

IN THE SUPREME COURT OF THE STATE OF NEVADA

THOMAS HENRY LEWIS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 52740

FILED

FEB 03 2010

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of three counts of assault with a deadly weapon and one count of coercion with a deadly weapon. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

Appellant claims that his right to present a defense was violated due to his inability to subpoena witnesses to testify in his defense. We conclude that this claim lacks merit for two reasons: (1) the difficulties that appellant faced in issuing subpoenas was the result of his decision to represent himself and he was warned of those difficulties; and (2) appellant announced that he was ready for trial at pretrial calendar calls and on the first day of trial; and when the subpoena issue came up on the second day of trial, he indicated that he was ready even if his witnesses did not appear and he did not seek a continuance or any other relief.<sup>1</sup> To the extent that appellant suggests that the district court

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<sup>1</sup>We note that appellant did not make an offer of proof as to what the witnesses would have said. It therefore is not clear that the witnesses were crucial to his defense.

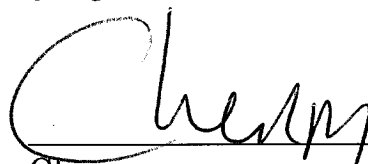
interfered with his ability to subpoena witnesses or denied him some constitutional right by limiting the role of stand-by counsel, we conclude that this claim lacks merit as there is no constitutional right to the appointment of stand-by counsel, see Harris v. State, 113 Nev. 799, 804, 942 P.2d 151, 155 (1997), and the district court did not preclude appellant from subpoenaing witnesses.

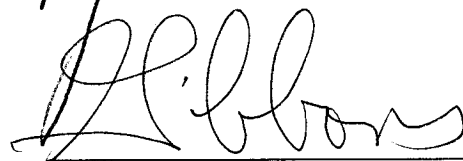
Appellant next argues that he was deprived of his constitutional rights to due process and a fair trial based on the district court's failure to declare a mistrial due to juror misconduct. We review for plain error because appellant never sought a mistrial. NRS 178.602; Green v. State, 119 Nev. 542, 545, 80 P.3d 93, 94-95 (2003). The district court questioned the two jurors involved in the incident and excused the juror who had been talking during trial and was not completely forthcoming when questioned about his conduct. Appellant sought no further relief until more than seven days after the verdict, when he filed an untimely motion seeking a new trial. See NRS 176.515(4). Under the circumstances, the record reveals no plain error.

Having considered appellant's claims and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.

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

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

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

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