

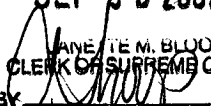
IN THE SUPREME COURT OF THE STATE OF NEVADA

DONALD ROBIN BARREN,
Appellant
vs.
THE STATE OF NEVADA,
Respondent

No. 46247

FILED

SEP 25 2007

JANE M. BLOOM
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, upon a jury verdict, of possession of a firearm by an ex-felon. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge. The district court adjudicated appellant a habitual criminal and sentenced him to serve a term of life in the Nevada State Prison.

Appellant Donald Robin Barren argues that, among other things, the district court erred in conducting an insufficient Faretta canvass before allowing him to represent himself at trial. He further argues that the evidence presented at trial does not support the jury's verdict and that the district court abused its discretion by admitting additional information into evidence along with his judgments of conviction. The parties are familiar with the facts; therefore, we do not recount them in this order except as is necessary for our disposition.

Standard of review

In order to be reversible, "this court must conclude that [an error at trial] was not harmless beyond a reasonable doubt."¹

¹Hymon v. State, 121 Nev. 200, 210, 111 P.3d 1092, 1099 (2005).

Faretta canvas

A criminal defendant has the right to represent himself under the Sixth Amendment of the United States Constitution and under the Nevada Constitution.² However, this court concluded in Hymon v. State that a defendant first must demonstrate, to the district court, that he knowingly, voluntarily, and intelligently waives his right to counsel.³ To satisfy that threshold, district courts are required to inquire into the defendant's understanding of the case and "inform the defendant of some of the dangers, disadvantages and consequences of self-representation."⁴ However, this court has rejected the idea that a Faretta canvass has to be conducted in a strict mechanical fashion and has held that even the omission of a canvass does not constitute reversible error if, from the whole record, it appears that the defendant was aware of his rights and insisted on proceeding in proper person.⁵

In this case, before allowing Barren to represent himself, the district court inquired into Barren's understanding of his rights, the circumstances of his case, criminal trial procedure, the penalty of the crimes for which he was accused, and his right to the assistance of counsel by a court-appointed attorney. Barren affirmed to the district court that

²Faretta v. California, 422 U.S. 806, 819 (1975) ("The Sixth Amendment does not provide merely that a defense shall be made for the accused; it grants to the accused personally the right to make his defense."); Nev. Const. art. 1, § 8, cl. 1.

³121 Nev. at 212, 111 P.3d at 1101.

⁴Id. (discussing SCR 253); see also SCR 253.

⁵Id. at 212-13, 111 P.3d at 1101.

he understood its concerns and insisted on proceeding to trial without counsel. We conclude that the district court did not err in this case because it adequately canvassed Barren, consistent with Hymon, before proceeding to trial.

Sufficiency of the evidence

In a criminal case, the standard of review for sufficiency of the evidence is “whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt, after viewing the evidence in the light most favorable to the prosecution.”⁶ It is well established that “[c]ircumstantial evidence alone may sustain a conviction.”⁷ It is equally well established that this court “will not disturb a verdict on appeal if it is supported by substantial evidence.”⁸

In this case, the State bore the burden of proving, beyond a reasonable doubt, that Barren (1) is an ex-felon and (2) was in possession of a firearm.⁹ We conclude that the State satisfied that burden. Barren admitted that he is an ex-felon, and his prior judgments of conviction are additional evidence of that fact. Additionally, there is ample evidence in the record on which a rational fact finder could find beyond a reasonable doubt that Barren had been in possession of a firearm.

⁶Domingues v. State, 112 Nev. 683, 693, 917 P.2d 1364, 1371 (1996) (citations omitted).

⁷McNair v. State, 108 Nev. 53, 61, 825 P.2d 571, 576 (1992).

⁸Domingues, 112 Nev. at 693, 917 P.2d at 1371.

⁹NRS 202.360(1)(a).

Judgments of conviction

District courts have discretion to admit or exclude evidence, and this court reviews the exercise of that discretion for abuse.¹⁰ The exercise of that discretion is not an abuse and will not constitute grounds for reversal unless the district court's decision is manifestly wrong.¹¹ Evidence is inadmissible "if its probative value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues or of misleading the jury."¹² Relevant evidence "may [also] be excluded if its probative value is substantially outweighed by considerations of . . . [the] needless presentation of cumulative evidence."¹³

The prosecutor in this case bore the burden of proving that Barren had been an ex-felon in possession of a firearm.¹⁴ Accordingly, the evidence that is relevant to the prosecution of that crime is evidence that tends to prove those facts. NRS 50.095(6) states that "[a] certified copy of a conviction is prima facie evidence of [a] conviction."

Barren admitted to his status as an ex-felon. However, he did not formally stipulate to that status. Therefore, we conclude that the

¹⁰Ford v. State, 122 Nev. 796, 806, 138 P.3d 500, 507 (2006); Felder v. State, 107 Nev. 237, 241, 810 P.2d 755, 757 (1991).

¹¹Ford, 122 Nev. at 806, 138 P.3d at 507.

¹²NRS 48.035(1).

¹³NRS 48.035(2) (emphasis added).

¹⁴NRS 202.360(1)(a).

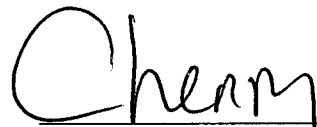
district court acted within its discretion by admitting Barren's judgments of conviction.¹⁵

We have carefully considered Barren's other arguments and conclude that they lack merit.¹⁶ We further conclude that the district court's errors, if any, are harmless beyond a reasonable doubt. Accordingly, we

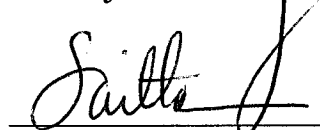
ORDER the judgment of the district court AFFIRMED.

 _____, J.

Gibbons

 _____, J.

Cherry

 _____, J.

Saitta

¹⁵On the other hand, the district court may have admitted additional evidence concerning Barren's prior convictions in error. However, we conclude that the admission of that evidence was not impermissibly cumulative, nor was its probative value substantially outweighed by any unfair prejudice that evidence created. Therefore, the district court's decision to admit that evidence, if in error, was harmless beyond a reasonable doubt.

¹⁶During oral argument, Barren withdrew his contention that in 1995 the Legislature amended NRS 207.010 to preclude district attorneys from charging a defendant as a habitual offender post-conviction. Accordingly, we have not addressed that argument herein.

cc: Hon. Stewart L. Bell, District Judge
JoNell Thomas
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk