IN THE SUPREME COURT OF THE STATE OF NEVADA

LAILONI D. MORRISON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40097

FILED

JUN 03 2004

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY DEPUTY CLERK

ORDER OF AFFIRMANCE

Appellant Lailoni D. Morrison appeals from a judgment of conviction, pursuant to a jury verdict, of one count of second-degree murder with use of a deadly weapon. Morrison challenges his conviction on various grounds. We conclude that all of his arguments lack merit, and we affirm his conviction.

Morrison first contends that the district court erred in denying his motion to suppress his confession. Morrison argues that his statement was involuntary and coerced. Specifically, he claims that the record demonstrates that he was never asked if he wanted to give a statement; he repeatedly asked to be taken to jail; he was kept physically uncomfortable; he was lied to about statements of witnesses; he asked for an attorney, but his request was ignored; and he was threatened with the death penalty and with threats of never seeing his children.

A confession is inadmissible unless freely and voluntarily given.[1] "In order to be voluntary, a confession must be the product of a

[1]Steese v. State, 114 Nev. 479, 488, 960 P.2d 321, 327 (1998); Rowbottom v. State, 105 Nev. 472, 482, 779 P.2d 934, 940 (1989).

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'rational intellect and a free will.'"[2] "[A] confession obtained by physical intimidation or psychological pressure is inadmissible."[3]

We conclude that the district court did not err in denying Morrison's motion to suppress. The record shows that: (1) after receiving a full recitation and explanation of his rights, Morrison indicated he understood his rights, confirmed that understanding in writing, and then waived his rights; (2) rather than attempting to make Morrison physically uncomfortable, the detectives who were interviewing him tried to accommodate his physical needs; (3) although the detectives falsely stated that witnesses unknown to Morrison had identified him, and they tried to minimize Morrison's participation in the crime in an attempt to get him to offer his involvement, the falsehood and inducements employed by the detectives were not of a type reasonably likely to procure an untrue statement;[4] (4) Morrison requested counsel, but then waived his right to counsel after he chose to initiate further conversation with the detectives; (5) the detectives mentioned Morrison's children, but never threatened him that if he did not give a statement he would not see them; and (6) the detectives did not improperly use the State's intent to seek the death penalty as a threat. Accordingly, we conclude that Morrison's statement

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[2]Passama v. State, 103 Nev. 212, 213-14, 735 P.2d 321, 322 (1987) (quoting Blackburn v. Alabama, 361 U.S. 199, 208 (1960)).

[3]Thompson v. State, 108 Nev. 749, 753, 838 P.2d 452, 455 (1992), overruled on other grounds by Collman v. State, 116 Nev. 687, 7 P.3d 426 (2000), cert. denied, 532 U.S. 978 (2001).

[4]See Sheriff v. Bessey, 112 Nev. 322, 325, 914 P.2d 618, 620 (1996) (observing that confessions obtained through the use of subterfuge are not vitiated so long as the methods used are not of a type reasonably likely to procure an untrue statement).

to the detectives was not involuntary or coerced, and the district court did not err in denying Morrison's motion to suppress his confession.

Morrison also complains that the district court improperly restricted his cross-examination of Pam Neal, a witness during the State's case-in-chief. Morrison argues that the district court's ruling limited his ability to show Neal's bias and motive to fabricate. We disagree. Morrison was permitted to inquire concerning the events surrounding Neal's arrest, the specific charges she faced, and her belief that Morrison was responsible for the death of her cousin. Additionally, Morrison elicited adequate testimony from Neal regarding dismissal of her criminal charges to imply that the charges may have been dismissed in return for her favorable testimony. Since the district court limited Morrison's impeachment of Neal only by the use of extrinsic evidence and by the restriction that Morrison was not to try to prove whether Neal in fact committed the crimes she was charged with, we conclude that the district court acted within its discretion and did not err in limiting Morrison's cross-examination of Neal.

Morrison contends that the district court erred in admitting an out-of-court prior consistent statement of Anthony Gantt as inadmissible hearsay. We conclude that the district court did not abuse its discretion in admitting Gantt's statement.[5] Under NRS 51.035, an out-of-court statement that would otherwise be inadmissible hearsay is admissible if "[t]he declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is: . . .

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[5]See Qualls v. State, 114 Nev. 900, 902, 961 P.2d 765, 766 (1998) (observing that it is within the district court's discretion to admit or exclude evidence).

(b) Consistent with his testimony and offered to rebut an express or implied charge against him of recent fabrication or improper influence or motive."[6] Here, all the requirements of NRS 51.035(2)(b) were met, and thus, Gantt's prior consistent statement was not hearsay: (1) Gantt testified at trial prior to Detective Bodnar's testimony; (2) Gantt was subject to cross-examination; (3) the statement introduced through Detective Bodnar was consistent with Gantt's testimony at trial; and (4) the statement was offered to rebut an express or implied charge of recent fabrication by Gantt.[7]

Morrison next contends that the district court erred in denying his motion for a mistrial after Detective Bodnar discussed other criminal conduct committed by Morrison. Specifically, while summarizing Morrison's statement, Detective Bodnar stated that Morrison told him that when he heard gunshots, "[h]e went to run, choked on a blunt." We conclude that the district court did not abuse its discretion in denying Morrison's motion for mistrial.[8] While NRS 48.045 prohibits the admission of other crimes, wrongs, or acts to prove a defendant acted in conformity with his character, it does not prohibit its admission "for other

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[6]NRS 51.035(2)(b).

[7]See Runion v. State, 116 Nev. 1041, 1052, 13 P.3d 52, 59 (2000) (noting that although prior consistent statements of a witness are generally considered to be inadmissible hearsay, such statements are admissible to rehabilitate a witness charged with recent fabrication or having been subjected to improper influence).

[8]See Mortensen v. State, 115 Nev. 273, 281, 986 P.2d 1105, 1111 (1999) (noting that denial of a motion for mistrial is within the district court's sound discretion and will not be overturned absent a showing of abuse).

purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident."[9]

Here, the evidence regarding Morrison choking on a blunt was not introduced for the purpose of showing character consistency.[10] What Morrison claims is an inadmissible prior bad act is more appropriately characterized as an inconsequential, single remark by one witness relating Morrison's statement that he "choked on a blunt." Additionally, unless the jury was particularly familiar with street terminology, the remark did not directly imply that Morrison was involved in any criminal activity. Also, the district court remedied any conceivable harm by permitting Morrison, if he so desired, to poll the jury after the trial in order to determine if they understood that the term "blunt" referred to a marijuana cigarette. Thus, we conclude that the district court did not err by denying Morrison's motion for mistrial.

Finally, Morrison alleges two instances of error regarding the jury instructions given at his trial: (1) the malice aforethought instruction was vague and ambiguous and contained archaic language; and (2) the express and implied malice instruction was unconstitutionally vague. First, we have directly addressed Morrison's argument regarding the malice aforethought instruction in Leonard v. State,[11] and have concluded that the language "a heart fatally bent on mischief" in the malice

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[9]NRS 48.045(2).

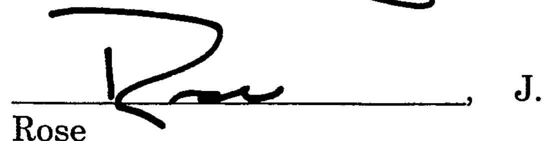
[10]See Qualls v. State, 114 Nev. 900, 903, 961 P.2d 765, 767 (1998) (observing that NRS 48.045(2) prohibits the introduction of evidence of prior bad acts for purposes of showing character consistency).

[11]117 Nev. 53, 79, 17 P.3d 397, 413 (2001).

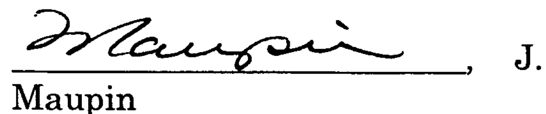
aforethought instruction is constitutional. We noted that "'[a]lthough these phrases are not common in today's general parlance, . . . their use did not deprive appellant of a fair trial.'"[12] Second, the express and implied malice instruction given at Morrison's trial was essentially the exact definition of express and implied malice as set forth in NRS 200.020. The statutory language used in the instruction is well established in Nevada,[13] and although we have characterized the language as "archaic," we have also found it to be essential.[14] The instruction differed only in that it contained the phrase "may be implied" instead of "shall be implied," a change that we have found to be preferable.[15] Thus, we conclude that Morrison's jury instruction challenges lack merit.

Having concluded that Morrison's contentions lack merit, we ORDER the judgment of the district court AFFIRMED.

_______________, C.J.
Shearing



_______________, J.
Rose



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Maupin

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[12]Id. (quoting Leonard v. State, 114 Nev. 1196, 1208, 969 P.2d 288, 296 (1998)).

[13]Leonard, 117 Nev. at 78, 17 P.3d at 413.

[14]Keys v. State, 104 Nev. 736, 740, 766 P.2d 270, 272 (1988).

[15]Leonard, 117 Nev. at 78, 17 P.3d at 413.

cc: Eighth Judicial District Court Department 11, District Judge
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