

IN THE SUPREME COURT OF THE STATE OF NEVADA

RONALD ROSS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52921

FILED

NOV 08 2010

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 larceny from the person, possession of a credit card without the cardholder's consent, fraudulent use of a credit card, theft, conspiracy to commit larceny, and two counts of burglary. Eighth Judicial District Court, Clark County; Michael Villani, Judge. Appellant Ronald Ross raises five issues.

First, Ross contends that his statutory and constitutional rights to a speedy trial were violated. Ross' trial began fourteen months after his arraignment. The record shows that Ross invoked his speedy-trial right at his arraignment but that further proceedings were continued at the State's and Ross' joint request to await the disposition of two pretrial appeals. After the appeals were decided eight months later, a new trial date was set. That date was further delayed because of the court's schedule. Ross fails to prove that the delay prejudiced him. Further, the record reveals no evidence that the State caused the delay or otherwise failed to make good-faith efforts to bring Ross to trial and his speedy-trial claims therefore lack merit. See Furbay v. State, 116 Nev. 481, 484-85, 998 P.2d 553, 555 (2000); see also Anderson v. State, 86 Nev. 829, 833, 477

P.2d 595, 598 (1970) (constitutional deprivation of right to speedy trial requires proof of prejudice attributable to delay).

Second, Ross claims that it was plain error for the district court to allow witnesses to testify about a surveillance video without producing that video for trial, in contravention of the best-evidence rule. Ross concedes that he failed to make a best-evidence objection to this video at trial. Several witnesses testified that they viewed the recording just after the victim's report of the fraudulent transaction and immediately recognized Ross as the individual purchasing merchandise with the victim's stolen credit card. The video was later recorded over because none of the store employees had the technological ability to preserve it. Under these circumstances, we conclude that NRS 52.255(1) was satisfied and there was no violation of Ross' substantial rights. See Valdez v. State, 124 Nev. 1172, 1190, 196 P.3d 465, 477 (2008).

Third, Ross argues that the district court committed reversible error when it allowed a detective to testify about "distract crimes" without having been noticed as an expert under NRS 174.234(2). We disagree. Because Ross did not object to the detective's testimony on this basis and has failed to articulate how notice of this purportedly expert testimony would have changed the course of his trial, we conclude that he has failed to demonstrate plain error by showing that his substantial rights were prejudiced. See Grey v. State, 124 Nev. 110, 117, 178 P.3d 154, 159 (2008).

Fourth, Ross asserts that insufficient evidence supports his conviction for larceny from the person. The victim testified that the strap of the purse from which Ross took her wallet was over her left shoulder, while the purse itself was resting on her chair next to her left leg. Based

on that testimony, we conclude that a rational juror could have found beyond a reasonable doubt that the taking was from the victim's person. See Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998); Jackson v. Virginia, 443 U.S. 307, 319 (1979); NRS 205.270; see also DePasquale v. State, 104 Nev. 338, 341, 757 P.2d 367, 369 (1988) (concluding that sufficient evidence supported conviction for larceny from the person where defendant removed money from victim's purse).

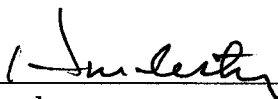
Fifth, Ross argues that the district court violated his Sixth Amendment Confrontation Clause rights when it found a witness unavailable and allowed the witness's preliminary hearing testimony to be read to the jury. On the first day of Ross' trial, the State informed the district court that a key witness had been hospitalized in California and made a motion to use the transcript in lieu of live testimony. The court heard sworn testimony from the State's investigator and ruled that the State's efforts had been reasonable in attempting to procure the witness for trial. We disagree with Ross' contention that this ruling was erroneous, particularly in light of his concession at trial that the State had indeed done all it could to procure the witness's presence. Instead, Ross contended, as he does now, that the opportunity for cross-examination at the preliminary hearing was so limited that the transcript's entry into evidence at trial violated his constitutional right to confront the witness.

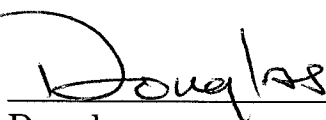
Again, we disagree, while preliminary hearings can provide an adequate opportunity for confrontation, determinations are made on a case-by-case basis. See Chavez v. State, 125 Nev. ___, ___, 213 P.3d 476, 483-84 (2009). In this case, the magistrate allowed Ross an unrestricted opportunity to question the witness: Ross asked him over 50 questions, probing his recollection of his interaction with Ross and whether he had


any independent memory of the credit transaction he processed. Additionally, Ross does not specify what discovery had not been made available to him by the time of the preliminary hearing, aside from the video that was unintentionally destroyed and other videos that were collateral to the percipience of that witness. Accordingly, we conclude that Ross was afforded an adequate opportunity to examine the witness and his Confrontation Clause rights were not violated by the admission of the witness's preliminary hearing testimony. See Chavez, 125 Nev. at ___, 213 P.3d at 485-86. Finally, we note that because the testimony was duplicative of another witness—who testified at trial that Ross was a regular patron of the store and that he recognized Ross as the individual who was captured on video making the fraudulent transaction—any error was harmless beyond a reasonable doubt. See Hernandez v. State, 124 Nev. 639, 652, 188 P.3d 1126, 1135-36 (2008).

Having considered Ross' claims and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Pickering

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