

IN THE SUPREME COURT OF THE STATE OF NEVADA

JEROME BROWN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44701

FILED

SEP 23 2005

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of larceny from the person. Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge. The district court sentenced appellant to a prison term of 24 to 60 months, but suspended the sentence and placed appellant on probation for a period not to exceed 5 years.

Appellant first contends that he was entrapped by the Las Vegas Metropolitan Police Department. The decoy operation which led to appellant's arrest was considered by this court recently in Daniels v. State.¹ In Daniels, this court concluded that the decoy operation did not constitute entrapment as a matter of law.² Moreover, we note that appellant initiated contact with the undercover detective and then distracted the detective and stole his wallet.³ We conclude that the

¹121 Nev. ___, 110 P.3d 477 (2005).

²Id. at ___, 110 P.3d at 479.

³See Foster v. State, 116 Nev. 1088, 1093, 13 P.3d 61, 64 (2000) (enumerating factors to be considered in determining whether a defendant is predisposed to commit a crime, including who initiated the criminal activity and whether the defendant was reluctant to participate).

opportunity presented to commit a crime was not improper and that appellant was clearly predisposed to commit the theft. We therefore conclude that appellant's contention that he was entrapped is without merit.

Appellant next contends that the district court erred by admitting evidence of a prior conviction for purposes of impeachment. Specifically, appellant argues that the conviction is constitutionally infirm, as evidenced by a report and recommendation by a United States magistrate recommending that the conviction be reversed.

This court has previously held that a prior conviction may not be used for impeachment purposes "when a constitutional infirmity appears from the face of the record."⁴ If a constitutional infirmity does not appear on the face of the conviction, "that infirmity is to be established through an appropriate proceeding in the [court] where the conviction occurred and not otherwise."⁵

In this case, there was federal litigation regarding the prior conviction, but despite the recommendation of the magistrate, the conviction has not been reversed. We therefore conclude that the district

⁴Anglin v. State, 86 Nev. 70, 73, 464 P.2d 504, 506(1970) (disapproved of on other grounds by Dressler v. State, 107 Nev. 686, 819 P.2d 1288 (1991)).

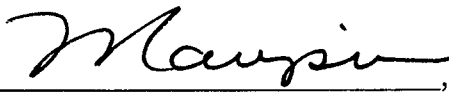
⁵Id.


court did not err by admitting evidence of the conviction.⁶ Moreover, even if admission of the prior conviction was error, such error was harmless.⁷

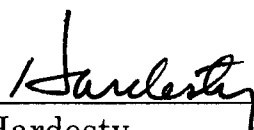
Finally, appellant contends that various comments by the prosecutor amounted to prosecutorial misconduct. However, none of the comments were objected to, and we conclude that they do not constitute plain error.⁸

Having considered appellant's contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Maupin


_____, J.
Gibbons


_____, J.
Hardesty

⁶See *id.* (holding that a court may rely on a prior conviction until the constitutional infirmity has been established in the court where the conviction occurred).

⁷See *Revuelta v. State*, 86 Nev. 224, 227, 467 P.2d 105, 107 (errors in admitting prior convictions for impeachment purposes are subject to harmless error analysis).

⁸See *Leonard v. State*, 117 Nev. 53, 82, 17 P.3d 397, 415 (2001); see also *King v. State*, 116 Nev. 349, 356, 998 P.2d 1172, 1176 (2000) (holding that “where evidence of guilt is overwhelming, even aggravated prosecutorial misconduct may constitute harmless error”).

cc: Hon. Elizabeth Goff Gonzalez, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk