IN THE SUPREME COURT OF THE STATE OF NEVADA

MELVIN CHARLES COLEMAN, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54622

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of robbery and sexual assault. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge. Appellant raises three issues on appeal.

Appellant first claims that the district court erred in permitting a police officer to testify to a statement of a child witness taken three hours after the crimes. We agree, but conclude the error was harmless. Following appellant's hearsay objection, the district court allowed the testimony as a prior consistent statement. The child had also testified at trial and had made an almost-identical statement; appellant declined to cross-examine. However, "[a] witness's prior consistent statements are inadmissible hearsay, unless offered to rebut an express or implied charge against the witness of recent fabrication or improper influence or motive." Evans v. State, 117 Nev. 609, 629-30, 28 P.3d 498, 512 (2001). See also NRS 51.035(2)(b). Here, there were no such charges to rebut, and admission of the statement was therefore erroneous, albeit harmlessly so, considering that significant independent evidence of guilt—including the victim's testimony and DNA evidence—exists to support

appellant's conviction. See Patterson v. State, 111 Nev. 1525, 1533-34, 907 P.2d 984, 989-90 (1995).

Second, appellant claims prejudicial error in the district court's refusal to grant his request for a continuance. Four days before trial, a story appeared in a local newspaper stating that Melvin Charles Coleman had been adjudicated a habitual criminal and sentenced to two life terms. The story referred to appellant's father, but the photo caption displayed appellant's mug shot. Appellant made the continuance request in order to "put a little distance" between jury selection and the newspaper's error. We see no abuse of discretion. See Rose v. State, 123 Nev. 194, 206, 163 P.3d 408, 416 (2007). The record provided does not show that any of the jurors was aware of the article, much less that the jury could not be impartial. See Hernandez v. State, 124 Nev. ___, ___, 194 P.3d 1235, 1244-45 (2008); Morford v. State, 80 Nev. 438, 442, 395 P.2d 861, 863 (1964).

Finally, appellant argues that the district court failed to consider his mental and emotional capacity and imposed an unconstitutional sentence. Appellant received the only sentence permitted by statute for the sexual assault, see NRS 200.366(2)(b), to which his sentence for robbery runs concurrently. A sentence which conforms to the statutory prescriptions is constitutionally valid unless either the sentencing statute is unconstitutional or the sentence imposed is grossly disproportionate to the crime. Allred v. State, 120 Nev. 410, 420, 92 P.3d 1246, 1253 (2004). Appellant raises no constitutional claim against the sentencing statute and the sentence imposed is not disproportionate to the crimes of which appellant was found guilty.

Having considered appellant's claims and concluded that they warrant no relief, we

ORDER the judgment of conviction AFFIRMED.

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

cc: Hon. Steven P. Elliott, District Judge
Story Law Group
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk