IN THE SUPREME COURT OF THE STATE OF NEVADA

RAYMOND RUSSELL GEORGE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47514

FILED

FEB 15 2008

TRACIE K. LINDEMAN
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 three counts of lewdness with a child under the age of fourteen, two counts of sexual assault on a child, and one count of willfully endangering a child as the result of abuse and/or neglect. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge.

The parties are familiar with the facts, and we do not recount them except as necessary for our disposition.

Appellant Raymond Russell George argues that the district court erred by denying his motion for a competency evaluation prior to sentencing. George also argues that the district court made three reversible errors regarding jury instructions: by giving "stock" jury instructions rather than his proffered instructions; by giving an erroneous bad act evidence jury instruction; and by refusing to take judicial notice and instruct the jury that George had been found incompetent subsequent to both his pre-arrest police interview and a recorded telephone call made while he was in jail prior to trial. We disagree with George's arguments for the reasons set forth below.

08-03832

Competency

"This court will not disturb a finding of competency absent a clear abuse of discretion."[1] Therefore, we will not disturb the district court's competency findings if they are supported by substantial evidence.[2] A trial court must suspend proceedings and conduct a competency hearing if, at any time prior to trial or upon conviction, a doubt arises as to the defendant's competency.[3] However, it is within the trial court's discretion to determine whether reasonable doubt exists.[4] In making its determination, the district court will consider whether the defendant understands the nature of the charges against him, his ability to assist in his defense, any history of irrational behavior, demeanor at trial, and prior medical opinions of competency.[5]

We conclude that there is substantial evidence to support the district court's finding that no competency evaluation was required prior to sentencing. First, we note that prior to trial, George was found incompetent to stand trial and the proceedings were properly suspended so that George could be further evaluated and treated. Proceedings did not resume until proper findings were made by the authorities and the

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[1]Evans v. State, 117 Nev. 609, 624, 28 P.3d 498, 509 (2001).

[2]Ogden v. State, 96 Nev. 697, 698, 615 P.2d 251, 252 (1980).

[3]NRS 178.405.

[4]Melchor-Gloria v. State, 99 Nev. 174, 181, 660 P.2d 109, 113 (1983).

[5]See NRS 178.400; see also Melchor-Gloria, 99 Nev. at 180, 660 P.2d at 113.

court found that George was able to understand the charges against him and to aid in his defense. In addition, the record shows that George was able to assist in his own defense at trial, he was able to write his own motion for habeas corpus, and he knew there were consequences for violating "man's law." Further, the district court properly considered both current and prior medical opinions as to George's competency. Therefore, we conclude that the district court did not abuse its discretion by denying George's motion for a competency evaluation at time of sentencing.

Jury Instructions

George argues that the district court erred because it refused to consider his "tailored" instructions and gave "stock" jury instructions. George also argues that the district court erred by giving a general bad acts evidence instruction. Further, George argues that the district court erred because it refused to take judicial notice of and instruct the jury that he had been declared incompetent ten weeks after a police interview and phone call. The jury had seen and heard recordings of the interview and the phone call, and George argues that the jury should have been instructed to consider that finding of incompetence when weighing whether the statements had been made voluntarily. We disagree.

"'A district court has broad discretion to settle jury instructions, and this court reviews the district court's decision for abuse of that discretion or judicial error.'"[6] Arbitrary or capricious decisions or those that "'exceed the bounds of law or reason'" constitute abuse of

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[6]Rose v. State, 123 Nev. ___, ___, 163 P.3d 408, 415 (2007) (quoting Crawford v. State, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005)).

discretion.[7] A court does not err by refusing to give an instruction if the law is adequately covered in another instruction.[8] The district court must, however, "give complete and accurate theory of the case instructions" when requested.[9] If the district court errs by refusing to give an instruction, we must then determine if the error was harmless.[10] An error is not harmless if the jury's verdict was attributable to the error.[11]

As to the "stock" instructions, we conclude that George's argument that the district court refused to consider his "tailored" instructions to be meritless. While this court, in Runion v. State, stated that jury instructions should be tailored to a case's facts and circumstances, and the district court should not "simply [rely] on 'stock' instructions,"[12] the district court here made its decision to give "stock" instructions only after hearing arguments from both parties.[13] George's

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[7]Crawford, 121 Nev. at 748, 121 P.3d at 585 (quoting Jackson v. State, 117 Nev. 116, 120, 17 P.3d 998, 1000 (2001)).

[8]Rose, 123 Nev. at ___, 163 P.3d at 415.

[9]Carter v. State, 121 Nev. 759, 765, 121 P.3d 592, 596 (2005).

[10]Crawford, 121 Nev. at 756, 121 P.3d at 590.

[11]Id.

[12]116 Nev. 1041, 1051, 13 P.3d 52, 59 (2000).

[13]Specifically, we note that the district court heard arguments with regard to instructions for reasonable doubt, witness credibility, proof of intent by circumstantial evidence, and bad acts evidence.

proffered instructions were adequately covered by the instructions given.[14] Those instructions were accurate statements of law, which George conceded at trial. Additionally, George offers no reasons why his proffered instructions were essential to his theory of the case. Therefore, we conclude that the district court did not abuse its discretion in giving "stock" jury instructions.

George also argues that the district court's use of a general, rather than specific, limiting instruction regarding use of bad acts evidence constituted reversible error. We disagree. This court, in Tavares v. State, noted that to maximize the effectiveness of limiting instructions regarding uncharged bad acts evidence, the trial court should give instructions twice: a specific limiting instruction prior to admission of the evidence and a general instruction when charging the jury.[15] George only assigns error to the instruction given at the end of trial, not to the instruction given prior to admitting the evidence. However, the district court gave the same instruction at both times. Further, Jury Instruction No. 17 was a correct statement of the law and substantially covered the proffered instruction. Therefore, we conclude that the contested instruction was sufficiently specific and that the district court did not abuse its discretion by refusing to give George's proffered instruction.

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[14]Jury Instruction Nos. 7 and 8 included the statutory definition of reasonable doubt; Instruction Nos. 12, 13 and 14 covered witness credibility and corroboration of victim testimony; Instruction No. 15 covered intent.

[15]117 Nev. 725, 733, 30 P.3d 1128, 1133 (2001).

Finally, George argues that the district court erred when it refused to take judicial notice of the court's pre-trial finding of his period of incompetence and instruct the jury that it should consider the finding in deciding whether his out-of-court statements were made voluntarily. George specifically refers to the September 2003 videotaped police interview and subsequent recorded phone call, which were both played for the jury. We disagree. To be judicially noticed, a fact must be either generally known within the court's territorial jurisdiction or be "[c]apable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, so that the fact is not subject to reasonable dispute."[16]

We note that George was found incompetent to stand trial in December 2003, ten weeks after the interview and phone call. Further, none of the psychiatrists who opined that George was incompetent in December 2003 offered an opinion as to whether he was competent in September 2003. Therefore, whether George was incompetent at the time of both the interview and the phone call is not "[c]apable of accurate and ready determination."[17] Additionally, we note that Jury Instruction No. 19 provided the jury with an accurate statement of the law regarding voluntariness of any out-of-court statements. Therefore, we conclude that the district court did not err by refusing to take judicial notice as requested. Nor did the district court abuse its discretion by refusing to

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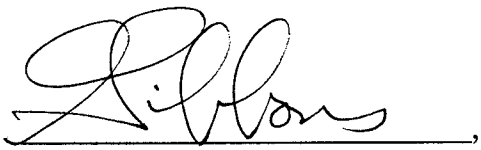
[16]NRS 47.130(2).

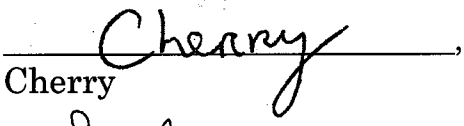
[17]Id.

instruct the jury to consider the later finding of incompetence when determining the voluntariness of George's statements during the police interview and phone call. Accordingly, we

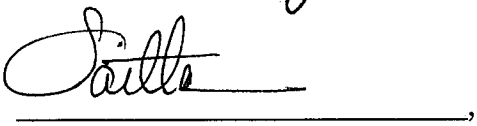
ORDER the judgment of conviction AFFIRMED.



_____, C.J.
Gibbons



_____, J.
Cherry



_____, J.
Saitta

cc: Hon. Steven R. Kosach, District Judge
Washoe County Public Defender
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk