IN THE SUPREME COURT OF THE STATE OF NEVADA

ANDRE DOW,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52583

FILED

MAY 26 2010

TRACIE K. LINDEMAN
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ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of two counts of first-degree murder with the use of a deadly weapon and one count of conspiracy to commit murder. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge. Appellant Andre Dow raises ten issues.

First, Dow states that the district court erred when it allowed prior bad act evidence that Dow killed Lee Laursen. Laursen was a witness to the murders with which Dow was charged in this case, and a possible co-conspirator. The district court permitted the jury to hear evidence of Laursen's murder—and the other instances of bad act evidence mentioned below—as demonstrative of identity under NRS 48.045(2). In light of the similarities between Laursen's murder and the murder of the victims in this case, we conclude that the district court was not manifestly wrong in admitting this evidence. See Crawford v. State, 107 Nev. 345, 348, 811 P.2d 67, 69 (1991).

Second, Dow asserts that the district court erred by admitting evidence that he fled during a San Francisco traffic stop and that he resisted arrest when he was apprehended for the victims' murders. By

fleeing and resisting, Dow "strengthened the inference of his consciousness of guilt." Santillanes v. State, 104 Nev. 699, 701, 765 P.2d 1147, 1149 (1988). See also Williams v. State, 85 Nev. 169, 175, 451 P.2d 848, 852 (1969) (evidence of flight admissible as indicative of guilty mind). Although we are not convinced that this evidence relates to identity under NRS 48.045(2), we conclude that it was admissible as evidence of Dow's consciousness of guilt. See Bellon v. State, 121 Nev. 436, 443-44, 117 P.3d 176, 180 (2005) (noting that trial court's decision may be upheld if court reached right result even though it was based on incorrect grounds).

Third, Dow challenges the district court's admission of evidence that he and a girlfriend were detained at the Mandalay Bay resort in April 2005. Considering its probative value in establishing the relationship between Dow and the woman—in whose car the two murder victims were found—we find no manifest error in admitting this evidence. See Reese v. State, 95 Nev. 419, 422, 596 P.2d 212, 215 (1979).

Fourth, Dow assigns error to the district court's failure to exclude testimony that two firearms were found in the San Francisco house where he was arrested for these murders. Dow failed to preserve objection to this evidence and we discern no plain error affecting his substantial rights.[1] See Higgs v. State, 126 Nev. ___, ___, 222 P.3d 648, 662 (2010).

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[1]Dow bears the burden of providing this court with a complete record. Greene v. State, 96 Nev. 555, 558, 612 P.2d 686, 688 (1980). He provided this court with the trial transcripts but did not provide the transcripts of the pretrial Petrocelli hearing. The record provided by Dow does not reflect an objection to the gun evidence or the district court's reason for admitting the evidence.

Fifth, Dow asserts error in the district court's admission, as an excited utterance, of a hearsay statement made to a police officer that the officer should arrest Dow's codefendant because the codefendant "killed two people in Vegas." We concur. However, in assessing constitutional error, we consider the importance of this statement in the prosecution's case and the overall strength of the case against Dow. Medina v. State, 122 Nev. 346, 355, 143 P.3d 471, 477 (2006). Here, the statement accused the codefendant, not Dow. Therefore, we conclude that the admission of the challenged statement was harmless beyond a reasonable doubt. See Deutscher v. State, 95 Nev. 669, 685, 601 P.2d 407, 418 (1979).

Sixth, Dow argues that the district court erred by admitting, under the present-sense-impression hearsay exception, Laursen's statement, related by her mother, that Laursen "was with [Dow] and some other people." See NRS 51.085. We agree this was error. See Franco v. State, 109 Nev. 1229, 1237, 866 P.2d 247, 252 (1993) (noting that "the statement of a non-testifying hearsay declarant is only admissible under the Confrontation Clause if it bears adequate 'indicia of reliability.'" (footnote omitted) (quoting Ohio v. Roberts, 448 U.S. 56, 66-67 (1980), abrogated on other grounds by Crawford v. Washington, 541 U.S. 36 (2004))). However, in light of the passing nature of the statement and other evidence establishing that Laursen was in Dow's company, we conclude that this error was harmless beyond a reasonable doubt. See Browne v. State, 113 Nev. 305, 312-13, 933 P.2d 187, 191 (1997).

Seventh, Dow assigns error to the district court's failure to admonish the jury and strike Laursen's mother's statement that "the police told [Laursen] that [Dow and his codefendant] were going to kill her." Because the district court sustained an objection to this spontaneous

and unsolicited statement, we conclude that any error was harmless. See Carter v. State, 121 Nev. 759, 770, 121 P.3d 592, 599 (2005); Weakland v. State, 96 Nev. 699, 701, 615 P.2d 252, 254 (1980).

Eighth, Dow argues that the district court erred in admitting Laursen's sister's testimony that some conversations she had with Laursen led her to be concerned for Laursen's safety. As the substance of the conversations was not revealed and served only as foundation for that opinion, we discern no error. See Browne, 113 Nev. at 312-13, 933 P.2d at 191.

Ninth, Dow asserts that he was prejudiced when the district court explained to the jury that two attorneys with whom he had prior contact had both attempted to assert attorney-client privilege, but that the court was ordering them to testify anyway. Though Dow twice had the opportunity, he failed to object below to the instruction and we find no injury to his substantial rights. See Gallego v. State, 117 Nev. 348, 365, 23 P.3d 227, 239 (2001).

Tenth, Dow urges that the cumulative effect of error mandates a new trial. We conclude that any error in this case, whether considered individually or cumulatively, does not warrant such relief. See Byford v. State, 116 Nev. 215, 241-42, 994 P.2d 700, 717-18 (2000).

Having considered Dow's contentions, and for the reasons discussed above, we

ORDER the judgment of conviction AFFIRMED.

_____, J.
Hardesty

_____, J.
Douglas

_____, J.
Pickering

cc: Eighth Judicial District Court Dept. 7, District Judge
Law Office of Lisa Rasmussen
Patti, Sgro & Lewis
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk