

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAMON LAMAR CAMPBELL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39127

FILED

JUL 14 2003

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ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of murder with the use of a deadly weapon and attempted murder with the use of a deadly weapon.

On July 22, 2000, appellant Damon Campbell approached two Hispanic males in his apartment complex parking lot. Campbell and the Hispanic men exchanged words. One of the Hispanic men whistled, causing several of his friends to run to the parking lot. Campbell fired multiple gunshots and then returned to his apartment. Shortly after, Campbell reached through his bathroom window and fired three shots, killing Luis Alberto Martinez and paralyzing Carlos Villanueva. Campbell remained inside his apartment with three other individuals until police entered several hours later and arrested him.

The State charged Campbell with one count of murder with the use of a deadly weapon and two counts of attempted murder with the use of a deadly weapon. The State also sought the death penalty. The jury found Campbell guilty of first degree murder with the use of a deadly weapon. The jury also found the aggravating circumstance of murder being committed by a person who knowingly created great risk to more than one person. Because the jury determined mitigating circumstances outweighed the aggravating circumstance, the jury returned a verdict of life without the possibility of parole.

The district court sentenced Campbell to two consecutive terms of life without the possibility of parole and two maximum consecutive terms of 192 months. Both consecutive terms are to be served concurrently.

Campbell first argues the district court erred in refusing to instruct the jury on his theory of self-defense. He argues the self-defense jury instructions did not address his specific defense in which he asserts a group attacked him and, thus, he was justified in defending himself against the entire group, as if he had been defending himself against an individual attacking him with deadly force. The State argues Campbell waived the issue for appellate review because he agreed to the proposed jury instruction after he initially objected. The State contends refusing to instruct a jury on a defendant's theory of the case does not rise to the level of reversible error when the proffered instruction is substantially covered by the jury instructions given to the jury.

A criminal defendant is entitled to have the jury instructed on his theory of the case, no matter how weak or incredible the evidence supporting the theory may be.¹ However, if a proffered jury instruction "misstates the law or is adequately covered by other instructions, it need not be given."²

In this case, Campbell proffered this addition to a proposed jury instruction: "A person who is attacked by more than one person has the right to act in self-defense against all of his attackers." However, the district court added "(s)" to assailant and provided the following jury instruction:

¹Barron v. State, 105 Nev. 767, 773, 783 P.2d 444, 448 (1989).

²Id.

The right of self-defense is not available to an original aggressor, that is a person who has sought a quarrel with the design to force a deadly issue and thus through his fraud, contrivance or fault, to create a real or apparent necessity for making a felonious assault.

However, where a person without voluntarily seeking, provoking, inviting or willingly engaging in a difficulty of his own free will, is attacked by an assailant(s), he has the right to stand his ground and need not retreat when faced with the threat of deadly force.

We first conclude Campbell's proffer of an addition to the jury instruction adequately preserved this issue for review.

We further conclude Campbell's proffered addition appears to be adequately covered by the above jury instruction, as it includes situations where a person is attacked by more than one assailant. We conclude the jury instruction could not have mislead the jury because, if the jury had concluded Campbell was attacked by a group and faced the threat of deadly force, his actions would have been justified. Accordingly, we conclude the district court did not err in refusing to give the proffered instruction.

Next, Campbell argues the district court abused its discretion in allowing prior bad act testimony. The State argues the district court did not abuse its discretion in allowing prior bad act testimony because Campbell opened the door by inquiring about Campbell's character.

Prior to trial, the district court ruled that a prior shooting incident involving Campbell could not be presented in the State's case-in-chief. During cross-examination, the State elicited the following testimony from John Woodring, the apartment maintenance manager:

Q. You didn't like the Mexican people over there, did you?

A. I didn't care if they were Mexican or who they were. I just, you know.

Q. You didn't like them?

A. No, at my apartment complex.

He further testified, on cross-examination, that the "Mexican" tenants were a pain because they partied, drank all the time, and left a great deal of broken bottles outside. During redirect, Campbell elicited the following testimony from Woodring:

Q. As far as you were concerned, Mr. Campbell was nothing more man [sic] a paying tenant, correct?

A. Exactly.

Q. As long as he didn't violate your rules, you didn't have no problem with him being there?

A. I didn't have no problem with Damon Campbell at all.

Based on Campbell's inquiry on redirect, the district court determined he had opened the door by putting Campbell's character at issue and allowed inquiry into the prior shooting incident.

Where the complaining party first questions a witness regarding otherwise inadmissible testimony, that party is barred from preventing the testimony's admission under the open door doctrine.³ The doctrine provides that the introduction of inadmissible evidence by one party allows the other party, in the court's discretion, to introduce evidence on the same issue to rebut any false impression that might have resulted from the earlier admission.⁴ It does not permit the introduction

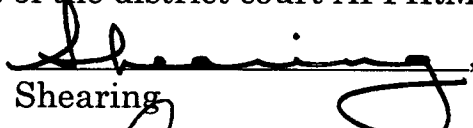
³See Taylor v. State, 109 Nev. 849, 851, 858 P.2d 843, 845 (1993).

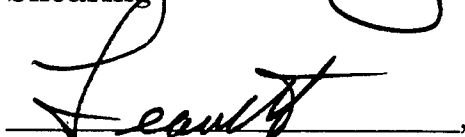
⁴United States v. Whitworth, 856 F.2d 1268, 1285 (9th Cir. 1988).


of evidence that is related to a different issue or is irrelevant to the evidence previously admitted.⁵

During cross-examination, the State attempted to impeach Woodring by showing his prejudice against Hispanics. We conclude Campbell's inquiry during redirect was not an inquiry about Campbell's character, for it did not place character in issue. Instead, the inquiry during redirect merely tended to rebut the inference of prejudice on cross-examination. The question was directed to indicate Woodring had no reason to lie for Campbell, and that Campbell was just another tenant. Thus, we conclude the district court erred in finding Campbell had opened the door for admitting the prior shooting incident. Nevertheless, we conclude the error was harmless because overwhelming evidence was adduced to support Campbell's convictions. Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁶


_____, J.
Shearing


_____, J.
Leavitt


_____, J.
Becker

⁵Id.

⁶We have considered Campbell's other claimed errors regarding the motion to strike the aggravating circumstances, the constitutionality of the aggravating circumstances enunciated in NRS 200.333, and the sufficiency of the evidence. We decline to consider the assignments of error regarding the aggravating circumstances because Campbell was not sentenced to death. We conclude the assignment of error regarding the sufficiency of evidence is without merit.

cc: Hon. Sally L. Loehrer, District Judge
David M. Schieck
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk