

IN THE SUPREME COURT OF THE STATE OF NEVADA

DARICK ANDREA HALL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52230

FILED

JAN 07 2010

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

ORDER OF AFFIRMANCE AND LIMITED REMAND TO CORRECT
THE JUDGMENT OF CONVICTION

This is an appeal from a judgment of conviction entered pursuant to a jury verdict of one count each of conspiracy to commit robbery, robbery of a victim 60 years of age or older, and battery with the intent to commit a crime on a victim 60 years of age or older. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

Confession

Appellant Darick Andrea Hall contends that the district court erred by denying his first suppression motion without conducting an evidentiary hearing. To the extent that any error occurred, we conclude the error was cured when the district court conducted a Jackson v. Denno, 378 U.S. 368 (1964), hearing on Hall's renewed suppression motion.

Hall also contends that the district court erred by determining that the confession was admissible. Because the record reveals that district court's finding that the confession was freely and voluntarily given is supported by substantial evidence, we conclude that the district court did not abuse its discretion by denying Hall's suppression motion. See Chambers v. State, 113 Nev. 974, 981, 944 P.2d 805, 809 (1997).

Hall further contends that the district court erred by allowing the State to admit portions of his statement into evidence that were irrelevant and included references to drug use and his having a “record.” Based on our review of the record, we conclude that the district court did not err by admitting the redacted statement. To the extent that Hall challenges the denial of his motion for a mistrial, we conclude that the district court did not abuse its discretion by denying the motion. See Geiger v. State, 112 Nev. 938, 942, 920 P.2d 993, 995 (1996).

Unauthenticated writing

Hall contends that the district court erred and he was unduly prejudiced by the admission of a letter that was retrieved from his jail cell and by the manner in which the letter was admitted into evidence because they made reference to his custodial status while awaiting trial.

Upon Hall’s objection and outside the presence of the jury, the district court conducted a hearing and found that the letter was relevant to the crimes charged, it was found during a legal search of Hall’s jail cell, the jury could decide whether Hall actually authored the letter, and the probative value of the letter was not substantially outweighed by risk of unfair prejudice. See Tinch v. State, 113 Nev. 1170, 1176, 946 P.2d 1061, 1064-65 (1997). Thereafter, the district court instructed the jury on the limited purpose for which the letter was being admitted and the State published the letter without reference to Hall’s custody status. See Tavares v. State, 117 Nev. 725, 733, 30 P.3d 1128, 1133 (2001); Haywood v. State, 107 Nev. 285, 287-88, 809 P.2d 1272, 1273 (1991).

We conclude that the district court did not abuse its discretion by allowing the letter to be admitted into evidence and that Hall’s right to

be cloaked with the presumption of innocence was not violated by the manner in which the letter was admitted.

Sufficiency of the evidence

Hall contends that insufficient evidence was adduced at trial to support his convictions, no evidence was presented that he made physical contact with the victim, and his battery conviction was improperly “predicated on the imputation of the actions of an alleged unindicted coconspirator.” Our review of the record on appeal, however, reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact. See NRS 199.480; NRS 200.380(1); NRS 200.400(1); Thomas v. State, 114 Nev. 1127, 1143, 967 P.2d 1111, 1122 (1998) (defining conspiracy and noting that it “is seldom susceptible of direct proof and is usually established by inference from the conduct of the parties” (internal quotation marks omitted)); McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

The jury heard the 76-year-old victim testify that he was knocked to the ground and his money was taken. Another witness testified that he saw two men punch and kick the victim, identified Hall as one of the two assailants, and further testified that Hall “came back to beat the [victim] up some more” after the other assailant left. The jury also heard the recording of Hall’s police interrogation in which Hall admitted that he and his accomplice were “money hungry,” they approached the victim from behind, he grabbed the victim’s wallet, and his accomplice hit the victim. The jury’s verdict will not be disturbed where, as here, it is supported by substantial evidence. See Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981).

Judicial bias

Hall contends that District Judge Herndon abused his discretion by presiding over his trial and sentencing because the judge participated as a prosecutor in the disposition of some of the cases that were used to support his habitual criminal adjudication and the judge's participation in these cases created an appearance of impropriety. Judge Herndon stated on the record that he had no recollection of Hall or the prior prosecutions, which took place 14 years earlier, and Hall presented nothing to the contrary. We conclude that Hall has failed to overcome the presumption that the judge acted impartially. See Rippo v. State, 113 Nev. 1239, 1248, 946 P.2d 1017, 1023 (1997).

Illegal sentence

The district court adjudicated Hall as a habitual criminal and sentenced him to serve a prison term of 5 to 20 years for conspiracy, a concurrent prison term of 10 to 25 years for robbery, and a consecutive prison term of 5 to 20 years for battery. Hall contends that the sentences for robbery and battery are illegal because they were improperly enhanced under both NRS 193.167 and NRS 207.010, and the sentence for robbery is also illegal because it exceeds the maximum sentence permitted by the small habitual criminal statute.

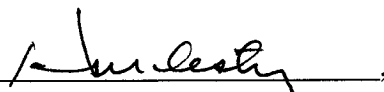
The district court's August 11, 2008, judgment of conviction clearly belies Hall's contention that his sentences for robbery and battery were improperly enhanced in violation of Odoms v. State, 102 Nev. 27, 34, 714 P.2d 568, 572 (1986). Although the judgment of conviction states that Hall was adjudicated a habitual criminal under the small habitual criminal statute for the robbery, the district court orally pronounced a sentence consistent with adjudication under the large habitual criminal

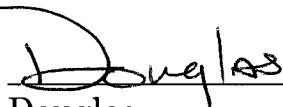
statute for robbery. The district court clarified its sentencing decision in an amended judgment of conviction. However, the amended judgment was entered while this appeal was pending and therefore the district court lacked jurisdiction to act and the amended judgment is void. See NRS 177.155; NRS 177.305; Buffington v. State, 110 Nev. 124, 126, 868 P.2d 643, 644 (1994) (holding that a district court lacks jurisdiction to enter an amended judgment of conviction before this court issues the remittitur in the case).

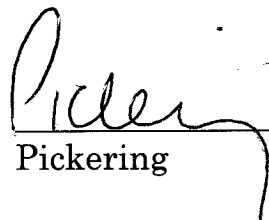
Under these circumstances, we conclude that this matter must be remanded so the district court can enter a corrected judgment of conviction which clearly reflects its sentencing decision. See NRS 176.565 (providing that clerical errors in judgments may be corrected at any time).

Having considered Hall's contentions, we

ORDER the judgment of conviction AFFIRMED and REMAND this matter to the district court for the limited purpose of correcting the judgment of conviction.


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Pickering

cc: Hon. Douglas W. Herndon, District Judge
Dan Winder
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk