love has articulated no compelling reasons to depart from our precedent, we decline to reconsider the issue. *See Miller v. Burk*, 124 Nev. 579, 597, 188 P.3d 1112, 1124 (2008) (“[U]nder the doctrine of *stare decisis*, [this court] will not overturn [precedent] absent compelling reasons for so doing.”).

Love also challenges instructions on the burden of proof, malice, implied malice, evidence of state of mind, premeditation, and equal and exact justice. He does not contend that the instructions were inaccurate statements of the law, and to the extent he challenges those instructions as confusing or unnecessarily given, he fails to “present relevant authority and cogent argument.” *Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987). We therefore decline to consider those arguments. No relief is therefore warranted on this issue.

The district court did not err in restricting expert testimony

Love argues the district court erred in prohibiting an expert from testifying to Love's mental state in the weeks before the murder. A witness qualified as an expert may testify to matters within the scope of their expertise if such testimony would assist the trier of fact in understanding the evidence. NRS 50.275. "This court reviews a district court's decision to allow expert testimony for abuse of discretion." *Hallmark v. Eldridge*, 124 Nev. 492, 498, 189 P.3d 646, 650 (2008).

Love's defense at trial was that he acted in self-defense or in the heat of passion in response to the victim's and other neighbors' campaign of bullying and threatening behavior. To that end, Love retained an expert on trauma responses and bullying. The expert did not interview Love but listened to 911 calls placed by Love in the weeks before the murder. Love attempted to solicit testimony from the expert as to whether Love sounded stressed or was lying on the 911 calls. The district court precluded this testimony based on a lack of foundation because the expert had no personal knowledge of Love's mental state apart from listening to the 911 calls. We conclude this was not an abuse of discretion. Although the expert was qualified to testify about stress responses generally and did so testify, the expert was in no better position to interpret Love's emotional state during the 911 calls than the jury. *See Pineda v. State*, 120 Nev. 204, 214 n.30, 88 P.3d 827, 834 n.30 (2004) (holding that gang violence expert's testimony "amounting to comments on [the defendant's] mental processes" was properly excluded where the expert had not interviewed the defendant). Accordingly, no relief is warranted on this issue.

The district court did not err in denying Love's motion for a mistrial based on juror misconduct

Love argues the district court erred in denying his motion for a mistrial because the victim's daughter, unaccompanied by a victim advocate, was seen smoking on the same balcony as two jurors. "To obtain a new trial based on juror misconduct, the defendant must establish that (1) misconduct occurred and (2) the misconduct was prejudicial." *Maestas v. State*, 128 Nev. 124, 138, 275 P.3d 74, 84 (2012). We review the district court's denial of Love's motion for a mistrial for an abuse of discretion and will not disturb the court's findings of fact absent clear error. *Meyer v. State*, 119 Nev. 554, 561, 80 P.3d 447, 453 (2003).

Attempts by third parties to influence the jury process constitute juror misconduct. *Id.* Such misconduct must be "readily ascertainable from objective facts and overt conduct without regard to the state of mind and mental processes of any juror." *State v. Thacker*, 95 Nev. 500, 501, 596 P.2d 508, 509 (1979).

Here, a defense investigator reported that he saw the victim's daughter approximately five feet from the jurors on the smoking balcony but did not report hearing or seeing any communication. The district court then questioned each juror individually. The two jurors who had been on the balcony denied that any communication occurred between them and the victim's daughter. These facts are insufficient to demonstrate juror misconduct occurred. Thus, the district court did not abuse its discretion in denying Love's motion for a mistrial.

Cumulative error

Love argues cumulative error necessitates reversal. Because we discern no error, “there is nothing to cumulate.” *Belcher v. State*, 136 Nev. 261, 279, 464 P.3d 1013, 1031 (2020). Accordingly, we

ORDER the judgment of conviction AFFIRMED.

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Herndon, C.J.

A handwritten signature in dark ink, appearing to be 'J. Bell', with a stylized, cursive 'J'.

Bell, J.

A handwritten signature in dark ink, appearing to be 'J. Stiglich', with a cursive 'S' and 't'.

Stiglich, J.

cc: Hon. Tierra Danielle Jones, District Judge
Oronoz & Ericsson, LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk