IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID OWENS HOOPER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49575

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of possession of a dangerous weapon or facsimile by an incarcerated person. Seventh Judicial District Court, White Pine County; Steve L. Dobrescu, Judge. The district court sentenced appellant David Owens Hooper to serve a term of 19 to 48 months in prison. On appeal from the judgment of conviction, Hooper raises five issues.

First, Hooper argues that the district court erred in allowing him to represent himself at trial because he was not able to communicate, as demonstrated by his "incomprehensible" pleadings, resulting in "a serious disruption of the proceedings" and the absence of a meaningful defense. We disagree. A criminal defendant has a constitutional right to self-representation so long as he knowingly, voluntarily, and intelligently waives the right to counsel. Faretta v. California, 422 U.S. 806, 835 (1975); Vanisi v. State, 117 Nev. 330, 337-38, 22 P.3d 1164, 1169-70 (2001). Even when the waiver of the right to counsel is knowing, voluntary, and intelligent, a court may deny a request for self-representation "if the request is untimely, equivocal, or made solely for purposes of delay or if the defendant is disruptive." Vanisi, 117 Nev. at

338, 22 P.3d at 1170. But the request cannot be denied because the case is complex or the request is unwise. Id. at 341-42, 22 P.3d at 1172. Hooper has not clearly identified any circumstances that would warrant denial of his request for self-representation. And the record demonstrates none. We therefore conclude that the district court did not abuse its discretion in granting Hooper's request for self-representation. See Tanksley v. State, 113 Nev. 844, 847, 944 P.2d 240, 242 (1997) (indicating that this court gives deference to trial judge's decision as to whether defendant knowingly and intelligently waived his right to counsel).

Second, Hooper argues that the district court deprived him of his rights to due process and compulsory process by not providing him with subpoenas. Hooper was informed and acknowledged when he elected self-representation that he would be held to the same rules and procedures as an attorney. But Hooper did not comply with NRS 174.305, which provides for the court clerk to issue blank subpoenas to a party upon request. When this issue arose during trial, Hooper acknowledged that he had not complied with the statute. Under the circumstances, we conclude that the district court did not deprive Hooper of his rights to due process and compulsory process.

Third, Hooper argues that the district court deprived him of his right to present evidence by excluding his log of cell searches and precluding him from asking a prison guard whether he had been in the prison when an inmate had been killed. As to Hooper's log, the district court excluded the evidence on hearsay grounds. See NRS 51.035; NRS 51.045. Hooper has not demonstrated that the district court abused its discretion in doing so. See Harkins v. State, 122 Nev. 974, 980, 143 P.3d 706, 709 (2006) (stating that court will not disturb trial court's finding

that evidence fit exception to hearsay rule absent an abuse of discretion). As to the cross-examination of the prison guard, the district court sustained an objection based on relevance. See NRS 48.025(2). We are not convinced that the district court abused its discretion in excluding the testimony. See Atkins v. State, 112 Nev. 1122, 1127, 923 P.2d 1119, 1123 (1996) (stating that "[t]rial courts have considerable discretion in determining the relevance and admissibility of evidence" and therefore appellate court will not disturb trial court's decision absent a clear abuse of discretion).

Fourth, Hooper argues that the prosecutor committed misconduct by attempting to shift the burden of proof. In particular, Hooper points to the prosecutor's inquiry when cross-examining Hooper as to whether he had requested that the weapon be tested for fingerprints. Hooper did not object to the questions. Accordingly, we may only review for plain error. See NRS 178.602; Green v. State, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003). We are not convinced there was plain error. Taken in context, the questions went to the credibility of Hooper's assertion during his direct testimony that he saw fingerprints on the weapon. But to the extent that the questions could be viewed as an attempt to shift the burden of proof, we conclude that Hooper has not demonstrated that the error affected his substantial rights given the strength of the evidence against him. See Green, 119 Nev. at 545, 548, 80 P.3d at 95, 97.

Finally, relying on Ake v. Oklahoma, 470 U.S. 68 (1985), Hooper argues that the district court erred in failing to appoint an expert to help him investigate the jury pool. Although it is not clear that Ake

applies to requests for non-psychiatric experts,[1] even considering the Ake factors,[2] we are not convinced that the district court erred. In particular, although Hooper's interest in an accurate proceeding is substantial, neither the risk of error from the denial of expert assistance to investigate the jury pool nor the probable value of such assistance are substantial enough to overcome the financial burden that his request would put on the State. As the district court observed, the concerns raised by Hooper could be addressed through other safeguards, including voir dire. Accordingly, we conclude that the district court did not err.

Having considered Hooper's claims and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.

Parraguirre, J.

Douglas, J.

Pickering, J.

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[1]The Supreme Court apparently has not yet extended Ake to non-psychiatric experts. See Conklin v. Schofield, 366 F.3d 1191, 1206 (11th Cir. 2004).

[2]Ake considered the following: (1) "the private interest that will be affected by the [State's] action," (2) "the governmental interest that will be affected if the safeguard is to be provided," and (3) "the probable value" of the assistance sought, and "the risk of an erroneous deprivation of the affected interest if those safeguards are not provided." 470 U.S. at 77.

cc: Hon. Steve L. Dobrescu, District Judge
State Public Defender/Carson City
Attorney General Catherine Cortez Masto/Carson City
Attorney General Catherine Cortez Masto/Ely
White Pine County District Attorney
White Pine County Clerk