

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL J. SMITH,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 51104

**FILED**

JAN 08 2010

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of two counts of burglary and two counts of possession of a stolen vehicle. Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge. Appellant Michael Smith was sentenced to multiple definite terms in prison. On appeal, he raises six claims of error.

First, Smith argues that the district court erred by denying his motion to substitute counsel. Because Smith failed to show adequate cause for rejection of his court-appointed attorney, we conclude that the district court did not abuse its discretion in this regard. See Young v. State, 120 Nev. 963, 968-69, 102 P.3d 572, 576 (2004) (explaining that the denial of a motion for substitution of counsel is reviewed for an abuse of discretion and that “[a]bsent a showing of adequate cause, a defendant is not entitled to reject his court-appointed counsel”).

Second, Smith argues that the district court erred by allowing him to represent himself. We conclude that the district court did not err because the record reflects that Smith was thoroughly canvassed regarding the consequences of his decision and made a knowing, intelligent, and voluntary waiver of his right to counsel. See Hooks, 124 Nev. \_\_\_, \_\_\_, 176 P.3d 1081, 1084-85 (2008); SCR 253. We likewise

conclude that the district court's denial of Smith's motion to substitute counsel did not constitute coercion to proceed without counsel.

Third, Smith contends that the district court erred by denying his motion to continue, which was filed on the morning of trial. Because discovery was complete, all witnesses had been secured and were prepared to testify, and Smith had acknowledged the day before trial was to begin that he was prepared to proceed, we conclude that the district court did not abuse its discretion in this instance. See Lord v. State, 107 Nev. 28, 42, 806 P.2d 548, 556 (1991) (“[T]he granting or denial of a motion for a continuance is in the sound discretion of the district court.”).

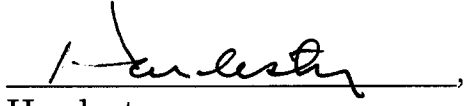
Fourth, Smith challenges the admission of a pretrial photographic line-up, to which he did not object. We conclude that Smith failed to demonstrate plain error. See Moore v. State, 122 Nev. 27, 36-37, 126 P.3d 508, 514 (2006). The fact that Smith was the only person in the line-up with a goatee did not, in itself, render the line-up “so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable misidentification.” Odoms v. State, 102 Nev. 27, 31, 714 P.2d 568, 570 (1986).

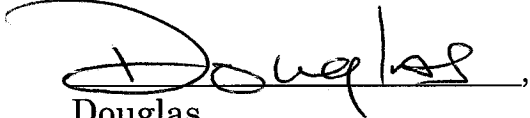
Fifth, Smith argues that the State withheld evidence of another potential suspect's true name in violation of Brady v. Maryland, 373 U.S. 83 (1963). Because Smith failed to show that the outcome of trial would have been different had the challenged evidence been disclosed prior to trial, we conclude that Smith failed to substantiate this claim. See Wyman v. State, 125 Nev. \_\_\_, \_\_\_, 217 P.3d 572, 582 (2009) (in order for evidence to be material for Brady purposes, there must be “a reasonable probability that the claimed evidence would have affected the judgment of the trier of fact, and thus the outcome of the trial.” (quoting Roberts v. State, 110 Nev. 1121, 1132, 881 P.2d 1, 8 (1994))).

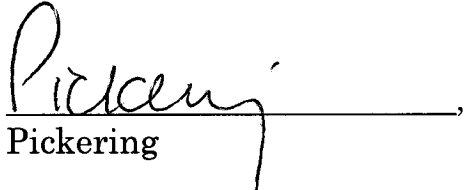
Finally, Smith challenges the sufficiency of the evidence supporting his convictions. The evidence adduced at trial shows that an eyewitness saw Smith moving property from a Volkswagen Jetta to a Nissan Quest, both of which had been stolen. When confronted, Smith drove off in one vehicle and a pawn ticket signed by Smith was found in the vehicle that was left behind. We conclude that this evidence was sufficient for a rational juror to find beyond a reasonable doubt that Smith entered and knowingly possessed the two stolen cars. See Jackson v. Virginia, 443 U.S. 307, 319 (1979); McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992); NRS 205.060(1); NRS 205.273(1)(b).

Having considered Smith's claims and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.

  
Hardesty, J.

  
Douglas, J.

  
Pickering, J.

cc: Hon. Elizabeth Goff Gonzalez, District Judge  
James J. Ruggero  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk