IN THE SUPREME COURT OF THE STATE OF NEVADA

EDWAN THURMOND,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45055

FILED

NOV 08 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
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 three counts of robbery with the use of a deadly weapon and two counts of conspiracy to commit robbery. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge. The district court sentenced appellant Edwan Thurmond to serve terms totaling 12 to 42 years in prison.

First, Thurmond argues the district court erred by admitting evidence of uncharged misconduct without first holding a Petrocelli[1] hearing. Our review of the record indicates that Thurmond elicited all the testimony he challenges here, with the exception of one comment by the lead detective that when investigating the July 2002 robbery he recognized Thurmond's name from a previous robbery investigation. The detective did not accuse Thurmond of any criminal role in that prior robbery. Nevertheless, even if the comment was improper, the State did not solicit it or seek its admission. Further, given the substantial evidence

[1]Petrocelli v. State, 101 Nev. 46, 692 P.2d 503 (1985).

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tying Thurmond to the charged crimes, the error, if any, was not so prejudicial that it requires reversal. For the same reasons, the district court's failure to sua sponte instruct the jury on the acceptable use of the evidence was harmless.[2] As for the testimony elicited by Thurmond himself, because he actually elicited the evidence, he cannot be heard to complain of its admission.[3]

Second, Thurmond argues that evidence of prior convictions was improperly admitted at trial through the testimony of several detectives who each briefly mentioned that detectives assigned to a "repeat offenders" unit had participated in the case. Our review of the record reveals that no evidence was admitted that Thurmond had a prior conviction or had even been previously charged with a crime. Further, Thurmond failed to object to this testimony at trial. "Generally, failure to object will preclude appellate review of an issue."[4] We conclude there was no plain error affecting Thurmond's substantial rights to overcome his failure to preserve the issue for appeal.[5]

Third, Thurmond argues the district court erred in denying his motion to suppress statements he made to investigators due to insufficient Miranda[6] warnings. Thurmond was advised of his rights

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[2]See Qualls v. State, 114 Nev. 900, 904, 961 P.2d 765, 767 (1998).

[3]See Carter v. State, 121 Nev. ___, ___, 121 P.3d 592, 599 (2005) (holding that a party who participates in an alleged error is estopped from raising any objection on appeal).

[4]Leonard v. State, 117 Nev. 53, 63, 17 P.3d 397, 403 (2001).

[5]See id. at 63, 17 P.3d at 403-04; NRS 178.602.

[6]Miranda v. Arizona, 384 U.S. 436 (1966).

under Miranda three times: when he was arrested by Detective Britt and before each of two statements he gave to Detective Mogg. He orally waived his Miranda rights after his arrest and signed a waiver card before both of his interviews with Detective Mogg. Thurmond argues he was never properly advised that he had the right to the presence of an attorney during questioning. We disagree.

Detective Britt testified that he read the Miranda warnings to Thurmond from a printed card he received from the Las Vegas Metropolitan Police Department. He produced the card at trial and read it into the record, as follows: "You have the right to remain silent. Anything you say can be used against you in a court of law. You have the right to the presence of an attorney. If you cannot afford an attorney, one will be appointed before questioning. Do you understand these rights?" The Miranda warnings card that Detective Mogg presented to Thurmond and Thurmond signed twice was not read into the record but was admitted as an exhibit. Thurmond failed to indicate whether the warnings given by Detective Mogg's card were different than those read to him by Detective Britt. Accordingly, we will assume they were identical.

Thurmond relies on United States v. Bland,[7] but Bland is distinguishable. The defendant in Bland was advised that he had the right to an attorney and that one would be appointed before questioning but was not advised that he had the right to the presence of an attorney.[8] In this case, Thurmond was specifically advised that he the right to the presence of an attorney and that if he could not afford an attorney one

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[7]908 F.2d 471 (9th Cir. 1990).

[8]Id. at 473-74.

would be appointed before questioning. We conclude the Miranda warnings given to Thurmond were sufficient and the district court did not err in denying Thurmond's motion to suppress his statements.

Thurmond also argues his statements should have been suppressed as the fruit of an unlawful arrest. We disagree. Thurmond contends that Detective Mogg lacked probable cause to arrest him for the May 19, 2003 conspiracy to commit robbery because that conspiracy charge was dismissed pretrial. However, Detective Mogg testified that he had probable cause to arrest Thurmond for the April 24, 2003 conspiracy. Thurmond does not argue that Mogg lacked probable cause to arrest him for that charge.

Fourth, Thurmond argues the district court erred by denying his motion to suppress evidence seized from his vehicle as the fruit of an unlawful search. Testimony at trial established that the robber entered Thurmond's vehicle through an unlocked door, changed his clothes inside, and exited the vehicle. Thurmond claims the first officer on the scene of the robbery unlawfully opened the rear door of Thurmond's vehicle and observed evidence inside. The State contends that the officer opened the door of the vehicle, a large SUV with tinted windows, to make sure no one was hiding inside but that the vehicle was not searched until after Detective Mogg obtained a telephonic search warrant.

In denying Thurmond's motion, the district court ruled that even if the officer should not have opened the door and looked inside, the evidence would have been inevitably discovered[9] because the robbery

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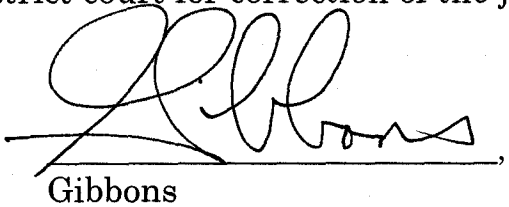
[9]See generally Camacho v. State, 119 Nev. 395, 402-03, 75 P.3d 370, 375-76 (2003).

suspect had been seen in the vehicle and the police would have impounded the vehicle and searched it then. We agree. We further note that when the robbery suspect opened and entered the vehicle and changed his clothes inside, the vehicle became part of the crime scene and a search warrant would have been justified, whether or not evidence was visible inside the vehicle through its open door. Thus, we conclude the district court did not err in denying Thurmond's motion to suppress the evidence seized from his vehicle.

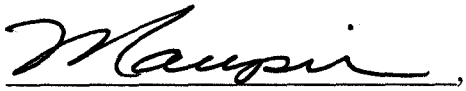
Our review of the record reveals a clerical error in the judgment of conviction, in that the judgment of conviction does not set forth the counts upon which the jury returned guilty verdicts.

Having reviewed Thurmond's contentions and concluded they lack merit, we

ORDER the judgment of the district court AFFIRMED and REMAND this matter to the district court for correction of the judgment of conviction.



_____, J.
Gibbons



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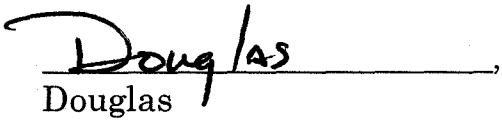

_____, J.
Douglas

cc: Hon. Donald M. Mosley, District Judge
Jeannie N. Hua
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk