IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID EDWARD EUGENO ABARA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48395

FILED

APR 04 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count each of obtaining and/or using the personal identification information of another and burglary. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge. The district court sentenced appellant David Abara to serve consecutive prison terms of 96-240 months and 48-120 months and ordered him to pay $323.84 in restitution.

First, Abara contends that the district court erred by allowing him to represent himself at trial. Specifically, Abara claims that he was not competent to waive counsel because he was unmedicated for a "schizoaffective disorder," and he believed that he had no choice but to represent himself because the district court did not inform him "that he could be represented by counsel outside the conflict group of lawyers." We disagree with Abara's contention.

In this case, the district court thoroughly canvassed Abara, ensuring that his waiver of the right to counsel was voluntary, knowing

and intelligent.[1] Among other things, Abara stated that he understood the nature of the charges against him. The district court discussed the various defenses Abara might present, and advised him about the dangers and disadvantages of self-representation. The district court also informed Abara that he could employ a private attorney or have a court-appointed attorney, including standby counsel. In fact, Abara agreed to have standby counsel present during the trial. The district court noted that Abara was educated and articulate, stating, "you could do as well as I suppose most anybody could in representing themselves, even though, frankly, I think it's not the way to go." Previously, after a psychiatric evaluation and hearing in the district court, Abara was found competent to stand trial. During the Faretta canvass, Abara stated that he opposed the competency evaluation because he did not have, and had not exhibited, any mental health issues. Throughout the canvass, Abara was unequivocal in his desire to represent himself.

Based on all of the above, we conclude that the record as a whole demonstrates that Abara knowingly, voluntarily, and intelligently waived his right to counsel and was competent to choose self-

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[1]See Faretta v. California, 422 U.S. 806, 835 (1975) (the record as a whole must show that an accused wishing to represent himself truly understood the dangers and disadvantages of self-representation so that the choice is made "with eyes open"); Vanisi v. State, 117 Nev. 330, 341, 22 P.3d 1164, 1172 (2001) ("[t]he district court should inquire of a defendant about the complexity of the case to ensure that the defendant understands his or her decision and, in particular, the difficulties he or she will face proceeding in proper person"); see also SCR 253.

representation. Therefore, we conclude that the district court did not err in allowing Abara to represent himself.

Second, Abara contends that the district court abused its discretion by imposing a harsh sentence. In support of his contention, Abara points out that he was already serving two life sentences for an unrelated case, his mental health problems were untreated at the time he committed the instant offense, and the victims' total monetary loss was only $323.84.

The Eighth Amendment of the United States Constitution does not require strict proportionality between crime and sentence, but forbids only an extreme sentence that is grossly disproportionate to the crime.[2] This court has consistently afforded the district court wide discretion in its sentencing decision.[3] The district court's discretion, however, is not limitless.[4] Nevertheless, we will refrain from interfering with the sentence imposed "[s]o long as the record does not demonstrate prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence."[5] Despite its severity, a sentence within the statutory limits is not cruel and unusual punishment where the statute itself is

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[2]Harmelin v. Michigan, 501 U.S. 957, 1000-01 (1991) (plurality opinion).

[3]Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

[4]Parrish v. State, 116 Nev. 982, 989, 12 P.3d 953, 957 (2000).

[5]Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

constitutional, or the sentence is not so unreasonably disproportionate to the crime as to shock the conscience.[6]

Abara does not allege that the district court relied on impalpable or highly suspect evidence or that the relevant sentencing statutes are unconstitutional. In fact, the sentence imposed by the district court was within the parameters provided by the relevant statutes.[7] Additionally, we note that Abara has an extensive criminal history and was eligible for habitual criminal adjudication. Also, it is within the district court's discretion to impose consecutive sentences.[8] Therefore, we conclude that the district court did not abuse its discretion at sentencing.

Third, Abara contends that the evidence against him "was the result of an improper inventory, waiver of Miranda, and search and seizure." Abara, however, does not provide any argument whatsoever suggesting error. In fact, Abara concedes that he waived his rights pursuant to Miranda prior to being interrogated.[9] Abara does not provide any argument assigning error to the inventory search in which incriminating evidence was seized. Additionally, Abara concedes that he consented to the search of his motel room which also resulted in the seizure of incriminating evidence. This court has repeatedly stated that

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[6]Allred v. State, 120 Nev. 410, 420, 92 P.3d 1246, 1253 (2004).

[7]See NRS 205.463(1); NRS 205.060(2).

[8]See NRS 176.035(1); see generally Warden v. Peters, 83 Nev. 298, 429 P.2d 549 (1967).

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

"[i]t is appellant's responsibility to present relevant authority and cogent argument; issues not so presented need not be addressed by this court."[10] Therefore, Abara has not demonstrated error.

Fourth, Abara purportedly claims that the evidence presented at trial was insufficient to support the jury's finding that he was guilty beyond a reasonable doubt. Abara's brief on appeal, however, does not note any insufficiency in the State's case, and instead, provides a summary of the overwhelming incriminating evidence against him. Nevertheless, we have reviewed the record on appeal and confirm that there was sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact.[11]

In particular, we note that Abara admitted to having possession of a passport without the owner's consent and using the passport to apply for a Target Department Store credit card. The credit card was then used to purchase items at Target. Abara concedes that a receipt for the items purchased at Target was found in his motel room, along with other documents in the victim's name. Additionally, a security surveillance videotape showed Abara committing the crimes. And finally, Abara confessed to the investigating police officer.

Based on the above, we conclude that the jury could reasonably infer from the evidence presented that Abara committed the

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[10]Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987).

[11]See Mason v. State, 118 Nev. 554, 559, 51 P.3d 521, 524 (2002) (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979)).

crimes beyond a reasonable doubt.[12] It is for the jury to determine the weight and credibility to give conflicting testimony, and the jury's verdict will not be disturbed on appeal where, as here, sufficient evidence supports the verdict.[13] Therefore, we conclude that the State presented sufficient evidence to support the jury's verdict.

Fifth, Abara contends that the district court erred by allowing the admission of prior bad acts without conducting a hearing and providing the jury with a limiting instruction. Specifically, Detective Joseph Lever of the Reno Police Department testified that while working undercover, he assisted with a traffic stop, and based on "[p]robable cause from an unrelated case for two different felony charges," took Abara into custody. Abara concedes that he did not object to the detective's testimony, but argues that admission of the other bad act evidence constitutes plain error requiring the reversal of his conviction. We disagree.

In this case, the district court did not conduct a hearing to consider the admissibility of the prior bad act evidence and did not provide the jury with a limiting instruction prior to its admission.[14] As noted above, Abara did not contemporaneously object. Nevertheless, prior to the jury's deliberations, the district court did give a limiting instruction.

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[12]See NRS 205.463(1); NRS 205.060(1).

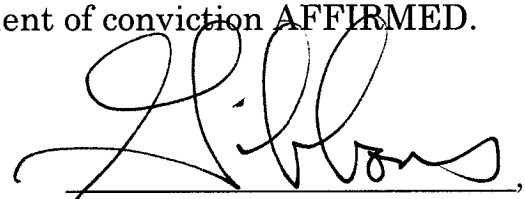
[13]See Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981); see also McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

[14]See Qualls v. State, 114 Nev. 900, 902, 961 P.2d 765, 766 (1998); see also Tavares v. State, 117 Nev. 725, 733, 30 P.3d 1128, 1133 (2001).

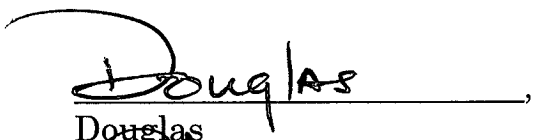
We conclude that although Detective Lever's testimony was admitted in error, it was harmless beyond a reasonable doubt.[15] The State presented overwhelming evidence of Abara's guilt, and Abara has not demonstrated that the failure of the district court to conduct a hearing and give a limiting instruction prior to the admission of the evidence had an injurious effect on the jury's verdict. Therefore, the district court's error does not require the reversal of Abara's conviction.

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

ORDER the judgment of conviction AFFIRMED.



_____, J.
Gibbons



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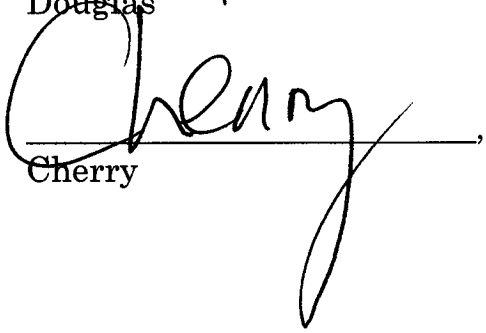
Douglas



_____, J.
Cherry

[15]See NRS 178.598; Ledbetter v. State, 122 Nev. 252, 259, 129 P.3d 671, 677 (2006) ("Although a hearing is required, the failure to hold a proper hearing below and make the necessary findings will not mandate reversal on appeal if . . . 'the result would have been the same if the trial court had not admitted the evidence.'") (quoting Rhymes v. State, 121 Nev. 17, 22, 107 P.3d 1278, 1281 (2005)).

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