IN THE SUPREME COURT OF THE STATE OF NEVADA

PIERRE JOSHLIN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49947

FILED

MAR 11 2010

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 conspiracy to commit murder, first-degree murder with the use of a deadly weapon, three counts of attempted murder with the use of a deadly weapon, conspiracy to commit robbery, and two counts of robbery with the use of a deadly weapon. Eighth Judicial District Court, Clark County; David B. Barker, Judge. Appellant Pierre Joshlin raises five claims.

First, Joshlin challenges the sufficiency of the evidence to support his convictions. The evidence shows Joshlin, his codefendant, Jemar Matthews, and two other young men walked up to four people visiting outside a house and opened fire, killing one woman and injuring another. Moments later, Joshlin, Matthews, and their cohorts happened upon two couples about to exit a parked car. The men ordered the occupants out of the car at gunpoint and drove away at a high rate of speed. A police chase ensued. When the carjacked vehicle came to a stop, the four men fled on foot. In the dumpster where Joshlin was eventually apprehended, police officers found a pair of black gloves, which contained gunshot residue, and a Glock pistol, which matched bullet casings

recovered from the murder scene.[1] Although none of the victims identified Joshlin, a police officer identified him as the individual who fled from the carjacked vehicle carrying a Glock pistol. Considering the evidence in the light most favorable to the prosecution, we conclude that a rational jury could find appellant guilty of the charged offenses beyond a reasonable doubt. See Jackson v. Virginia, 443 U.S. 307, 319 (1979); Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998).

Second, Joshlin argues that the district court erred by admitting evidence of gunshot residue tests because the evidence was irrelevant, the material tested was improperly preserved, he was given inadequate notice of the evidence, and expert testimony on the matter was inadmissible. However, Joshlin stipulated to the admission of this evidence, including expert testimony. Accordingly, we conclude that Joshlin cannot complain that admission of this evidence was error. See Carter v. State, 121 Nev. 759, 769, 121 P.3d 592, 599 (2005) ("A party who participates in an alleged error is estopped from raising any objection on appeal.").

Third, Joshlin contends that the prosecutor committed misconduct by referring to Matthews' SCOPE criminal history during his examination of a police officer and inviting the jury during closing argument to stare at the defendants and consider whether they looked innocent. Because Joshlin did not object to the challenged testimony or argument, we review this claim for plain error. See Baltazar-Monterrosa

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[1]Although the Glock pistol was not the murder weapon, Joshlin was charged with premeditated murder as a direct actor, coconspirator and aider and abetter.

v. State, 122 Nev. 606, 614, 137 P.3d 1137, 1142 (2006). As to the SCOPE reference, Joshlin fails to demonstrate how a reference to Matthews' SCOPE criminal history affected his substantial rights. As to the prosecutor's argument, although the argument was improper, cf. Nau v. Sellman, 104 Nev. 248, 251, 757 P.2d 358, 360 (1988) (stating that expert witness' comment that defendant "acted like a guilty guy" during preliminary hearing was improper); see U.S. v. Schuler, 813 F.2d 978, 981-82 (9th Cir. 1987) (concluding that prosecutorial comment on defendant's nontestifying behavior impinges on constitutional right to fair trial and right not to testify), we conclude that Joshlin failed to demonstrate prejudice sufficient to warrant reversal of his convictions.

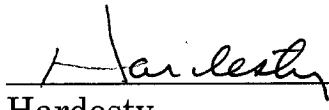
Fourth, Joshlin argues that the district court abused its discretion by admitting improper opinion testimony from a police officer related to his identification of Matthews. Because Joshlin did not object to the challenged testimony, we review this claim for plain error. Baltazar-Monterrosa, 122 Nev. at 614, 137 P.3d at 1142. Joshlin fails to adequately explain how the challenged evidence affected his substantial rights. Therefore, we deny relief.

Fifth, Joshlin contends that the district court erred by refusing to grant him additional peremptory challenges. However, NRS 175.051 allows eight peremptory challenges for each side where an offense charged is punishable by life in prison or death. Because the defendants were afforded the statutory number of peremptory challenges, we conclude

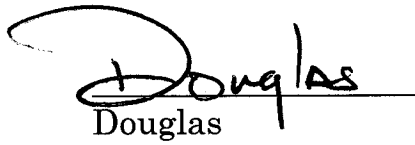
that the district court did not err in this regard.[2] Cf. NRS 175.051; White v. State, 83 Nev. 292, 297, 429 P.2d 55, 58 (1967).

Having considered Joshlin's claims and concluded that no relief is warranted, we

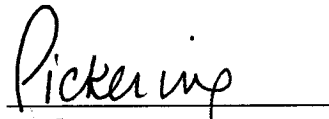
ORDER the judgment of conviction AFFIRMED.



_____, J.
Hardesty



_____, J.
Douglas



_____, J.
Pickering

cc: Hon. David B. Barker, District Judge
Karen A. Connolly, Ltd.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

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[2]In raising this claim, Joshlin relies on NRS 16.040; however, that statute speaks to peremptory challenges allowed in civil practice.