

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES GOODALL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44590

FILED

MAY 22 2006

ANETTE M. BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

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

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of possession of stolen property. Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Judge. The district court adjudicated appellant James Goodall as a habitual criminal and sentenced him to serve a prison term of 5-20 years. An amended judgment of conviction was entered, ordering Goodall to pay \$3,500.00 in restitution.

First, Goodall contends that the district court erred by denying his motion for a mistrial based on the State's failure to provide discovery. During the prosecutor's opening statement, she referred to an alleged confession in which Goodall informed an investigating officer that the computer in question might, in fact, be stolen. Defense counsel moved for a mistrial, arguing that Goodall's confession was never provided to the defense. The prosecutor informed the district court that she only learned about Goodall's inculpatory statement the weekend before the start of trial. The district court heard arguments from counsel and denied the motion. Later at trial, on redirect examination, Sergeant Gaylord Hammeck testified that Goodall's inculpatory statements were not included in any police reports because they were investigating several other cases and wanted to develop a working relationship with Goodall.

Sergeant Hammeck explained, “if that information becomes public information and, in fact, if our relationship with Mr. Goodall would have proceeded forward, I would not have wanted conversation in that original report, in case we arrested someone else. That might come back on Mr. Goodall.” On appeal, citing to NRS 174.235(1) and McKee v. State¹ for support, Goodall claims that the State violated his right to a fair trial by improperly withholding information about Goodall’s alleged confession. We disagree.

NRS 174.235(1) provides in part –

[A]t the request of a defendant, the prosecuting attorney shall permit the defendant to inspect and to copy or photograph any:

(a) Written or recorded statements or confessions made by the defendant, . . . within the possession, custody or control of the State, the existence of which is known, or by the exercise of due diligence may become known, to the prosecuting attorney[.]

(Emphasis added.) Here, unlike the evidence at issue in McKee, Goodall’s alleged oral confession was neither written nor recorded, so there was nothing for the defense to inspect, copy, or photograph; NRS 174.235(1) did not require the State to provide this information to the defense. Moreover, this court has stated that the prosecution is under no general duty to disclose inculpatory evidence to the defendant.² Therefore, we

¹112 Nev. 642, 917 P.2d 940 (1996) (holding that the prosecution violated its ethical duty when it purposely withheld inculpatory photographic evidence from an allegedly open file with the hope of later impeaching the defendant at trial with the withheld evidence).

²See Furbay v. State, 116 Nev. 481, 487, 998 P.2d 553, 557 (2000).

conclude that the district court did not abuse its discretion in denying Goodall's motion for a mistrial.³

Second, Goodall contends that the State committed prosecutorial misconduct by improperly withholding evidence presented in the rebuttal testimony of Officer Zachary Marsh. Outside the presence of the jury, the prosecutor informed the district court that prior to trial, she told defense counsel that on the day Goodall was arrested, he was in possession of another computer, not the computer at issue in the instant case. The State offered this information to the district court as a proffer for its rebuttal witness. Defense counsel conceded that the State provided this information, but not the specific witness or computer model. The district court allowed the State's rebuttal witness to testify about the computer in Goodall's possession at the time of his arrest. Officer Marsh testified that he listed the computer in the property report, however, the arrest report does not include the computer in the listing of property impounded. The State claimed that it provided the defense with all of the police reports even though no report contained information about a computer in Goodall's possession at the time of his arrest. Goodall did not question Officer Marsh on cross-rebuttal about the absence of a report listing the computer.

We conclude that the district court did not commit manifest error in allowing the rebuttal testimony of Officer Marsh.⁴ Goodall has

³Mortensen v. State, 115 Nev. 273, 281, 986 P.2d 1105, 1111 (1999) ("Denial of a motion for mistrial can only be reversed where there is a clear showing of an abuse of discretion.").

⁴See Greene v. State, 113 Nev. 157, 166, 931 P.2d 54, 60 (1997) (the decision to admit or exclude evidence rests within the discretion of the

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failed to demonstrate that the State was required to disclose any more information than had already been provided, and therefore, the State did not commit prosecutorial misconduct. Moreover, we conclude that the State presented overwhelming evidence of Goodall's guilt, and "where evidence of guilt is overwhelming, even aggravated prosecutorial misconduct may constitute harmless error."⁵

Finally, Goodall contends that the district court committed reversible error when it refused to instruct the jury on his theory of the defense. Part of the defense theory at trial was that "when the police returned the computer to the Defendant, indicating that there was no proof that the computer was stolen, the Defendant was not possessing stolen property." Another part of the defense theory was that Goodall bought the computer at a swap meet. Goodall requested the following instruction:

A person can not be convicted of possession of stolen property if, before the stolen property reaches the possessor, the property had been recovered by the police.

The district court rejected the instruction, stating that the case law cited in support of the instruction was not on point.⁶

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trial court), overruled on other grounds by *Byford v. State*, 116 Nev. 215, 994 P.2d 700 (2000); see also *Colon v. State*, 113 Nev. 484, 491, 938 P.2d 714, 719 (1997) ("this court will respect the trial court's determination as long as it is not manifestly wrong").

⁵*King v. State*, 116 Nev. 349, 356, 998 P.2d 1172, 1176 (2000).

⁶Goodall provided citations to *Darnell v. State*, 92 Nev. 680, 558 P.2d 624 (1976) and *United States v. Portrait of Wally*, 105 F. Supp. 2d 288 (S.D.N.Y. 2000) in support of the proposed instruction.

“The district court has broad discretion to settle jury instructions, and this court reviews the district court’s decision for an abuse of that discretion or judicial error.”⁷ “[T]he defense has the right to have the jury instructed on its theory of the case as disclosed by the evidence, no matter how weak or incredible that evidence may be.”⁸ Nevertheless, this court has stated that “a criminal defendant is not entitled to an instruction which incorrectly states the law.”⁹

We conclude that the district court did not abuse its discretion in rejecting Goodall’s proposed instruction. Unlike the facts in the cases cited by Goodall in support of the proposed instruction, Goodall was in actual possession of the stolen computer prior to contact with the investigating police officers. Further, Goodall mischaracterizes what he was told by the officers when they returned the computer to him. Sergeant Hammeck testified that he could not ascertain at that time that the computer was stolen, so it was returned to Goodall. When he gave the computer back to Goodall, Sergeant Hammeck still believed that the computer was stolen, and he told Goodall that he would return and arrest him if he found out that it was stolen. Approximately 5-10 minutes after returning the computer to Goodall and leaving the scene, Sergeant Hammeck received confirmation that the computer was, in fact, stolen. Sergeant Hammeck returned to arrest Goodall for possession of stolen property, but Goodall had already left with the computer. Based on the

⁷Crawford v. State, 121 Nev. ___, ___, 121 P.3d 582, 585 (2005).

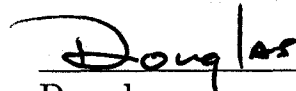
⁸Vallery v. State, 118 Nev. 357, 372, 46 P.3d 66, 76-77 (2002) (internal quotation marks omitted).

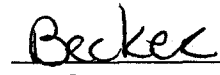
⁹Geary v. State, 110 Nev. 261, 264, 871 P.2d 927, 929 (1994).

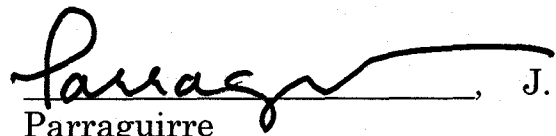
above, we conclude that Goodall's proposed instruction was inapplicable to the specific facts of his case, and therefore, was properly rejected.

Having considered Goodall's contentions and concluded that they are without merit, we affirm the judgment of conviction. Our review of the amended judgment of conviction, however, reveals a clerical error. The amended judgment of conviction incorrectly states that Goodall was convicted pursuant to a guilty plea. The amended judgment of conviction should have stated that Goodall was convicted pursuant to a jury verdict. Additionally, the amended judgment of conviction incorrectly states that Goodall was subject to a probation revocation proceeding. Goodall, however, did not receive probation. We therefore conclude that this matter should be remanded to the district court for the correction of the amended judgment of conviction.¹⁰ 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 amended judgment of conviction.


_____, J.
Douglas


_____, J.
Becker


_____, J.
Parraguirre

¹⁰See Ledbetter v. State, 122 Nev. ___, ___, 129 P.3d 671, 681 (2006).

cc: Hon. Joseph T. Bonaventure, District Judge
J. Chip Siegel, Chtd.
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk