

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARELL HILL A/K/A MARELL  
MARQUIS HILL,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 52404

**FILED**

**DEC 03 2009**

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 one count each of conspiracy to commit robbery, attempted robbery, and attempted burglary. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge. The district court sentenced appellant Marell Hill to a prison term of 36 to 120 months for attempted robbery. Terms of 24 to 60 months for each remaining count were imposed concurrently.

On appeal, Hill first argues that the district court abused its discretion in precluding testimony that Hill's brother, Jamal Hill, admitted to committing a robbery similar to one of the robberies that Hill was accused of committing. He contends that Jamal's statement was admissible pursuant to NRS 51.345, which provides that statements that tend "to expose the declarant to criminal liability and offered to exculpate the accused in a criminal case [are] not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement."

At trial, Hill sought to introduce evidence through the testimony of Shanilly Hammonds that Jamal admitted to robbing a Hollywood Video store and that Hill did not participate in that robbery.

While Hill had been charged with robbing a Hollywood Video store, the robbery to which Jamal confessed occurred on a different day and at a different location. Although the statement was against Jamal's penal interest, we conclude that it was irrelevant and inadmissible prior bad act evidence. Jamal's admission that he robbed one location of a business did not exculpate Hill who stood accused of robbing a different location on a different day. See NRS 51.345(1)(b). To the extent that it was offered to show that because Jamal robbed a different store on a different day, he also committed the robberies for which Hill was accused, the evidence was inadmissible character evidence. See NRS 48.045(2). Therefore, the district court did not abuse its discretion in precluding admission of the testimony. See Collman v. State, 116 Nev. 687, 702, 7 P.3d 426, 436 (2000) ("The decision to admit or exclude evidence rests within the trial court's discretion, and this court will not overturn that decision absent manifest error.").


Second, Hill contends that the district court improperly increased his sentences based on the facts underlying the crimes of which he was not convicted. However, a sentencing court "may take into account facts introduced at trial relating to other charges, even ones of which the defendant has been acquitted," United States v. Donelson, 695 F.2d 583, 590 (D.C. Cir. 1982), because an acquittal does "not prove that the defendant is innocent; it merely proves the existence of a reasonable doubt as to his guilt." Dowling v. United States, 493 U.S. 342, 349 (1990) (quoting United States v. One Assortment of 89 Firearms, 465 U.S. 354, 361-62 (1984)).

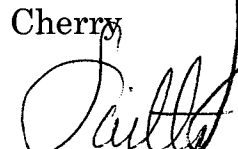
Here, the district court noted that it believed that Hill participated in the crimes for which the jury did not convict him. However, it stated that it could only consider the charges on which the

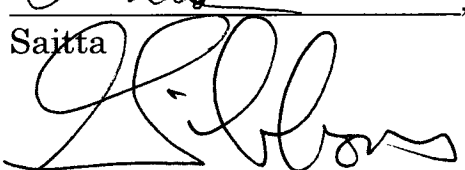
jury convicted Hill in determining his sentence but was “not unmindful” of the other charges as they related to Hill’s experience with the justice system. Based on the submissions before us, we conclude that the district court did not consider impalpable or highly suspect evidence in sentencing Hill or otherwise abuse its discretion in this regard. See Houk v. State, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987) (observing the district court’s wide discretion in sentencing decisions); Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976) (stating that this court will refrain from interfering with sentencing decisions absent prejudice resulting from consideration of impalpable or highly suspect evidence).

Having considered Hill’s contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Saitta

  
\_\_\_\_\_, J.  
Gibbons

cc: Eighth Judicial District Court Dept. 7, District Judge  
Thomas A. Ericsson, Chtd.  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk