

IN THE SUPREME COURT OF THE STATE OF NEVADA

SAMUEL ISAAC MARQUEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42305

FILED

MAR 22 2006

JANET M. BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of first-degree murder with the use of a deadly weapon, one count of robbery with the use of a deadly weapon, and one count of burglary while in possession of a deadly weapon. Eighth Judicial District Court, Clark County; Kathy A. Hardcastle, Judge.

In this appeal, we consider the adequacy of jury instructions in connection with the insanity defense. First, we examine whether the instructions required an explanation of the insanity defense. Second, we consider whether the defendant was entitled to an instruction regarding the probative value of evidence of mental illness that does not rise to the level of legal insanity. Third, we determine whether the district court erred in failing to instruct the jury that criminal intent requires a sound mind. We affirm.

FACTS AND PROCEDURAL HISTORY

Samuel Isaac Marquez entered the Lake Mead Tavern, struck bartender Richard Adamicki unconscious with a baseball bat, and stole approximately \$2,700 from the cash register. Marquez also removed Mr. Adamicki's wallet from his person. Based on video surveillance and ATM records generated at the bar, police ascertained Marquez's identity and arrested him at his apartment. Several hours after the incident, he

confessed to planning and committing the crimes, and expressed remorse for committing what he considered to be wrongful acts. Mr. Adamicki never regained consciousness, and died approximately two months after the incident.

The State charged Marquez with one count each of murder with the use of a deadly weapon, robbery with the use of a deadly weapon, and burglary while in possession of a deadly weapon.

At trial, forensic psychologist, Dr. Mark Chambers, testified that Marquez experienced a visual hallucination during the night in question. Dr. Chambers told of an apparition of a dead woman seen by Marquez throughout his life since he was a young boy in El Salvador. Dr. Chambers explained that Marquez feared this woman, believing that she was responsible for his sister's death, and that this woman wished to take Marquez into the afterlife with her as well. At the bar, Marquez saw the apparition, who demanded money from the cash register. Out of self-preservation, Marquez did her bidding. Dr. Chambers stressed that Marquez acted out of fear, without consideration as to whether what he was doing was right or wrong. However, on cross-examination, Dr. Chambers opined that Marquez was not in a delusional state when he committed the crimes at issue.

Based on Dr. Chambers' testimony, the defense sought the following instructions: (1) an instruction defining legal insanity and explaining the probative value of an insanity finding; and (2) an instruction that evidence of mental illness, although insufficient to warrant an insanity finding, could be considered for other purposes, such as conviction on a reduced charge. Specifically, the first proposed instruction provided in relevant part:

Evidence has been presented that the Defendant was legally insane at the time of the commission of the offense. To qualify as being legally insane, a Defendant must be in a delusional state such that he cannot know or understand the nature and capacity of his act, or his delusion must be such that he cannot appreciate the wrongfulness of his act, that is, that the act is not authorized by law.

....

If you find the Defendant legally insane, you must acquitg [sic] him of the crimes with which he is charged.

The second proposed instruction provided the following:

Evidence that does not rise to the level of legal insanity may be considered in evaluating whether the prosecution has proven each element of an offense beyond a reasonable doubt for example in determining whether a killing is first or second degree murder.

These instructions mirrored those approved in Finger v. State.¹

The district court rejected both instructions. The district court refused the first instruction because it found Dr. Chambers' testimony incredible. It refused the second instruction because it concluded that other instructions adequately encompassed its substance.

In closing argument, the State primarily based its case on felony murder, but it also argued that sufficient evidence existed to prove Marquez acted with malice aforethought. The district court issued instructions on both theories of murder.

The jury convicted Marquez on all counts, after which the district court imposed the following sentences: 100 years imprisonment on

¹117 Nev. 548, 576-77, 27 P.3d 66, 84-85 (2001).

the murder conviction, with parole eligibility beginning after 40 years; consecutive terms of 60 to 180 months on the conviction for robbery with use of a deadly weapon; and 48 to 180 months on the conviction for burglary while in possession of a deadly weapon. The district court ordered concurrent service of the robbery and burglary sentences, and imposed consecutive service of the murder sentence. Marquez appeals.

DISCUSSION

We conclude that the district court committed no abuse of discretion in its refusal of the basic insanity instruction.² Marquez's expert opined that appellant was not in a delusional state and likely did not consider, rather than did not appreciate, whether his actions were right or wrong, as required to warrant issuance of this instruction under Finger, i.e., the M'Naghten standard.³

We also conclude that it was not an abuse of discretion for the district court to refuse the instruction regarding the probative value of evidence of mental illness that does not rise to the level of legal insanity. First, Marquez's statement to police belies his claim that he was mentally ill when he committed the crimes. Second, the district court permitted Marquez to present evidence and closing argument along the lines of the proposed instruction. Third, the jury was instructed on the elements of two types of first-degree murder: (1) that which requires proof of malice aforethought in the killing, and (2) that which requires proof of the killing during the perpetration of a felony. Fourth, the jury was informed that

²See Crawford v. State, 121 Nev. ___, ___, 121 P.3d 582, 585 (2005).

³See id. at 557, 576, 27 P.3d at 84-85 (citing M'Naghten's Case, 8 Eng. Rep. 718, 10 Cl. & Fin. 200, 211 (1843)).

the prosecution must prove all elements beyond a reasonable doubt. Fifth, the jury was instructed that in order to convict on each of the crimes charged, it must ascertain the joint operation of act and intent.⁴

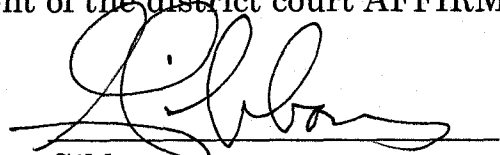
For these same reasons, we also reject Marquez's contention that the district court erred in failing to instruct the jury that criminal intent requires a sound mind.

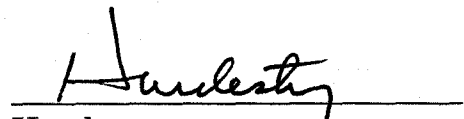
We have considered Marquez's other arguments, and conclude they are without merit.

CONCLUSION

We conclude the district court committed no abuse of discretion in denying the jury instructions at issue. Therefore, we

ORDER the judgment of the district court AFFIRMED.


Gibbons, J.

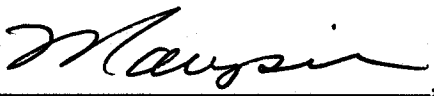

Hardesty, J.

⁴We note that jury instruction no. 14 erroneously stated that to convict a defendant of murder in the perpetration of robbery, the jury must find that the defendant possessed specific intent to commit robbery. Robbery requires general, rather than specific, intent. See Litteral v. State, 97 Nev. 503, 508, 634 P.2d 1226, 1228 (1981). However, we also note that this error benefited the appellant, because general intent need only be inferred from voluntary commission of the act. See id. at 506, 634 P.2d at 1228.

cc: Hon. Kathy A. Hardcastle, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

MAUPIN, J., dissenting:

In my view, the district court should have given instruction on the probative value of mental illness that does not rise to the level of legal insanity. In Crawford v. State, this court stated that “the defense has the right to have the jury instructed on its theory of the case as disclosed by the evidence, no matter how weak or incredible that evidence may be.”¹ In this, I believe the majority opinion in Finger v. State wrongly overruled Aldana v. State,² which correctly required an instruction on legal insanity upon presentation of any evidence of mental illness.³


_____, J.
Maupin

¹121 Nev. ___, ___, 121 P.3d 582, 586 (2005) (quoting Vallery v. State, 118 Nev. 357, 372, 46 P.3d 66, 76-77 (2002)).

²117 Nev. 548, 577, 27 P.3d 66, 85 (2001).

³See Aldana v. State, 102 Nev. 245, 246-47, 720 P.2d 1217, 1218 (1986).