

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALBERT STEPHEN BRILLER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 40189

FILED

MAY 11 2004

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. R. [Signature]*  
CHIEF DEPUTY CLERK

Albert Stephen Briller appeals from a judgment of conviction, pursuant to a jury verdict, of guilty of first-degree murder and theft. Briller was sentenced to life in prison without the possibility of parole on the first-degree murder count and was adjudicated as a habitual criminal and sentenced to life without the possibility of parole on the theft count, to run consecutive to the first-degree murder count.

On appeal, Briller argues that (1) there was insufficient evidence of criminal agency, (2) the district court made various errors relating to the admission of certain testimony, (3) the district court erred in denying Briller's motion for a mistrial based on a witness' reference to Briller's custodial status, and (4) the district court erred in denying his motion for a new trial based on newly discovered evidence.

The State alleged that Briller killed his girlfriend, Teri Roberts, by choking and/or strangling her and/or by a manner or means unknown, and that he stole her personal property. Briller argues that the State could not charge him with Roberts' murder because it could not prove the corpus delicti.

To establish the corpus delicti, "the State must demonstrate: (1) the fact of death, and (2) that death occurred by the criminal agency of

another.”<sup>1</sup> We have permitted the State to establish corpus delicti by circumstantial evidence only, but it bears the burden of establishing corpus delicti beyond a reasonable doubt.<sup>2</sup> On appeal, we review claims of lack of a criminal agency using the sufficiency of the evidence standard, i.e., whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have concluded beyond a reasonable doubt that the victim’s death was caused by a criminal agency.<sup>3</sup>

We recently affirmed a conviction in West v. State,<sup>4</sup> a case similar to Briller’s. In West, we concluded that there was sufficient evidence of the corpus delicti, notwithstanding the fact that the victim’s actual cause of death could not be determined.<sup>5</sup> We concluded that the circumstances of the victim’s disappearance, the discovery of the victim’s body in a sealed garbage can located in a storage unit that West had rented, West’s admission that she had put the victim in the garbage can, and the discovery of a plastic bag covering the victim’s nose and mouth clearly created a reasonable inference of the victim’s death by criminal agency.<sup>6</sup> We also resolved that even though West presented medical evidence that the victim might have died by natural causes, the jury was

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<sup>1</sup>Tabish v. State, 119 Nev. \_\_\_, \_\_\_, 72 P.3d 584, 596 (2003).

<sup>2</sup>Id.

<sup>3</sup>Id.

<sup>4</sup>119 Nev. \_\_\_, \_\_\_, 75 P.3d 808, 812 (2003).

<sup>5</sup>Id. at \_\_\_, 75 P.3d at 813.

<sup>6</sup>Id. at 814.

at liberty to weigh this evidence along with the evidence that the victim died by a criminal agency.<sup>7</sup>

Here, testimony established that Briller and Roberts had a troubled relationship prior to her death because they had been fighting about his wasting money on gambling and drugs. Also, evidence was presented that Briller had, on more than one occasion, stated that he wished Roberts were dead, and that Roberts may have been fearful of Briller. Roberts' body was found on the bed in the apartment shared by her and Briller; she was covered with a blanket and sheet in a manner suggesting that someone else had covered her body. The chief medical examiner for Clark County testified that Roberts' body had likely been decomposing for three to four weeks. During this time period, Briller remained living in the apartment, until he left town in a panic. Additionally, evidence demonstrated that Briller pawned many of Roberts' personal belongings following her death.

Although there was evidence presented that Roberts suffered from epilepsy and that death as a result of an epileptic seizure could not be ruled out, we conclude that, as in West, it was within the province of the jury to weigh this evidence along with the evidence that Roberts died by a criminal agency. Accordingly, we conclude that the State satisfied its burden of establishing the corpus delicti.

Next, Briller argues that the district court erred in making several evidentiary rulings. The district court has considerable discretion in determining the relevancy and admissibility of evidence; consequently,

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<sup>7</sup>Id.

we will not disturb a district court's evidentiary ruling unless it was manifestly wrong.<sup>8</sup>

First, Briller contends that the district court erred in allowing Gary Lubke, Roberts' neighbor, to testify that Roberts was afraid of Briller. Lubke testified that one night he offered Roberts a ride because the weather was bad, but that she told him she could not accept a ride because Briller would get angry. Briller objected to the admission of Roberts' statement to Lubke. We conclude that the district court did not err in admitting Roberts' statement to Lubke because it demonstrated her state of mind prior to her death; she was afraid of Briller.<sup>9</sup>

Second, Briller argues that much of the testimony of Richard Kowal, Briller's acquaintance, was irrelevant and prejudicial; specifically, Kowal's testimony about his reaction upon seeing a television report on Roberts' death, his motivations for coming forward with information in this case, and his feelings about Roberts' death. We conclude that the district court did not err in admitting Kowal's statements because they explained why Kowal came forward with information regarding Briller's past comments about wanting to kill Roberts.<sup>10</sup> Also, his statement that Roberts did not deserve to be killed, though improper, was stricken from

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<sup>8</sup>Castillo v. State, 114 Nev. 271, 277, 956 P.2d 103, 107-08 (1998); Libby v. State, 115 Nev. 45, 52, 975 P.2d 833, 837 (1999).

<sup>9</sup>NRS 51.105 (allowing the use of an out-of-court statement when it is offered to establish the declarant's then existing state of mind).

<sup>10</sup>See Smith v. State, 114 Nev. 33, 40, 953 P.2d 264, 268 (1998) (noting that it is within the district court's discretion to admit evidence that it deems relevant and more probative than prejudicial).

the record and the jury was instructed to ignore the comment. Accordingly, we conclude that Briller's argument lacks merit.

Third, Briller argues that the district court erred in admitting evidence that Briller was romantically involved with a neighbor. We conclude that this evidence was relevant inasmuch as it demonstrated a possible motive Briller had for killing his girlfriend Roberts.<sup>11</sup>

Next, Briller argues that the district court erred by denying his motion for a mistrial based on Meghan Lrenze's reference to Briller having been in prison. We will only reverse the denial of a motion for a mistrial where there is a clear showing that the district court abused its discretion.<sup>12</sup> We conclude that Lrenze's reference to Briller having been in prison was innocuous. Briller did not object to the comment at the time Lrenze made it, and it was unclear whether the jury even heard it. Moreover, when Briller later brought it to the district court's attention, he insisted that the district court not cure any possible error by admonishing the jury. Therefore, we conclude that Briller's argument lacks merit.

Finally, Briller argues that the district court erred in denying his motion for a new trial based on newly discovered evidence. We review the denial of a motion for a new trial for abuse of discretion, and will not disturb the district court's decision on appeal absent clear abuse of

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<sup>11</sup>See Cutler v. State, 93 Nev. 329, 333, 566 P.2d 809, 811 (1977) (permitting the prosecution to offer evidence which tended to prove motive, malice, or intent).

<sup>12</sup>Mortensen v. State, 115 Nev. 273, 281, 986 P.2d 1105, 1111 (1999).

discretion.<sup>13</sup> We have stated that the standard for establishing a claim for a new trial based on newly discovered evidence is as follows:

(1) the evidence must be newly discovered; (2) it must be material to the defense; (3) it could not have been discovered and produced for trial even with the exercise of reasonable diligence; (4) it must not be cumulative; (5) it must indicate that a different result is probable on retrial; (6) it must not simply be an attempt to contradict or discredit a former witness; and (7) it must be the best evidence the case admits.<sup>14</sup>

Several days after the verdict in this case, Briller's counsel received a phone call from Jesse Earhart, an inmate in the North Las Vegas Detention Center, who informed Briller's counsel of a conversation he had with Donald Stenger, a witness for the State, while the two were incarcerated together. Earhart said that Stenger had told him that it was easy to get charges reduced by becoming a snitch. According to Earhart, he saw Stenger's photograph in a newspaper article relating to Briller's trial, and realized that Stenger had done precisely what he had discussed with Earhart—he became a snitch in Briller's case.

At Briller's trial, Stenger testified that Briller told him that the reason he was in jail was because he strangled his girlfriend. Briller's counsel attempted to discredit Stenger by asking him why he did not come forward immediately after Stenger told him that he had killed his girlfriend. Briller's counsel also inquired into Stenger's motivation, asking whether his testimony helped him in any way. Stenger admitted that he

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<sup>13</sup>Woosley v. State Farm Ins. Co., 117 Nev. 182, 188, 18 P.3d 317, 321 (2001).

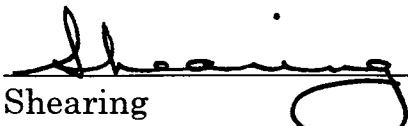
<sup>14</sup>Hennie v. State, 114 Nev. 1285, 1290, 968 P.2d 761, 764 (1998).

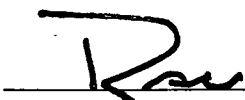
hoped to get favorable sentencing, but that his testimony was not based on any agreement with the State.


It appears that Briller's use of Earhart's testimony is essentially an attempt to discredit Stenger's testimony, which is not a permissible basis for a new trial motion. Moreover, Briller already attempted to discredit Stenger's testimony at trial. Given the overwhelming evidence against Briller, we conclude that Earhart's testimony would not render a different result. Accordingly, we conclude that the district court did not abuse its discretion in denying Briller's motion for a new trial.

Having considered Briller's arguments on appeal and concluding they lack merit, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Shearing

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Maupin

cc: Hon. Donald M. Mosley, District Judge  
Clark County Public Defender  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk