

IN THE SUPREME COURT OF THE STATE OF NEVADA


JOSEPH ALEXANDER HENDERSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52573

FILED

FEB 03 2010

ORDER OF AFFIRMANCE

TRACE K. LINDEMAN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of conspiracy to commit burglary, burglary with the use of a firearm, conspiracy to commit first-degree kidnapping, two counts of first-degree kidnapping with the use of a deadly weapon, conspiracy to commit sexual assault, three counts of sexual assault with the use of a deadly weapon, conspiracy to commit robbery, two counts of robbery with the use of a deadly weapon, open or gross lewdness, and battery with a deadly weapon resulting in substantial bodily harm. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge. Appellant Joseph Henderson raises four claims of error.

First, Henderson claims that the district court erred by denying his motion to dismiss the information and alternative motion to preclude the State's DNA evidence based on the State's alleged consumption of all of the available DNA material. Because Henderson's claim that the State did not preserve DNA material from each sample for defense retesting is belied by the record, we conclude that the district court did not abuse its discretion. See Hill v. State, 124 Nev. ___, ___, 188 P.3d 51, 54 (2008).




Second, Henderson claims that the district court erred by denying his pretrial motion to preclude the improper use of DNA evidence. Henderson does not allege that any improper DNA evidence or argument was presented to the jury, and therefore we conclude that this claim is wholly without merit.

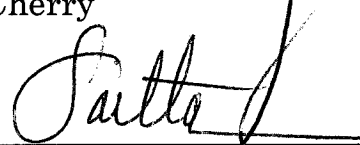
Third, Henderson claims that the district court erred by denying a motion for mistrial and an alternative motion to strike the testimony of expert witness Kim Murga. Henderson's motion was based on three grounds: (1) Murga was noticed as a witness one day late, (2) her notes were not disclosed to the defense prior to her testimony, and (3) she improperly vouched for another witness. We conclude that the district court did not clearly abuse its discretion when it denied the motion and determined that (1) the State had good cause for its one-day delay in noticing Murga as a witness, (2) the State was not required to disclose Murga's personal summary of official reports already provided to the defense, and (3) Murga's testimony that another expert followed proper procedures in performing his DNA analysis was not improper. See Randolph v. State, 117 Nev. 970, 981, 36 P.3d 424, 431 (2001); Hernandez v. State, 124 Nev. ___, ___, 188 P.3d 1126, 1131 (2008).

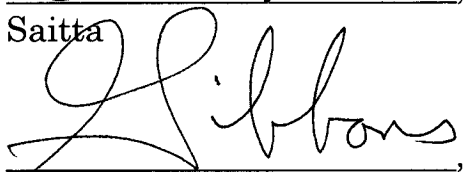
Finally, Henderson claims that the district court erred when it required him to voice his peremptory challenges in open court. Although we have previously stated "our strong preference that . . . peremptory challenges during jury selection [be] exercised and considered outside the presence of the jury," Foster v. State, 121 Nev. 165, 174, 111 P.3d 1083, 1089 (2005), we have never mandated such procedures. And because Henderson fails to show prejudice, we deny relief on this claim.

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

ORDER the judgment of conviction AFFIRMED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Donald M. Mosley, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk