

IN THE SUPREME COURT OF THE STATE OF NEVADA

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Elizabeth A. Brown
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NORMAN K. FLOWERS,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

Case No. 53159/55759

RESPONDENT'S SUPPLEMENTAL AUTHORITIES

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RESPONDENT'S SUPPLEMENTAL AUTHORITIES

I. INTRODUCTION

The State herein provides Supplemental Authorities in Flowers v. State, Dockets No. 53159 and 55759 as this Court requested in its February 8, 2019 Order.

II. THE COOTE MURDER EVIDENCE WAS PROPERLY ADMITTED.

Appellant argued that the district court abused its discretion by allowing the State to introduce prior-bad-act evidence of another homicide. AOB at 18. The State argued that this was not manifest error. RAB at 11.

The following supplemental authorities are likely to assist this Court: Hubbard v. State, 134 Nev. ___, ___, 422 P.3d 1260, 1262 (2018) (holding that “the defense need not place intent or absence of mistake at issue before the State may seek admission of prior act evidence if the evidence is relevant to prove an element of the

offense”); Bigpond v. State, 128 Nev. 108, 117, 270 P.3d 1244, 1250 (2012) (addressing the steps the State must take to overcome the presumption that prior-bad-acts are inadmissible). The State agrees with Appellant that Brant v. State, 130 Nev. 980, 989 n.5, 340 P.3d 576, 582 n.5 (2014) (addressing whether the exclusion of prior bad acts was an abuse of discretion) is also relevant. Appellant’s Supplemental Authorities (“ASA”) at 1.

III. DEFENDANT’S CONFRONTATION RIGHTS WERE NOT VIOLATED.

Appellant argued that his rights under the Confrontation Clause were violated. AOB at 21. The State responded that the district court did not commit plain error by allowing expert witnesses to testify who had not actually prepared the reports. AOB at 18.

The following supplemental authorities are likely to assist this Court: Vega v. State, 126 Nev. 332, 340, 236 P.3d 632, 638 (2010) (holding that admission of an expert’s independent opinion based on evidence she reviewed does not violate the Confrontation Clause); Jeremias v. State, 134 Nev. ___, ___, 412 P.3d 43, 51 (2018) (same); Melendez–Diaz v. Massachusetts, 557 U.S. ___, 129 S.Ct. 2527 (2009) (holding that a forensic laboratory report created to serve as evidence in a criminal proceeding is testimonial for purposes of the Confrontation Clause); Bullcoming v. New Mexico, 564 U.S. 647, 652, 131 S.Ct. 2705, 2710 (2011) (“The accused’s right is to be confronted with the analyst who made the certification, unless that analyst is

unavailable at trial, and the accused had an opportunity, pretrial, to cross-examine that particular scientist.”). The plurality opinion in Williams v. Illinois, 567 U.S. 50, 132 S.Ct. 2221 (2012), while lacking in precedential value, is also relevant to this issue.

IV. DEFENDANT’S STATEMENT WAS PROPERLY ADMITTED

Appellant argued that his right to remain silent was violated when, after he invoked the right, the State admitted a statement he made. AOB at 24. The State responded that Appellant had waived the right in the case at bar and had invoked it in an unrelated case. RAB at 27.

The State adopts Appellant’s description of McCarthy v. State, 132 Nev. ___, ___, 371 P.3d 1002, 1005-06 (2016). ASA at 4. No further supplemental authorities are necessary for this issue.

V. AUTOPSY PHOTOGRAPHS WERE PROPERLY ADMITTED.

Appellant argued that the district court abused its discretion by admitting photographs from the autopsy. AOB at 28-29. The State responded that the district court’s decision to allow the photographs was proper. RAB at 30.

The following supplemental authorities are likely to assist this Court: Harris v. State, 134 Nev. ___, ___, 432 P.3d 207, 210-13 (2018) (finding that the improper inclusion of autopsy photographs whose “probative value was unquestionably minimal under the circumstances” was harmless error).

VI. THE DISTRICT COURT PROPERLY EXCLUDED IMPROPER HEARSAY.

Appellant argued that the district court abused its discretion by prohibiting him “from introducing evidence that [the victim’s] boyfriend knew of her relationship with” Appellant. AOB at 31. The State responded that such evidence was inadmissible hearsay. AOB at 31.

The following supplemental authorities are likely to assist this Court: Coleman v. State, 130 Nev. ___, ___, 321 P.3d 901, 906-11 (2014) (holding that the district court abused its discretion by excluding an out-of-court statement against interest that was both “corroborated and trustworthy”).

VII. THERE WAS NO PROSECUTORIAL MISCONDUCT.

Appellant argued that his right to remain silent was violated by the State. AOB at 33. The State responded that there was no prosecutorial misconduct because Appellant had voluntarily waived his rights after being advised of them. RAB at 35.

The State agrees with Appellant that Salinas v. Texas, 570 U.S. 178, 183 (2013) (plurality of Alito, J., Roberts, C.J., and Kennedy, J.) (declining the “invitation to craft a new exception to the ‘general rule’ that a witness must assert the privilege to subsequently benefit from it”) is relevant to the resolution of this issue. ASA at 5. No further supplemental authority is needed here.

VIII. SUFFICIENT EVIDENCE SUPPORTS SEXUAL ASSAULT AND MURDER.

Appellant argued that there is insufficient evidence to support his conviction. AOB at 36. The State argued a reasonable trier of fact could have been convinced of Appellant's guilt. AOB at 36.

No additional authority is necessary for this Court to adequately address this claim.

IX. NO CUMULATIVE ERROR EXISTS.

Appellant argued that cumulative error warrants reversal. AOB at 37. The State responded that there was no error to cumulate, so the claim of cumulative error fails. RAB at 37-38.

No additional authority is necessary for this Court to adequately address this claim.

X. THE DISTRICT DID NOT ERR IN DENYING DEFENDANT'S MOTION FOR A NEW TRIAL (DOCKET NO. 55759).

Appellant argued that the district court abused its discretion when it denied his motion for new trial after George Brass was convicted of murder in a different case. AOB (Docket No. 55759) at 5. The State responded that the decision to deny the motion was proper. RAB (Docket NO. 55759) at 9.

No additional authority is necessary for this Court to adequately address this claim.

CONCLUSION

The State submits the aforementioned Supplemental Authorities and once more asks that “Defendant’s conviction and sentence ... be affirmed.” RAB at 38.

Dated this 25th day of February, 2019.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. **I hereby certify** that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2003 in 14 point font of the Times New Roman style.
2. **I further certify** that this brief complies with the page or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either proportionately spaced, has a typeface of 14 points or more, contains 983 words and 6 pages.
3. **Finally, I hereby certify** that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 25th day of February, 2019.

Respectfully submitted

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on 25th day of February, 2019. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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