IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY DOUGLAS ECHOLS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40913

FILED

SEP 03 2004

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 first-degree murder with the use of a deadly weapon and burglary with the use of a deadly weapon. First Judicial District Court, Carson City; William A. Maddox, Judge.

On August 5, 2000, after entering Rick Albrecht's residence, appellant Anthony Echols shot Albrecht twice in the head, killing him. The State charged Echols with open murder with the use of a deadly weapon and burglary with the use of a deadly weapon. Following a jury trial, the district court sentenced Echols to two consecutive terms of life imprisonment without the possibility of parole and one maximum concurrent term of one hundred twenty months.

On appeal, Echols first asserts that the district court abused its discretion in denying his challenge for cause to prospective juror Schwitters.

A district court has broad discretion in ruling on challenges for cause.[1] A party must show that there was cause to challenge the juror

[1]Walker v. State, 113 Nev. 853, 865, 944 P.2d 762, 770 (1997) (citing Wainwright v. Witt, 469 U.S. 412, 428-29 (1985)).

under NRS 175.036(1) and that the party was prejudiced by the district court's denial of the challenge.[2] "If the impaneled jury is impartial, the defendant cannot prove prejudice."[3]

In this case, Echols challenged Schwitters for cause based on her exposure to pre-trial publicity and her daughter being an acquaintance of the victim's sister. Schwitters indicated that she believed that she could fairly try the case based on the evidence and set aside any general opinion she had formed from reading the newspaper. She also stated that she understood that newspaper accounts may be inaccurate and that she could evaluate the case based upon the evidence presented at trial, not any general information she may have seen in the media. Schwitters also stated that she had only vague recollections from her prior exposure to the case and that she thought she could be fair. When asked if she was certain she could be fair, she replied that she could not be certain because she could not know for certain until she actually heard the evidence. Based upon this general statement, Echols challenged for cause. Given the totality of Schwitters' comments and placing this answer into context, we conclude that the district court did not err in denying the challenge.

Second, Echols argues that insufficient evidence was adduced to support his convictions under the specific theories charged by the State. We disagree.

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[2]See Thompson v. State, 102 Nev. 348, 350, 721 P.2d 1290, 1291 (1986).

[3]Wesley v. State, 112 Nev. 503, 511, 916 P.2d 793, 799 (1996).

"[W]hen the sufficiency of the evidence is challenged on appeal in a criminal case, '[t]he relevant inquiry for this Court is "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime[s] beyond a reasonable doubt."'"[4] Moreover, it is for the jury to determine what weight, credibility and credence to give to witness testimony and other trial evidence.[5]

We conclude that sufficient evidence was presented from which the jury, acting reasonably and rationally, could have found the elements of first-degree murder with the use of a deadly weapon and burglary with the use of a deadly weapon beyond a reasonable doubt. Evidence was admitted that showed Echols had threatened to kill Albrecht; that Echols blamed Albrecht for the break-up of Echols' marriage, and that Echols believed Albrecht was interfering with Echols' relationship with his son. Echols took a rifle to confront Albrecht and Albrecht was shot twice. Although Echols asserts that the shooting was accidental, a reasonable jury could reject this defense and find that Echols intended to harm or kill Albrecht. Accordingly, we conclude that Echols' convictions were supported by substantial evidence.

Next, Echols asserts that the district court abused its discretion by allowing opinion testimony from various individuals. We disagree.

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[4]Hutchins v. State, 110 Nev. 103, 107-08, 867 P.2d 1136, 1139 (1994) (emphasis in original) (quoting Koza v. State, 100 Nev. 245, 250, 681 P.2d 44, 47 (1984)); see also Jackson v. Virginia, 443 U.S. 307, 319 (1979).

[5]See Hutchins, 110 Nev. at 107, 867 P.2d at 1139.

The determination of whether to admit evidence is within the sound discretion of the district court, and that determination will not be disturbed unless manifestly wrong.[6] Additionally, the admission of expert testimony lies within the sound discretion of the district court.[7] "Expert opinion may not be the result of guesswork or conjecture."[8]

In this case, contrary to Echols' assertion, the alleged errors did not involve expert opinion testimony.[9] Individuals were asked to give lay opinions within the range of ordinary experience and their observations of specific events. For example, Deputy William Richards testified that based upon his observations of Echols and Echols' spontaneous statements, he did not think that Echols' statement that Echols didn't mean to kill Albrecht was an assertion that the shooting was an accident, because Echols also referred to himself as a murderer. We conclude that the district court did not abuse its discretion in allowing the lay opinion testimony.

Echols also contends that the district court erred in instructing the jury that a life sentence without the possibility of parole could not be pardoned.

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[6]Petrocelli v. State, 101 Nev. 46, 52, 692 P.2d 503, 508 (1985), superceded by statute as stated in Thomas v. State, 120 Nev. ____, 83 P.3d 818 (2004).

[7]Brown v. State, 110 Nev. 846, 852, 877 P.2d 1071, 1075 (1994).

[8]Wrenn v. State, 89 Nev. 71, 73, 506 P.2d 418, 419 (1973).

[9]Because Echols did not object to Deputy Gray's testimony, we conclude he did not preserve the issue for review on appeal.

NRS 213.085(1) prohibits the state board of pardons commissioners from commuting a life sentence without the possibility of parole, meaning that it cannot change the sentence to one allowing parole.[10] While NRS 213.085 modifies and limits the power of commutation, it does not address other forms of clemency, including the pardon power.[11] Because a life sentence without the possibility of parole can be pardoned, the jury instruction was an incorrect statement of the law.[12]

The State asserts that Echols did not preserve the issue for review on appeal because he did not object at trial. Echols argues that the error involves constitutional issues, including Echols' right to due process, and a reliable sentence and can be raised even if not objected to at trial. Even if we agreed the error was of a constitutional magnitude, it did not prejudice Echols or affect any substantial right. Accordingly, any error would be harmless beyond a reasonable doubt.

We said in Geary v. State,[13] that an improper commutation instruction that misleads a jury into believing a sentence of life without

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[10]See Colwell v. State, 112 Nev. 807, 812, 919 P.2d 403, 406 (1996) (noting that commutation is the changing of one sentence to another while a pardon absolves a defendant of the crime altogether).

[11]Id. at 812, 919 P.2d at 407.

[12]Id.

[13]112 Nev. 1434, 1440, 930 P.2d 719, 723-24 (1996) (determining that a sentence was not constitutionally reliable when an instruction improperly suggested, and counsels' arguments improperly presumed, that a life sentence without the possibility of parole could be modified, leaving

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the possibility of parole may be commuted to life with the possibility of parole is reversible error where the State argues that a defendant poses a future danger to society and a harsher sentence, the death penalty, should be imposed. This was not a capital case, and the State never argued future dangerousness. Moreover, the error was in telling the jury life without the possibility of parole could not be pardoned, so the jury could not have given a harsher sentence on a mistaken theory that Echols was eligible for parole or pardon, as occurred in Geary. Accordingly, we conclude any error was harmless because the jury instruction did not mislead the jury to Echols' deteriment or prejudice Echols.

Finally, Echols argues that the district court abused its discretion by allowing victims to recommend the maximum sentence possible. We disagree.

In Randall v. State, we held that a victim may express an opinion regarding a defendant's sentence in a non-capital case.[14] In this case, unlike Randall, the jury heard the victims' recommendations because the penalty hearing was conducted before the trial jury, as required by NRS 175.552(1)(a), for Echols' first-degree murder conviction. We conclude this fact alone is insufficient to deviate from the rule set forth in Randall. We conclude that the district court did not abuse its discretion

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the jury to speculate that the defendant was likely to be released on parole even if given a life sentence without the possibility of parole).

[14]Randall v. State, 109 Nev. 5, 8, 846 P.2d 278, 280 (1993) (holding that the district court did not abuse its discretion by sentencing the defendant after hearing the victim's sentencing recommendation).

by allowing victims to recommend the maximum sentence possible. Accordingly, we

ORDER the judgment of the district court AFFIRMED.[15]

Becker, J.
Becker

Agosti, J.
Agosti

Gibbons, J.
Gibbons

cc: Hon. William A. Maddox, District Judge
Richard F. Cornell
Attorney General Brian Sandoval/Carson City
Carson City District Attorney
Carson City Clerk

[15]Having reviewed Echols' other argument requesting a sentence modification, we conclude it is without merit.