IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL RAMIREZ SANTIAGO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42601

FILED

FEB 03 2005

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of voluntary manslaughter with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Michael A. Cherry, Judge. The district court sentenced appellant Michael Ramirez Santiago to serve two consecutive prison terms of 40 to 120 months.

Santiago first contends that reversal of his conviction is warranted because the district court improperly admitted a recording of a 9-1-1 telephone call made by an eyewitness to the stabbing. Santiago argues that the recording was unduly prejudicial because the jurors could hear people screaming in the background and notes that, after the recording was played, the witness and the jurors were crying. We conclude that Santiago's contention lacks merit.

NRS 48.015 defines relevant evidence as evidence "having 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." Nevertheless, even if evidence is relevant, it is "not admissible if its probative value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues or of misleading the jury."[1]

[1]NRS 48.035(1).

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The district court has considerable discretion in determining the relevance and admissibility of evidence, and this court will not disturb the trial court's decision to admit evidence absent manifest error.[2]

After hearing arguments from counsel, the district court balanced the probative value of the evidence against its potential for unfair prejudice and ruled that the evidence was admissible. We conclude that the district court did not commit manifest error in so ruling because the 9-1-1 recording was relevant to show a full and accurate account of the circumstances surrounding the commission of the crime.[3] Nonetheless, even assuming the district court erred in admitting the evidence, we conclude that any error was harmless.[4]

Santiago also contends that the district court erred in admitting eyewitness Jaime Florido's hearsay testimony that she heard Santiago's friend, Shawn Neel, say: "my boy [Santiago] feels disrespected and my boy wants to fight your boy." Santiago argues that Neel's statement, which purportedly conveyed Santiago's intent to fight the victim, was inadmissible because it was unreliable and it is possible that "Neel was making a misleading statement in the hopes of egging on and aggravating the conflict between Santiago and [the victim]." We conclude that Santiago's contention lacks merit.

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[2]See Lucas v. State, 96 Nev. 428, 431-32, 610 P.2d 727, 730 (1980).

[3]See NRS 48.035(3); Brackeen v. State, 104 Nev. 547, 553, 763 P.2d 59, 63 (1988).

[4]See Rowland v. State, 118 Nev. 31, 43, 39 P.3d 114, 121-22 (2002) (erroneous admission of prejudicial evidence subject to harmless-error analysis).

"Pursuant to NRS 51.035(2)(a), an out-of-court statement is not inadmissible as hearsay if the following two conditions are met: (1) the declarant testifies at trial and is subject to cross-examination concerning the statement; and (2) the out-of-court statement is inconsistent with the declarant's testimony."[5]

In this case, the district court admitted Florido's testimony, ruling that it was admissible as a prior inconsistent statement pursuant to NRS 51.035(2)(a). We conclude that the district court did not err in so ruling. The declarant, Neel, had previously testified at trial and was subject to cross-examination concerning the statement. Moreover, Neel's out-of-court statement that Santiago wanted to fight was inconsistent with Neel's prior testimony that he could not recall whether Santiago wanted to do so. Accordingly, the testimony was admissible under NRS 51.035(2)(a).

Having considered Santiago's contentions and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.

Becker, C.J.
Becker

Rose, J.
Rose

Hardesty, J.
Hardesty

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[5]Cheatham v. State, 104 Nev. 500, 503, 761 P.2d 419, 421 (1988).

cc: Hon. Michael A. Cherry, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General Brian Sandoval/Carson City
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