

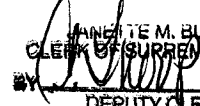
IN THE SUPREME COURT OF THE STATE OF NEVADA

RAYMOND DAUBER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46080

FILED

OCT 31 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of grand larceny. Eighth Judicial District Court, Clark County; Jennifer Togliatti, Judge. The district court sentenced appellant Raymond Dauber to a prison term of 24 to 60 months.

Dauber first contends that there was insufficient evidence adduced at trial to support his conviction. Although the State's theory was that Dauber stole a bucket of gaming tokens from the victim, the information alleged that Dauber took "lawful money of the United States" owned by the victim. Dauber argues that even if he had taken one of the buckets of tokens belonging to the victim, there was no evidence that he took "lawful money of the United States."

Pursuant to NRS 205.220, an individual is guilty of grand larceny if he "[i]ntentionally steals, takes [or] carries away . . . [p]ersonal goods or property, with a value of \$250 or more, owned by another person." Our review of the record on appeal reveals sufficient evidence to establish

Dauber's guilt beyond a reasonable doubt as determined by a rational trier of fact.¹

In particular, we note that the victim testified that she noticed one of her buckets of tokens missing, after a slot mechanic finished refilling the machine she was playing. The slot mechanic immediately went to the cashier's cage and found Dauber attempting to cash in the tokens. Further, a casino surveillance videotape showed Dauber taking the bucket of tokens while the slot mechanic was working on the machine and the victim's view of the buckets was blocked.

The jury could reasonably infer from the evidence presented that Dauber committed grand larceny, and the jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict.²

To the extent that Dauber challenges the accuracy of the criminal information, we conclude that he has not demonstrated that he is entitled to relief. NRS 173.075(1) provides that "the information must be a plain, concise and definite written statement of the essential facts constituting the offense charged." Although the information in this case alleged that Dauber took "lawful money of the United States" from the victim, rather than that he took gaming tokens, we conclude that Dauber was effectively on notice as to the specific acts that were alleged. Particularly, we note that a preliminary hearing was conducted at which

¹See Wilkins v. State, 96 Nev. 367, 609 P.2d 309 (1980); see also Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998).

²See Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981); see also McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

the State's allegations were presented, and Dauber's defense throughout trial was that he did not actually take the bucket.

This court has held that where the sufficiency of the charging document is not raised until after a verdict or plea of guilty, such a verdict or plea cures technical defects unless it is apparent that they have resulted in prejudice to the defendant.³ Dauber has failed to demonstrate that the defect in the information prejudiced him, and this argument is therefore without merit.⁴

Dauber also contends that the district court erred by admitting a casino surveillance videotape and allowing witnesses to comment on the videotape. Specifically, Dauber argues that the State should not have been allowed to show the videotape during opening argument, that the victim should not have been allowed to authenticate the videotape because it showed four different camera angles and the victim was only present in one of the angles, and finally, that the arresting officer should not have been able to testify about what she saw on the video because the officer was not actually present when the alleged crime occurred.

The decision to admit or exclude evidence lies within the broad discretion of the district court, and its decision will not be reversed absent

³Laney v. State, 86 Nev. 173, 177-78, 466 P.2d 666, 669-70 (1970).

⁴See NRS 178.598 ("Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.").

manifest error.⁵ We conclude that the district court did not err by allowing the videotape to be authenticated by the victim and admitted. We further conclude that the arresting officer's testimony regarding the videotape was properly admitted for the purpose of identity.

Finally, Dauber contends that his right to a speedy trial was violated. NRS 178.556(1) provides, in part: "If a defendant whose trial has not been postponed upon his application is not brought to trial within 60 days after the arraignment on the . . . information, the district court may dismiss the . . . information." Appellant initially invoked the 60-day rule at his arraignment on January 31, 2005. Trial finally commenced on July 18, 2005.

In determining whether a defendant's speedy trial rights have been violated, four factors must be considered: "(1) [l]ength of the delay; (2) the reason for the delay; (3) the defendant's assertion of his right [to speedy trial]; and (4) prejudice to the defendant."⁶ Considering these factors in the instant case, we first note that the trial was held 168 days after Dauber was arraigned, and the delay was therefore not particularly long.⁷ Second, all of the continuances were requested by the defense to

⁵Kazalyn v. State, 108 Nev. 67, 71-72, 825 P.2d 578, 581 (1992), modified on other grounds by Byford v. State, 116 Nev. 215, 994 P.2d 700 (2000).

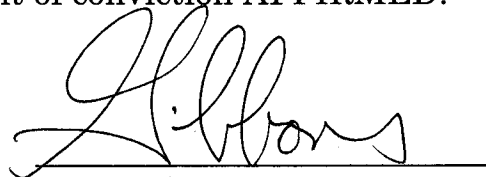
⁶Barker v. Wingo, 407 U.S. 514, 530 (1972).

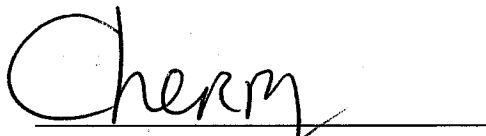
⁷Cf. Middleton v. State, 114 Nev. 1089, 968 P.2d 296 (1998) (holding that a delay of two and a half years did not deprive defendant to his right to a speedy trial); Furbay v. State, 116 Nev. 481, 998 P.2d 553 (2000) (holding that a delay of five and a half years did not violate defendant's speedy-trial right).

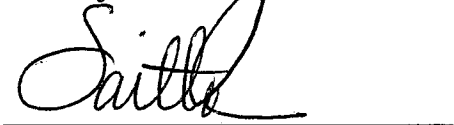
allow for further discovery. Third, although Dauber initially invoked the 60-day rule, he subsequently sought continuances and he never filed a motion to dismiss in the district court based on a speedy trial violation. Finally, Dauber makes absolutely no allegation of prejudice. We therefore conclude that Dauber's speedy trial right was not violated.

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

ORDER the judgment of conviction AFFIRMED.


_____, J.
Gibbons


_____, J.
Cherry


_____, J.
Saitta

cc: Hon. Jennifer Togliatti, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk