IN THE SUPREME COURT OF THE STATE OF NEVADA

BRENT H. SHERIDAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 38953

FILED

AUG 1 9 2003

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of second degree murder with the use of a deadly weapon. Appellant Brent H. Sheridan was sentenced to two consecutive terms of life imprisonment with the possibility of parole after ten years.

On November 15, 1999, Harriet Jennings Chapin was shot and killed at the Warren Motel and Apartments. Within fifteen minutes of the shooting, police officers arrived and received information that a white male, approximately six feet tall, wearing a dark shirt and pants, left the crime scene with a handgun and was heading southbound. Based on information provided by multiple witnesses, the officers followed Sheridan's trail in a southeasterly direction and saw a silhouette of a person in an empty desert area.

The officers approached Sheridan and gave him several commands, which he did not respond to initially. Officers handcuffed Sheridan asking him his name and where he had come from. After identifying himself, Sheridan indicated that he had come from the Warren Motel. Thereafter, the officers read Sheridan his Miranda[1] rights and

[1]Miranda v. Arizona, 384 U.S. 436 (1966).

arrested him. The State filed a criminal information, charging Sheridan with murder with the use of a deadly weapon.

During his first trial, Sheridan testified on his own behalf. The district court allowed the State to impeach Sheridan by asking him if he recalled telling someone that he had considered killing homosexuals, fat women and various people who cut in front of him when driving or walking. Sheridan admitted making the statements to a psychiatrist. After the first trial ended in a mistrial, Sheridan's testimony was read to the jury at his second trial.

Prior to the second trial, Sheridan filed a motion for disclosure of evidence, seeking any informant file(s) on a new witness Thomas Yates, a/k/a Daniel Smith. The State represented that no informant file existed. However, during the third day of trial, an informant file was discovered. The district court provided Sheridan with one day to review the informant file before allowing the State to call Yates as a witness.

Sheridan first argues the district court erred in denying a motion to suppress evidence obtained as a result of the police stop and seizure. "This court will uphold [a] district court's decision regarding suppression unless this court is 'left with the definite and firm conviction that a mistake has been committed.'"[2]

NRS 171.123(1) allows a police officer to detain any person whom the officer encounters under circumstances which reasonably indicate that the person has committed, is committing, or is about to commit a crime. In reviewing police action in seizure cases, the

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[2]State v. McKellips, 118 Nev. ____, 49 P.3d 655, 658 (2002) (quoting United States v. Gypsum Co., 333 U.S. 364, 395 (1948)).

touchstone of Fourth Amendment analysis must always be that of reasonableness.[3] Reasonableness must be determined with an objective eye in light of the totality of the circumstances.[4]

In this case, the officers followed Sheridan's trail, consistent with witnesses' directions, and found him walking in circles in an empty desert area near the Warren Motel shortly after the shooting occurred Furthermore, Sheridan matched the description of the suspect We conclude the officers had a reasonable, articulable suspicion that Sheridan was the suspect they were looking for.[5] Therefore, we conclude the district court did not err in concluding that the officers properly detained Sheridan.

Next, Sheridan argues the district court erred in denying a motion to suppress pre-Miranda statements made in response to police questioning.

The Fifth Amendment privilege against self-incrimination provides that statements made by a suspect during custodial interrogation are inadmissible unless the police first provide a Miranda warning.[6] An individual is deemed in custody where there has been a formal arrest or where there has been a restraint on freedom of movement of the degree associated with a formal arrest so that a reasonable person would not feel

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[3]State v. Lisenbee, 116 Nev. 1124, 1128, 13 P.3d 947, 950 (2000).

[4]Id.

[5]Id.

[6]State v. Taylor, 114 Nev. 1071, 1081, 968 P.2d 315, 323 (1998); see also Miranda, 384 U.S. at 478-79.

free to leave.[7] The term interrogation refers to any express questioning, words, or actions on the part of the police that the police should know are reasonably likely to elicit an incriminating response.[8] This court has recognized that inquiries by police which are investigative and non-coercive in nature do not constitute custodial interrogation.[9]

In this case, we conclude Sheridan's statements were not the product of a custodial interrogation. The officers asked Sheridan for his name and where he came from. Although Sheridan's responses may have been incriminating, we conclude the questions, by themselves, were not reasonably likely to elicit an incriminating response. The questions were investigative and non-coercive in nature, as the officers were trying to ascertain whether Sheridan was the suspect they were looking for. Accordingly, we conclude the district court did not err in denying the motion to suppress because Sheridan's statements were not the result of a custodial interrogation.

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[7]Taylor, 114 Nev. at 1082, 968 P.2d at 323.

[8]Rhode Island v. Innis, 446 U.S. 291, 301 (1980).

[9]See Johnson v. State, 92 Nev. 405, 406-07, 551 P.2d 241, 242 (1976) (questioning whether an inquiry made by police, who had observed the defendant shoot one of two victims, in particular, why he had shot the victims, due to the investigative and non-coercive nature of the questioning, was not deemed a custodial interrogation); see also Schnepp v. State, 84 Nev. 120, 122, 437 P.2d 84, 85 (1968) (concluding inquiries by police, in particular, (1) to whom did a piece of property belong, and (2) how the property got into the car, were proper, pre-custody inquiries, investigative and non-coercive in nature, and justified by the circumstances as a legitimate police practice).

Sheridan also argues the district court erred in denying his motion to preclude the testimony of informant Yates, pursuant to Brady v. Maryland.[10]

Whether the State adequately disclosed information under Brady involves both factual and legal questions and requires a de novo review.[11] Brady and its progeny require a prosecutor to disclose evidence favorable to the defense when the evidence is material either to guilt or to punishment.[12] Failure to disclose the evidence violates due process regardless of the prosecutor's motive.[13] In Nevada, after a specific request for evidence, omitted evidence is material if there is a reasonable possibility it would have affected the outcome.[14]

In this case, the State had a duty to disclose the informant file, because it was impeachment evidence favorable to Sheridan and material to guilt. However, we conclude, in light of Sheridan's failure to identify any actual prejudice he may have incurred, a Brady violation did not occur, despite the late disclosure of the file. We further conclude the defense adequately used the informant file to impeach Yates. Accordingly, we conclude the district court did not err in allowing Yates to testify.

Finally, Sheridan argues the district court erred in allowing the State to impeach him with a statement that he had made to a

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[10]373 U.S. 83 (1963).

[11]See Mazzan v. Warden, 116 Nev. 48, 66, 993 P.2d 25, 36 (2000).

[12]Lay v. State, 116 Nev. 1185, 1194, 14 P.3d 1256, 1262 (2000).

[13]Id.

[14]Id.

psychiatrist contained in a petition for involuntary detention and treatment nine years prior to the second trial. We agree.

NRS 50.085(3) provides that specific instances of conduct of a witness, for the purpose of attacking or supporting his credibility, may, if relevant to truthfulness, be inquired into on cross-examination of the witness.

In this case, Sheridan testified that he had hollered at vagrants dozens of times, he had confronted various people, but he did not attempt to do these people any harm. He further testified that he never threatened Chapin, he never wanted to murder her, and he never shot her or anybody else. Based on that testimony, the district court permitted the following cross-examination, which was read to the jury during the second trial:

> Q Do you recall in 1992 telling someone that you had considered killing homosexuals, fat women and various people who cut in front of you when you're driving or when you're walking down the street. . . .
>
> A I had talked to a psychiatrist in 1992 after losing my employment in Kansas City, Missouri.
>
> Q So if you did make that statement that is who you would have made it to?
>
> A That's correct.
>
> Q Do you remember making it or not?
>
> A Yes I do.
>
> Q You did make it?
>
> A Yes I did.

The statement was a privileged communication under Esquivel v. State[15] and McKenna v. State[16] and should not have been admitted. Nevertheless, we conclude the error was harmless because overwhelming evidence was adduced to support Sheridan's conviction. Accordingly, we

ORDER the judgment of the district court AFFIRMED.[17]

_____, J.
Shearing

_____, J.
Leavitt

_____, J.
Becker

cc: Hon. Kathy A. Hardcastle, District Judge
Special Public Defender
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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[15]96 Nev. 777, 617 P.2d 587 (1980).

[16]98 Nev. 38, 639 P.2d 557 (1982).

[17]Having reviewed Sheridan's other arguments regarding the admission of evidence, we conclude they are without merit.