IN THE SUPREME COURT OF THE STATE OF NEVADA

FRED HUSTON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39803

FILED

JUN 04 2003

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of murder with the use of a deadly weapon against a victim 65 years of age or older. Appellant Fred Huston was sentenced to serve two consecutive life sentences in the Nevada State Prison with the possibility of parole.

Appellant was convicted and sentenced for the murder of his wife, Eldona Huston. Appellant contends on appeal that the district court committed reversible error when it permitted the State to cross-examine him concerning the number of times that he and his wife stated that they loved each other during 9-1-1 telephone calls that Eldona made moments before appellant shot and killed her. Appellant argues that this evidence was irrelevant and substantially prejudiced the jury against him.

NRS 48.015 provides that evidence is relevant when it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence." Relevant evidence, however, is inadmissible if its probative value is substantially outweighed by the danger of unfair

prejudice, it confuses the issues, or it is needlessly cumulative.[1] We have consistently held that "[d]istrict courts are vested with considerable discretion in determining the relevance and admissibility of evidence."[2] A district court's decision to admit or exclude evidence will not be reversed on appeal unless it is manifestly wrong.[3]

In the 9-1-1 tape recordings, Eldona told appellant that she loved him three separate times before he shot and killed her. Appellant did not return Eldona's statements of love. When specifically asked on direct examination about what he was thinking and feeling at the time of the shooting, appellant replied, "I loved my wife." Thereafter, appellant was cross-examined by the State as follows:

> Q. Mr. Huston, you heard the tape. We all heard the tape of the 911 call.
>
> A. Yes.
>
> Q. How many times on that tape did Eldona Huston say to you she loved you? How many times?
>
> MR. BASSETT: Objection, relevance.
>
> THE WITNESS: I don't recall.
>
> THE COURT: I'll let the question stand.
>
> . . . .

---

[1]See NRS 48.035; see also Castillo v. State, 114 Nev. 271, 277, 956 P.2d 103, 107 (1998) modified on other grounds by Harte v. State, 116 Nev. 1054, 1071-72, 13 P.3d 420, 432 (2000).

[2]Castillo, 114 Nev. at 277, 956 P.2d at 107-08.

[3]Vallery v. State, 118 Nev. ___, ___, 46 P.3d 66, 76 (2002).

Q. Do you know how many times you said you loved [her] don't you? None. Isn't that right?

MR. BASSETT: Relevance, Judge.

THE WITNESS: That day, I don't know.

THE COURT: The question can be asked and answered.

THE WITNESS: I don't remember a lot of things that was [sic] said almost six months ago.

By testifying in his own defense on direct examination about the love he felt for Eldona at the time he shot and killed her, appellant opened the door for the State to question him on this issue during cross-examination.[4] Thus, we conclude that the evidence at issue was relevant to rebut appellant's testimony.

Additionally, the 9-1-1 recordings were admitted into evidence without objection and played to the jury in their entirety prior to appellant's testimony. We conclude that appellant has failed to show how he was substantially prejudiced on cross-examination by questions regarding evidence already presented to the jury on an issue that he raised. It is noteworthy that the State only asked two questions relating to this issue, and appellant did not recall the answers to the questions.

---

[4]See McKenna v. State, 114 Nev. 1044, 1056, 968 P.2d 739, 747 (1998); Taylor v. State, 109 Nev. 849, 851, 858 P.2d 843, 845 (1993).

We conclude that the district court's decision to allow the State to pursue the cross-examination of appellant regarding this evidence was not manifestly wrong. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Shearing

_____, J.
Leavitt

_____, J.
Becker

cc: Hon. Michael L. Douglas, District Judge
Clark County Public Defender
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk