

IN THE SUPREME COURT OF THE STATE OF NEVADA

AMY M. GREEN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44163

FILED

JUL 28 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE AND LIMITED REMAND TO CORRECT THE
JUDGMENT OF CONVICTION

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of seven counts of elder exploitation. Eighth Judicial District Court, Clark County; Lee A. Gates, Judge. The district court sentenced appellant Amy M. Green to 6 concurrent prison terms of 24 to 96 months and 1 consecutive prison term of 24 to 96 months, but then suspended execution of the sentence and placed Green on probation for an indeterminate time period not to exceed 5 years. As a condition of probation, the district court ordered Green to pay restitution in the amount of \$1,515,000.00.

The instant charges arose when Green, over a period of five months, received over \$1,500,000.00 from an eighty-five-year-old woman whom she cared for. While Green argued at trial that the money was a gift, the State presented evidence that the elderly woman was mentally incompetent and that Green intimidated her into giving the money.

Citing to Young v. State,¹ Green first contends that the district court erred in denying her defense counsel's motion to withdraw

¹120 Nev. ___, ___, 102 P.3d 572, 576 (2004) (in reviewing a ruling on a motion for substitute counsel, this court considers the nature of the

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by failing to make an adequate inquiry into the nature of the conflict and by failing to rule on the motion. Additionally, Green contends she was entitled to new defense counsel because the attorney-client relationship had broken down to the extent that it was irreconcilable. We conclude that Green's contention lacks merit.

There is no Sixth Amendment guarantee to a "meaningful relationship" between an accused and his counsel.² The right to counsel of one's own choosing is not absolute, and a defendant is not entitled to reject his court-appointed counsel and request substitution of other counsel at public expense without first showing adequate cause.³ "Good cause for substitution of counsel cannot be determined 'solely according to the subjective standard of what the defendant perceives.'"⁴ A defendant's loss of confidence in his counsel is not sufficient.⁵ "The decision whether friction between counsel and client justifies appointment of new counsel is

... continued

conflict, the adequacy of the district court's inquiry, and the timeliness of the motion).

²Morris v. Slappy, 461 U.S. 1, 14 (1983); U.S. Const. amend. VI.

³Thomas v. State, 94 Nev. 605, 607, 584 P.2d 674, 676 (1978).

⁴Thomas v. Wainwright, 767 F.2d 738, 742 (11th Cir. 1985) (quoting McKee v. Harris, 649 F.2d 927, 932 (2d Cir. 1981)).

⁵Id.; see also Brinkley v. State, 101 Nev. 676, 679, 708 P.2d 1026, 1028 (1985) (no abuse of discretion in denying motion for continuance based, in part, on "unnoteworthy" claim that appellants were displeased with court-appointed counsel).

entrusted to the discretion of the trial court," whose decision will not be disturbed absent a clear showing of abuse of discretion.⁶

In this case, we conclude the district court did not abuse its discretion in denying the motion to withdraw because there was no sufficient cause to warrant substitute counsel. Despite defense counsel's statement that the attorney-client relationship had broken down, the record indicates that defense counsel communicated with Green on numerous occasions, had retained an investigator, and was able to prepare a defense.⁷ Further, the district court inquired about the nature of the conflict at a hearing, and explained its justification for its refusal to appoint substitute counsel:

I've been giving you continuances. The last attorney you didn't want, so I changed [your] attorney and gave you a private attorney. You listen to me. I'm not going to keep doing this. You're going to go to trial here. Unless you have some money to go out and hire your own lawyer -- the court appointed a lawyer for you and you [weren't] satisfied with your first lawyer, so now just go on and cooperate, and we're going to get this thing to trial.

At a subsequent hearing on Green's motion for a new trial, the district court again explained its justification for denying the motion for substitute counsel:

⁶Thomas, 94 Nev. at 607-08, 584 P.2d at 676 (citation omitted).

⁷Cf. Young, 120 Nev. at ___, 102 P.3d at 576 (concluding that there was a significant breakdown in the attorney-client relationship where attorney failed to investigate the case, prepare a defense, and violated court order requiring he communicate with client).

But let me tell why I didn't let the lawyer withdraw. The reason the lawyer wanted to withdraw was because Ms. Green didn't want him to represent her anymore. That was it. That was the third lawyer, and she wanted him for no reason, that she didn't want him -- I guess she wanted to delay the case some more. That wasn't reason enough to let anyone withdraw.

We conclude that the district court's inquiry into the nature of the conflict was adequate under the circumstances, and the district court acted within its discretion in ruling that there was inadequate cause for substitution of counsel. Accordingly, the district court did not err in denying defense counsel's motion to withdraw.

Green next contends that the district court erred in denying her motion for a new trial based on ineffective assistance of counsel. Specifically, Green contends that defense counsel was ineffective by failing to interview and properly rebut the testimony of the State's medical expert, Dr. Baig. Additionally, Green contends that defense counsel was ineffective by failing to interview and investigate defense witness Belinda Harris and argue that her testimony about her refusal to notarize a deed for Green was false.⁸ We conclude that Green's contentions lack merit.

The district court has the discretion to grant or deny a timely motion for a new trial, and the district court's determination will not be

⁸To the extent that Green argues that she is entitled to a new trial because Harris's testimony was perjurious, we reject that contention. The record does not indicate that the State knew or should have known that Harris's testimony was false, nor does it indicate that Harris's testimony about refusing to notarize a quitclaim deed was untrue. See Jimenez v. State, 112 Nev. 610, 622, 918 P.2d 687, 694 (1996).

reversed on appeal absent a clear abuse of its discretion.⁹ In this case, after hearing arguments from counsel, the district court denied the motion for a new trial, ruling that Green failed to show that she was prejudiced by the allegedly deficient conduct of defense counsel in light of the overwhelming evidence of guilt.¹⁰ Green has failed to show that the district court's findings of fact are not supported by substantial evidence or are clearly wrong.¹¹ Accordingly, we conclude that the district court did not err by denying Green's motion for a new trial.

Green also contends that reversal of her conviction is warranted because the prosecutor engaged in misconduct during rebuttal closing argument. During closing argument, defense counsel argued that even if the jury believed that the elderly female victim was mentally incompetent, Green was not guilty because the victim's husband, Charles, also endorsed the checks issued to Green. In rebuttal closing argument, the prosecutor responded:

One thing that . . . the defense attorney said -- he said, those checks that go out of T.D. Waterhouse, both of them endorsed them, both Charles and the [victim] endorsed them, but you know, I thought about that

September 13th, that's two days after he dies -- Charles -- it's one day before the defendant is having [the victim] sign some documents over with Alex, and on September 13, somehow or another

⁹See Servin v. State, 117 Nev. 775, 792, 32 P.3d 1277, 1289 (2001); Sanborn v. State, 107 Nev. 399, 406, 812 P.2d 1279, 1284 (1991).

¹⁰See Strickland v. Washington, 466 U.S. 668 (1984); Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984).

¹¹See Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

Charles' name is signed. He probably did not sign it from the grave and he probably did not sign it before he died. The check wasn't issued until after he died. The defense attorney said actions speak louder than words. I agree, and you look at the actions.

Green argues that the rebuttal argument amounted to misconduct because the argument implied that Green forged the check and that implication was unsupported by any evidence produced at trial.

As a preliminary matter, we note that Green did not object to the instances of alleged prosecutorial misconduct. This court has recognized that the failure to object to prosecutorial misconduct at trial precludes appellate review unless the asserted error is plain or constitutional in magnitude.¹² We conclude that no such error occurred in this case.

This court has recognized that it is permissible for a prosecutor, during closing argument, to suggest reasonable inferences that the jurors might draw from the evidence presented at trial.¹³ Here, the prosecutor was merely responding to defense counsel's argument that Charles endorsed all the checks, by pointing out that one check was endorsed after he died. The fact that Charles did not personally sign his name to the check was a reasonable inference from the evidence presented. Accordingly, we conclude that the prosecutor did not engage in misconduct during rebuttal closing argument.


Having considered Green's contentions and concluded that they lack merit, we affirm the judgment of conviction. However, our


¹²Parker v. State, 109 Nev. 383, 391, 849 P.2d 1062, 1067 (1993).

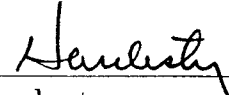
¹³Klein v. State, 105 Nev. 880, 884, 784 P.2d 970, 973 (1989).

review of the judgment of conviction reveals a clerical error. The judgment of conviction states that Green was convicted pursuant to a guilty plea when, in fact, she was convicted pursuant to a jury verdict. Accordingly, we

ORDER the judgment of the district court AFFIRMED and REMAND this matter to the district court for the limited purpose of correcting the judgment of conviction.


_____, J.
Rose


_____, J.
Gibbons


_____, J.
Hardesty

cc: Hon. Lee A. Gates, District Judge
Goodman & Chesnoff
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk