

CRIMINAL LAW—DEATH PENALTY

SUMMARY

The Nevada Supreme Court affirmed the jury's finding that the defendant was guilty of two counts of first-degree murder, one count of attempted murder, and its imposition of lethal injection as punishment. The court found unpersuasive defendants objections that (1) the prosecution was not allowed to cross-examine his expert psychologist on past violent occurrences that were not formally admitted into evidence; (2) that he was prejudiced by having to enter a reservation that shows that he intended to plead guilty by reason of insanity; that his counsel was deprived of using other defenses as a result of his plea of guilty by reason of insanity; (3) the trial court's failure to give adequate jury instructions regarding his plea of guilty by reason of insanity; (4) the trial court's denial of a voir dire challenge for cause was an abuse of its discretion; (5) that such a denial was a violation of his constitutional rights; (6) the prosecutor committed prosecutorial misconduct by making comments that if the death penalty were imposed that the defendant would never kill again; and (7) that the trial court's failure to fully admonish the jury before every recess.

DISPOSITION/OUTCOME

A jury sitting in the Eighth Judicial District of Nevada convicted the defendant on two counts of first-degree murder and one count of attempted murder. The Nevada Supreme Court affirmed the jury's finding and found that the trial court did not commit reversible error.

FACTUAL AND PROCEDURAL HISTORY

The Defendant, Mr. Blake, met three female dancers through their employment at a Las Vegas club. He allowed them to store some items in the garage of his home. Later, the women made two trips out to take back their belongings. On the second occasion, the defendant placed their items on a street corner. The women began to load their SUV when two cars pulled up behind the SUV. The defendant, a passenger in one of the cars, and three other companions got out of the cars and hit one of the women in the back. The other woman called 9-1-1. The defendant then beat the woman, although she attempted to escape. The defendant then began to beat the other woman. He then asked his friends to leave but asked the women to walk with him into the desert. While in the desert he asked them to get on their hands and knees. A struggle persisted where one woman sustained cut marks from a knife and the defendant was stabbed. He then shot each woman in the head. While two of them died, one woman lived and found a police officer when she came to.

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Meanwhile the defendant fled to Los Angeles with three other friends. He thought of an alibi and later visited a hospital to treat his stab wound. While at the hospital, the defendant lied about his identity and told a police officer that he had been mugged and stabbed. The defendant also threw away the gun in a sewer and washed his hands. On the trip back to Las Vegas, the police stopped their vehicle and arrested all the passengers, including the defendant.

At trial, a psychologist testified on the defendant's behalf that he appeared to have a compromised mental state at the time of the killings. However, on cross-examination the psychologist testified that his finding was not based on tests but rather interviews with a family member and two other friends; thus, the accuracy of his diagnosis was based on the accuracy of the information provided by the interviewees.

The jury convicted the defendant on two counts of first-degree murder and one count of attempted murder. In rendering its decision, the jury found three mitigating circumstances: (1) his remorse for the crime; (2) his mental state; and (3) the lack of evidence showing that there was a long-standing plan to commit murder. However, the jury found that these mitigating circumstances were outweighed by the aggravating circumstances, particularly: (1) a felony conviction of attempted murder in the immediate proceeding; (2) the two murders were committed to avoid a lawful arrest for the events immediately preceding the murders; and (3) that he had been convicted of more than one more in the immediate proceeding. The Nevada Supreme Court affirmed the jury's finding.

DISCUSSION

The defendant first argued that the prosecution's cross-examination of the psychologist constituted reversible error was misguided. The prosecution asked the psychologist if it would change his opinion if he knew that the defendant had committed various violent acts. The psychologist said yes. The defendant's objection lies in that these past violent acts were not formally admitted into evidence. However, the prosecution just explored and challenged the psychologist's opinions, which it is allowed to do.

The defendant also argues that the court committed constitutional error by forcing him to plead not guilty by reason of insanity by "reserving" such a plea twenty-one days before trial. Thus, he argues that he was deprived of other defenses. However, this "reservation" of a plea is not an actual plea since reserving a plea is not the same as entering a plea. It is only intended to allow the state to prepare for a guilty plea by reason of insanity, and therefore, summon their psychologist to examine the defendant. Thus, the defendant was not deprived of the opportunity to change his plea and explore other defenses.

In addition, the defendant argues that the court's failure to explain to the jury the consequences of pleading guilty by reason of insanity constitutes reversible error. While it is true that the court should advise the jury of the consequences of such a plea, the failure to do so does not constitute reversible error. Furthermore, there was an abundance of evidence presented to the jury for them to conclude that he was not legally insane. In particular, he was sane enough to dismiss his friends, walk the women into the desert, ordered them to get on their hands and knees, pulled out a gun, shot them, took off to Los

Angeles, concocted an alibi, and lied to hospital and law enforcement officials about his identity and the nature of his stab wound. Thus, the defendant did not suffer any prejudice from the trial court's omission to explain to the jury the consequences of an insanity plea.

Moreover, the defendant complains that the court should overrule precedent that a defendant can be guilty of preventing a lawful arrest since all murders are precipitated by some criminal act. Instead, the defendant advocates that the court should interpret it as the defendant must have had contact with the officials attempting to enforce the imminent arrest. However, escape from custody does not necessarily require contact with the persons who wish to enforce the custody.

Furthermore, the defendant argues that the court erroneously denied his challenge for cause against a prospective juror since that juror had heard reports about the incident. However, it is sufficient if the juror can put aside his or her impressions and deliberate an impartial verdict based on the evidence presented in court. The prospective juror said that he could do just that when asked. Additionally, the defendant failed to show that he was prejudiced in any way by the court's decision to deny the challenge for cause.

The defendant also argues that there was prosecutorial misconduct since the prosecutor made comments on general penology theories. However a prosecutor is allowed to make comments on general penology theories, e.g., ideas about punishment and deterrence. Additionally, the defendant believes that the prosecutor's comments that the imposition of the death penalty would prevent the defendant from ever killing again constituted prosecutorial misconduct. However, the prosecutor is allowed to do just that, although he or she is not allowed to argue that the jury would bear responsibility for any future killing that the defendant may commit.

Lastly, the defendant argues that the trial court failed to fully admonish the jury not to speak to anyone else about the case and only referenced the full admonishment prior to taking some recesses. While it is important for the court to fully admonish the jury before each recess, it does not, however, constitute reversible error.

CONCURRING OPINION

Chief Justice Becker and Justice Hardesty concurred but disputed that the defendant was ever entitled jury instructions of the consequence of pleading guilty by reason of insanity since the defendant was never declared to be legally insane.

CONCLUSION

The Nevada Supreme Court, En Banc, held the following:

(1) State was entitled to cross-examine defendant's expert psychologist regarding defendant's prior violent acts without first having hearing to determine admissibility of such prior acts;

(2) the trial court's act of having the defendant reserve his intention to plead not guilty by reason of insanity 21 days before trial did not prejudice the trial counsel's ability to

present a defense and did not deprive defendant of his right to a fair trial since by reserving a plea, he could always actually plea differently;

(3) the trial court's failure to give jury instruction regarding the consequences of a verdict of not guilty by reason of insanity was wrong but did not constitute reversible error;

(4) the trial court did not abuse its discretion by denying defendant's challenge for cause against a prospective juror who stated during voir dire that based on media reports, he believed defendant committed the murders since the juror also stated that he could put aside his beliefs and weigh the evidence impartially.

(5) even if the trial court had erred in denying defendant's challenge for cause, such error did not deprive the defendant of any constitutional rights by requiring him to utilize one of his peremptory challenges;

(6) prosecutor's comment during penalty phase, in which prosecutor commented that death penalty would guarantee that defendant never killed again, was not improper; and

(7) the trial court's failure to give the jury a full admonishment to refrain from talking about the trial was wrong but it did not constitute reversible error.

Affirmed.