

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

FILED BY CLERK
AUG 30 2007
COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,)
)
Appellee,)
)
v.)
)
CLAYTON LEE HUGGINS,)
)
Appellant.)
_____)

2 CA-CR 2006-0253
DEPARTMENT B

MEMORANDUM DECISION
Not for Publication
Rule 111, Rules of
the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF GILA COUNTY

Cause No. CR20050495

Honorable Robert Duber II, Judge

AFFIRMED

Terry Goddard, Arizona Attorney General
By Randall M. Howe and Michael T. O'Toole

Phoenix
Attorneys for Appellee

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V Á S Q U E Z, Judge.

¶1 Following a jury trial Clayton Lee Huggins was convicted of first-degree murder and sentenced to life imprisonment without the possibility of release for twenty-five years. Huggins argues on appeal that the trial court erred in denying his motions for mistrial when two witnesses gave improper testimony, by denying his request that the court declare a mistrial for alleged prosecutorial misconduct relating to the improper testimony, and in denying his motion for judgment of acquittal pursuant to Rule 20, Ariz. R. Crim. P., 17 A.R.S., challenging the sufficiency of the evidence. Finding no reversible error, we affirm.

Factual and Procedural Background

¶2 We view the facts in the light most favorable to sustaining the jury's verdicts. *State v. Tucker*, 205 Ariz. 157, n.1, 68 P.3d 110, 113 n.1 (2003). On May 10, 2005, Marcus Pizano and his friends, David and Pearl Powell, gave his niece a ride to school and his roommate a ride to work. After dropping them off, Marcus and his friends picked up a third friend, Theresa Armendariz, and they all went back to Marcus's house. Huggins was at the house when they arrived, and he was carrying what "looked like a pistol with a homemade silencer on it," or a sawed-off shotgun.¹ Huggins went inside the house, and during the conversation he said he was "going to find the . . . bad people that [were] trying to hurt [them] and . . . take care of them." Immediately after saying that, he left. David,

¹There were discrepancies in the witnesses' testimony about the type of gun Huggins appeared to be carrying, but they all agreed he was carrying a gun.

Pearl, and Theresa left half an hour to an hour later. Marcus remained, and they apparently never saw him again.

¶3 On May 19, 2005, Monica Pizano contacted the Gila County Sheriff's Department to report that her brother, Marcus, was missing. She had last seen him on May 9, and his friends had not seen him since the morning of May 10. On May 22, Deputy Ronald Carillo received information that led him to search the Cherry Flats area, near Miami, Arizona, for Marcus's body. Carillo and another police officer met with Marcus's family members at Cherry Flats, and they searched for Marcus. Michael Pizano, Jr., Marcus's older brother, located a body, later identified as Marcus's. An extensive investigation followed, in which detectives obtained statements from a number of individuals that Huggins had told them he had murdered Pizano. Huggins was charged with first-degree murder.

¶4 At the close of the state's evidence at trial, Huggins moved for a judgment of acquittal, which the trial court denied. He renewed the motion at the close of the case, and the court denied it again. The jury found Huggins guilty and the trial court sentenced him to a life term of imprisonment, with eligibility for release after twenty-five years. This appeal followed.

Discussion

I. Motions for Mistrial.

¶5 “A declaration of a mistrial is the most dramatic remedy for trial error and should be granted only when it appears that justice will be thwarted unless the jury is discharged and a new trial granted.” *State v. Murray*, 184 Ariz. 9, 35, 906 P.2d 542, 568 (1995), quoting *State v. Adamson*, 136 Ariz. 250, 262, 665 P.2d 972, 984 (1983). “The trial court has broad discretion in ruling on a motion for mistrial, and failure to grant the motion is error only if it was a clear abuse of discretion.” *Id.*

¶6 Huggins argues the trial court abused its discretion in denying his motions for mistrial prompted by the testimony of two state’s witnesses about matters the trial court had expressly precluded. The trial court previously had granted Huggins’s motion to preclude any witness from testifying that he had been in prison. But during defense counsel’s cross-examination of the victim’s brother, Michael Pizano, the following exchange ensued:

Q. [by defense counsel]: Also, Marcus would help Clayton with his baby?

A. That I know of, yeah. He used to go by to make sure that Lacy had food and stuff.

Q. So Marcus would go by?

A. Uh-huh.

Q. That’s a yes?

A. Yes, sir.

Q. Marcus would help Clayton and Lacy with their baby?

A. Uh-huh. When he was in prison, yes.

¶7 Huggins moved for a mistrial and, in the alternative, requested a curative instruction. After denying the request for a mistrial, the court instructed the jury as follows:

The last witness, Mr. Pizano, inferred that the defendant, Clayton Huggins, had been in prison. You are to disregard that remark and not to consider it for any purpose in your deliberations or otherwise. Witnesses sometimes say things that may or may not be true. Sometimes it's necessary for me to tell you to disregard such a remark and not to consider it.

¶8 In the second instance, Huggins moved to preclude the state from eliciting testimony from Johnny Goss that two of Huggins's relatives had asked him to help move a body "because [Huggins] had killed someone or done something." Huggins argued the statements were hearsay, he had not been charged with conspiracy, and, therefore, the statements were improper. The court ruled Goss could testify that the two relatives had asked him to help move a body. But it prohibited the state from eliciting "from this witness that they—that is [the two relatives] said something else, which would be attributed to actions by [Huggins]."

¶9 During the state's direct examination, Goss violated the court's order while testifying about a discussion he had with Huggins's uncle, Glen Alan Huggins:

Q. [by the prosecutor]: And it's 10:00 o'clock at night, you're there alone and Glen Alan [Huggins] comes up to you; is that right?

A. Yes.

Q. And he asks you to help him; is that right?

A. Yes.

Q. What did he ask you to help him do?

A. He said that Clayton did shoot—

Q. I'm not asking that. What did he ask you to do?

A. If I would help him get rid of a body.

Huggins moved for a mistrial. In the alternative, he requested an order precluding Goss from testifying further and striking the testimony he had already given. The court refused the request for a mistrial and instead prohibited the state from asking Goss about what others, except Huggins, may have told him. The court also instructed the jury to disregard any statements Goss attributed to Glen Alan Huggins, to “give them no weight,” and not “discuss them or consider them in any fashion during [their] deliberations.”

¶10 Huggins contends the court should have granted a mistrial after the first incident. He asserts the statement that he had been in prison unduly influenced the jury to believe he was a bad person and, thus, guilty of Pizano's murder. But Huggins does not argue the prosecution intentionally elicited this testimony; he merely asserts that the testimony prejudiced him. When a witness unexpectedly volunteers an inadmissible statement, “the remedy rests largely within the discretion of the trial court.” *State v. Marshall*, 197 Ariz. 496, ¶ 10, 4 P.3d 1039, 1043 (App. 2000); *see also State v. Adamson*, 136 Ariz. 250, 262, 665 P.2d 972, 984 (1983).

¶11 As the state correctly notes, the testimony that Huggins had been in prison did not single him out as the only person with prior problems. And by Huggins's own account,

the state's case against him was based largely on the testimony of "known drug addicts, serious felons, and people who made deals for plea agreements." Viewed against this backdrop, we cannot say the trial court abused its discretion in resolving the issue in the manner it did. We give "great deference to a trial court's decision because the trial court 'is in the best position to determine whether the evidence will actually affect the outcome of the trial.'" *State v. Lamar*, 205 Ariz. 431, ¶ 40, 72 P.3d 831, 839 (2003), quoting *State v. Jones*, 197 Ariz. 290, ¶ 32, 4 P.3d 345, 359 (2000). See *State v. Dann*, 205 Ariz. 557, ¶¶ 43-45, 74 P.3d 231, 244 (2003) (finding no abuse of discretion in denying mistrial after witness testified defendant stated "I can't go back to jail."); *State v. Hoskins*, 199 Ariz. 127, ¶¶ 54-58, 14 P.3d 997, 1012-13 (2000) (finding no error in denying mistrial after witness volunteered testimony regarding defendant's prior arrest); see also *State v. Ramirez*, 178 Ariz. 116, 127, 871 P.2d 237, 248 (1994) (jurors presumed to follow trial court's instructions).

¶12 Turning to the second incident, Huggins argues "it certainly was incumbent on the court to declare a mistrial" during Goss's testimony because the court expressly stated it would do so "if [its] orders were again ignored by a witness."² But the trial court's admonition was designed to secure compliance with its orders. It was not a binding promise

²In ruling on Huggins's motion for mistrial, the court stated: "Motion for mistrial is denied. I will give the jury an instruction. I will tell them I have specifically ordered that no such reference be made and that, directly in contrary to my orders, it was made. And if it happens again, I will grant a mistrial."

to the defendant that the trial court would declare a mistrial upon a subsequent violation of its orders, and Huggins has cited no authority for this proposition. *See United Cal. Bank v. Prudential Ins. Co. of Am.*, 140 Ariz. 238, 308, 681 P.2d 390, 460 (App. 1983) (trial judge’s ruminations on record insufficient on appeal to set aside judgment of trial court).

¶13 The state does not dispute that Goss’s testimony violated the trial court’s ruling. But it contends the statement, though improper, was cumulative to other properly admitted evidence that Huggins had admitted shooting Pizano. We agree. Goss and other witnesses testified that Huggins admitted to them that he had killed Pizano. The trial court, therefore, did not abuse its discretion in denying the motion for a mistrial when the improper statement was merely cumulative to similar statements made by Huggins and properly admitted in evidence.³ *See State v. Davolt*, 207 Ariz. 191, ¶ 40, 84 P.3d 456, 470 (2004) (probative evidence obtained from motel room largely cumulative to other evidence); *State v. May*, 137 Ariz. 183, 191, 669 P.2d 616, 624 (App. 1983) (improper statements cumulative to similar properly admitted statements).

II. Alleged Prosecutorial Misconduct.

¶14 Huggins nevertheless contends the state was aware the court had “specifically limited the testimony [it] could elicit from the [two] witnesses,” but contrary to the court’s ruling, the state “elicited information that tainted the jury.” At trial, Huggins moved for a

³Having made this determination, we need not address the state’s other arguments on this issue.

mistrial on this ground, but the trial court denied the motion. As curative measures, the trial court instructed the jury to disregard the witness's statement and prohibited the state from asking the witness about anything anyone other than the defendant told him.

¶15 “In addressing allegations of prosecutorial misconduct, an appellate court must determine whether the prosecutor's actions were reasonably likely to have affected the jury's verdict, thereby denying him a fair trial.” *Murray*, 184 Ariz. at 35, 906 P.2d at 568. “To warrant reversal, the prosecutorial misconduct must be ‘so pronounced and persistent that it permeates the entire atmosphere of the trial.’” *State v. Newell*, 212 Ariz. 389, ¶ 61, 132 P.3d 833, 846 (2006), *quoting State v. Atwood*, 171 Ariz. 576, 611, 832 P.2d 593, 628 (1992).

¶16 Huggins's allegations of prosecutorial misconduct are without merit. The first instance, when Michael Pizano stated that Huggins had been in prison, occurred during defense counsel's cross-examination. The prosecutor therefore did not “elicit” any information from this witness that tainted the jury as Huggins claims. And regarding Goss, the prosecutor interrupted him in an effort to prevent the offending testimony. Huggins does not claim, nor does the record show, that the prosecutor otherwise directed either witness to make the improper statements or had failed to properly advise them of the court's evidentiary rulings. We find the trial court committed no error in refusing to grant a mistrial.

III. Sufficiency of the Evidence.

¶17 Huggins argues the trial court erred in denying his Rule 20 motion for judgment of acquittal because the evidence was insufficient to support his conviction. He primarily contends the state relied on witnesses with questionable backgrounds and motives for lying and that there was no forensic evidence to link him to the murder.

¶18 We review a trial court’s denial of a motion for judgment of acquittal for an abuse of discretion, *see State v. Paris-Sheldon*, 214 Ariz. 500, ¶ 32, 154 P.3d 1046, 1056 (App. 2007), and will reverse only if no substantial evidence supports the conviction, *Davolt*, 207 Ariz. 191, ¶ 87, 84 P.3d at 477. “Substantial evidence is that which reasonable persons could accept as sufficient to support a guilty verdict beyond a reasonable doubt.” *Id.* “Evidence may be direct or circumstantial, but if reasonable minds can differ on inferences to be drawn therefrom, the case must be submitted to the jury.” *State v. Landrigan*, 176 Ariz. 1, 4, 859 P.2d 111, 114 (1993) (internal citation and quotation omitted).

¶19 A person commits first-degree murder if “[i]ntending or knowing that the person’s conduct will cause death, the person causes the death of another person . . . with premeditation” A.R.S. § 13-1105(A)(1). Huggins correctly asserts that there was no forensic evidence linking him to the murder. But there was other direct evidence of guilt. The state presented four witnesses who testified Huggins had admitted killing Pizano. *State ex rel. O’Neill v. Brown*, 182 Ariz. 525, 527, n.2, 898 P.2d 474, 476 n.2 (1995) (defendant’s admission is direct evidence, not circumstantial evidence).

¶20 Heidi Mischler testified she had gone to Glen Alan Huggins's house to buy drugs late one night around midnight. She let herself in when no one answered her knock at the door. She stated Huggins later had entered the house and appeared "dirty and bloody." He had dirt on his clothes, "blood splattered on his forearms and on his face and neck," and he asked her to help him clean up. He told her "he had shot [Pizano] in the face and he got what he deserved." Mischler also testified she had been present when Huggins told a mutual friend what he had done to Pizano. Huggins "[m]ade the remark that [Pizano] deserved what he got for what he had done to him when he was a kid, and if he had to do it again, he would." Roxanne Davis testified Huggins had told her Pizano had made a pass at him so Huggins and "some of his buddies" tied him up "execution style," beat him, and Huggins shot him twice. Johnny Goss testified Huggins had told him that he shot Pizano with a shotgun. And finally, Sara Janette Ford, a childhood friend of both Huggins and Pizano, said when the police interviewed her on May 26 she knew nothing of Pizano's disappearance. However, sometime between May 26 and May 30, when she was again interviewed by officers, Huggins had approached her on the street and said "I heard you were talking to the cops . . . [w]ell you just better keep your fucking mouth shut because I'm not going back to prison for something I did."

¶21 The state also presented strong circumstantial evidence of Huggins's guilt. Johnny Goss testified that in May 2005 Huggins had told Goss he had been molested by Pizano when the two were much younger. Goss stated Huggins was still angry about it, and

it was one week later when Huggins informed Goss that he had shot Pizano. *See State v. Wood*, 180 Ariz. 53, 61-62, 881 P.2d 1158, 1166-67 (1994) (evidence of previous difficulties between accused and victim admissible to prove premeditation). A number of witnesses testified they had seen Huggins with what appeared to be a sawed-off shotgun at various times within a few weeks of the murder. As we have noted, Roxanne Davis testified Huggins had stated to her he had tied up Pizano “execution style” and had shot him. This evidence was supported by the medical examiner’s findings. The medical examiner determined Pizano had died from a single shotgun wound to the left side of his head, fired from a close range of “inches to a couple of feet.” *State v. Murray*, 184 Ariz. 9, 32, 906 P.2d 542, 565 (1995) (shooting victims “execution-style” circumstantial evidence of premeditation). Sheriff’s deputies stated when they discovered the body in a shallow grave it had been wrapped in a blanket. The medical examiner testified when she had received the body it was wrapped in a blanket bound in four places by duct tape. Johnny Goss testified that when he helped bury the body it had been wrapped in a comforter and bound by duct tape. He recognized the blanket as one he had seen at Huggins’s uncle’s house. All of this evidence, though circumstantial, is probative of Huggins’s guilt. “There is no distinction in the probative value of direct and circumstantial evidence. A conviction may be sustained on circumstantial evidence alone.” *State v. Green*, 111 Ariz. 444, 446, 532 P.2d 506, 508 (1975); *see also Davolt*, 207 Ariz. 191, ¶ 43, 84 P.3d at 470 (probative weight of circumstantial evidence “sufficient to justify the verdict[]”).

¶22 Huggins nevertheless argues the evidence against him was not reliable or probative of guilt because the state’s witnesses were “known drug addicts, serious felons, and people who made deals for plea agreements.” The credibility of witnesses is a question for the jury. *State v. Cañez*, 202 Ariz. 133, ¶ 39, 42 P.3d 564, 580 (2002). And “[c]ross-examination is the principal means by which the believability of a witness and the truth of his testimony are tested.” *Davis v. Alaska*, 415 U.S. 308, 316, 94 S. Ct. 1105, 1110 (1974). Huggins does not claim, and we find no indication in the record, that the trial court denied him “the opportunity of presenting to the trier of fact information which bears either on the issues in the case or on the credibility of the [state’s] witness[es].” *State v. Fleming*, 117 Ariz. 122, 125, 571 P.2d 268, 271 (1977). In fact, quite the opposite is true. Defense counsel thoroughly cross-examined the state’s witnesses. But the jury nonetheless apparently found them to be credible, and it was in the best position to make that determination. *See State v. Gay*, 214 Ariz. 214, ¶ 41, 150 P.3d 787, 798 (App. 2007). “We will not reweigh the evidence on appeal to determine whether we would arrive at the same conclusion as the jury.” *State v. Romanosky*, 162 Ariz. 217, 226, 782 P.2d 693, 702 (1989). Having reviewed the record in a light most favorable to sustaining the conviction, we cannot say the evidence was insufficient to support the jury’s verdict. *Tucker*, 205 Ariz. 157, n.1, 68 P.3d 110, 113 n.1 (2003). Accordingly, the trial court did not err in denying Huggins’s motion for judgment of acquittal pursuant to Rule 20.

Conclusion

¶23

The judgment of conviction is affirmed.

GARYE L. VÁSQUEZ, Judge

CONCURRING:

PETER J. ECKERSTROM, Presiding Judge

J. WILLIAM BRAMMER, JR., Judge