

IN THE SUPREME COURT OF THE STATE OF NEVADA

GARY WAYNE WALTERS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52118

FILED

FEB 03 2010

TRACIA K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of five counts of forgery, five counts of theft, four counts of offering a false instrument for filing, and three counts of attempted theft. Eighth Judicial District Court, Clark County; Michael Villani, Judge. Appellant Gary Walters raises seven claims on appeal.

First, Walters claims that the district court erred by denying his motion to substitute counsel without holding a substantive hearing regarding his allegations that his attorney was unprepared for trial. The record reflects that Walters was being represented by his fifth attorney, trial had been continued numerous times (in most instances due to Walters' failure to appear or cooperate with counsel), and he did not make his motion until the morning of trial. Because Walters' motion was untimely we conclude that the district court did not abuse its discretion in summarily denying it. See Young v. State, 120 Nev. 963, 968, 102 P.3d 572, 576 (2004) (stating that inquiry into a defendant's motion to substitute counsel is required where it is made "considerably in advance of trial" (quoting Gallego v. State, 117 Nev. 348, 362, 23 P.3d 227, 237 (2001))).

Second, Walters claims that the district court erred by failing to hold a substantive hearing on his verbal request to represent himself at trial. During argument on his motion to substitute counsel, Walters stated, "I'd rather defend myself than have this man defend me." Even if this comment can be construed as a waiver of his right to counsel, we conclude, based on the record, that the district court did not err in summarily rejecting Walters' request because it was untimely and made for the purpose of delay. See Tanksley v. State, 113 Nev. 997, 1001, 946 P.2d 148, 150 (1997).

Third, Walters claims that the district court erred by failing to sua sponte revisit his motion to substitute counsel when his attorney stated, on the last day of trial, that he had been unable to review the grand jury testimony. Walters fails to cite any authority suggesting that these circumstances required the district court to sua sponte conduct a hearing. Furthermore, because the record reveals no substantive differences between the grand jury and trial testimony, Walters fails to demonstrate that the district court's failure to review his counsel's preparation in this regard resulted in prejudice.

Fourth, Walters claims that the district court erred by precluding the testimony of defense witnesses that had not been noticed pursuant to NRS 174.234. The record indicates that Walters had difficulty communicating and cooperating with his various attorneys and thus none of them filed a notice of defense witnesses. On the morning of trial, Walters presented a list of witnesses that included vague references to unnamed bank representatives and, in many cases, did not include contact information. We conclude that the district court did not abuse its discretion in concluding that Walters was at fault for the defense's failure

to file a timely notice of witnesses and precluding previously unnoticed witnesses. See Mitchell v. State, 124 Nev. ___, ___, 192 P.3d 721, 729 (2008). And because the district court specified that it was not precluding potential rebuttal testimony, we also conclude that Walters' constitutional right to discredit his accusers was not infringed. See Sampson v. State, 121 Nev. 820, 827-28, 122 P.3d 1255, 1259-60 (2005).

Fifth, Walters claims that the district court committed plain error when it admitted (1) a financial statement found in his home that overestimated his wealth and (2) testimony that he stopped payment on two checks he had written with insufficient funds, without first holding a Petrocelli hearing.¹ To the extent that there was any error, we conclude that it did not rise to the level of plain error affecting Walters' substantial rights. See Archanian v. State, 122 Nev. 1019, 1031, 145 P.3d 1008, 1017 (2006); Patterson v. State, 111 Nev. 1525, 1530, 907 P.2d 984, 987 (1995).

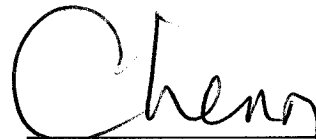
Sixth, Walters claims that the prosecutor committed misconduct by asking him whether one of the State's witnesses had perjured himself. Walters did not object to this questioning. In light of the overwhelming evidence presented at trial and Walters' numerous unsolicited accusations that the State's witnesses were lying, we conclude that while the prosecutor's question was improper, see Daniel v. State, 119 Nev. 498, 519, 78 P.3d 890, 904 (2003), it did not affect Walters' substantial rights. Archanian, 122 Nev. at 1031, 145 P.3d at 1017.


¹Petrocelli v. State, 101 Nev. 46, 692 P.2d 503 (1985), modified by Sonner v. State, 112 Nev. 1328, 1333-34, 930 P.2d 707, 711-12 (1996), and superseded in part by statute as stated in Thomas v. State, 120 Nev. 37, 45, 83 P.3d 818, 823 (2004).

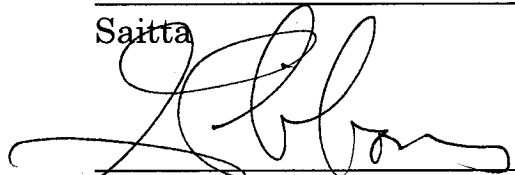
Finally, Walters claims that there was insufficient evidence to support his four convictions for offering a false instrument for filing. However, the evidence adduced at trial showed that four documents filed with the Clark County Recorder's Office contained forged signatures and notary stamps. Each of them included language indicating that Walters was the person recording them and directing that the recorded documents be mailed to him. All four of the forged documents purported to transfer ownership of certain properties to Walters. We conclude that this evidence was sufficient for a rational juror to find beyond a reasonable doubt that Walters either filed the forged documents himself or directed someone else to file them on his behalf. See Jackson v. Virginia, 443 U.S. 307, 319 (1979); McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992); NRS 239.330.

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

ORDER the judgment of conviction AFFIRMED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Michael Villani, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk