IN THE SUPREME COURT OF THE STATE OF NEVADA

JERRY HOOKS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 55009

FILED

JUL 14 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of two counts of sale of a controlled substance and one count of giving away a controlled substance. Eighth Judicial District Court, Clark County; Valerie Adair, Judge. Appellant Jerry Hooks raises six claims on appeal.

Adequacy of Faretta canvass

Hooks argues that the district court failed to conduct a sufficient canvass pursuant to Faretta v. California, 422 U.S. 806 (1975), before granting his motion to represent himself. We disagree. The record shows that the district court conducted a thorough canvass during which Hooks indicated that he understood the nature of the charges and potential penalties and the district court apprised him of the dangers of self-representation. See Hooks v. State, 124 Nev. 48, 54, 176 P.3d 1081, 1084 (2008) (providing that upon motion to dismiss counsel, district court must apprise the defendant of the risks of self-representation and the nature of the charged crime). The court also explored the nature of Hooks' displeasure with counsel and appointed standby counsel to advise Hooks during trial. In addition, the record indicates that Hooks was able to articulate arguments and file motions citing relevant authority.

Therefore, we conclude that the district court did not err in granting Hooks' motion.

Joinder

Hooks argues that the district court improperly joined three separate instances for trial. We disagree. The three separate transactions, which were temporally and geographically proximate as well as similar in method, "constitut[ed] parts of a common scheme or plan," see NRS 173.115(2), thus, we conclude that the district court did not abuse its discretion. See Graves v. State, 112 Nev. 118, 128, 912 P.2d 234, 240 (1996) (concluding that defendant's systematic walk from one casino to another where he attempted to steal while in each constituted a common scheme); Tillema v. State, 112 Nev. 266, 268, 914 P.2d 605, 606-07 (1996) (holding that vehicle burglaries 17 days apart were part of a common scheme or plan).

DNA analysis

Hooks contends that the district court interfered with his ability to present a defense by denying his motion for the appointment of an expert to conduct DNA analysis. We discern no reversible error. Regardless of whether the district court abused its discretion in declining to appoint an expert, any error is harmless. There was overwhelming evidence of Hooks' guilt, based on the testimony of the undercover officer who conducted multiple drug transactions with Hooks. See Richmond v. State, 118 Nev. 924, 934, 59 P.3d 1249, 1255 (2002) (providing that district court error regarding admission of evidence harmless where evidence of guilt is overwhelming). Moreover, Hooks' trial strategy conceded that he participated in the transactions.

Evidentiary issues

Hooks contends that the district court erred in admitting evidence at trial and ruling on objections at trial. The contentions lack merit for the reasons discussed below.

First, Hooks contends that the district court abused its discretion in overruling his objections to two exhibits based on discrepancies in the dates referenced in the chain of custody, the failure of a witness to indicate where on the packaging he tested the drugs, and the fact that exhibits were examined by the State out of Hooks' presence during trial. We discern no abuse of discretion. See Mclellan v. State, 124 Nev. 263, 267, 182 P.3d 106, 109 (2008). The State established a reasonable chain of custody and nothing in the record suggests that the seized drugs had been substituted, see Sorce v. State, 88 Nev. 350, 352-53, 497 P.2d 902, 903 (1972), or that any discrepancy in the chain of custody rendered it unsound, see id. (concluding that informer's five to eight minute walk after receiving drugs before turning them over to police did not render chain of custody infirm).

Second, Hooks contends that the district court abused its discretion in sustaining an objection to his questioning a police officer about the route she travelled prior to stopping him for questioning. We disagree. The information Hooks sought did not have any tendency to prove a fact in controversy in Hooks' trial. See NRS 48.015 (defining relevant evidence). Therefore, the district court did not abuse its discretion in sustaining the objection. Mclellan, 124 Nev. at 267, 182 P.3d at 109.

Third, Hooks contends that a State witness responded inappropriately to his cross-examination and thus tainted the jury's view

of Hooks. We discern no plain error. See Green v. State, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003) (providing that the failure to object precludes appellate review but for plain error). While the witness's answer did not respond to Hooks' question concerning whether the drugs were tested for DNA evidence, Hooks did not demonstrate that it prejudiced his substantial rights as there was significant evidence that he provided the drugs to the undercover detective several times and even his defense theory conceded that he did so.

Sentencing

Hooks argues that his sentence constitutes cruel and unusual punishment because the sentence is grossly disproportionate to the crime. We disagree. The sentence imposed is within the statutory limits, see NRS 207.010(1)(b), and NRS 207.010 does not violate the Cruel and Unusual Punishment and the Due Process Clauses by subjecting persons to criminal prosecution based upon their "status" because the statute does not charge a substantive act or violate the prohibition against double jeopardy, Carr v. State, 96 Nev. 936, 940, 620 P.2d 869, 871 (1980). We conclude that the sentence imposed is not grossly disproportionate to the offense and Hooks' history of recidivism for purposes of the constitutional prohibitions against cruel and unusual punishment. See Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996); Ewing v. California, 538 U.S. 11, 29 (2003) (plurality opinion); Harmelin v. Michigan, 501 U.S. 957, 1000-01 (1991) (plurality opinion).

Cumulative error

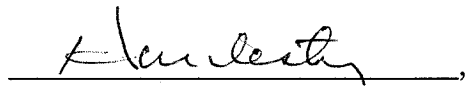
Hooks contends that cumulative error warrants reversal of his convictions. Because we have rejected Hooks' assignment of error, we conclude that his allegation of cumulative error lacks merit. See U.S. v.

Rivera, 900 F.2d 1462, 1471 (10th Cir. 1990) ("[A] cumulative-error analysis should evaluate only the effect of matters determined to be error, not the cumulative effect of non-errors.").

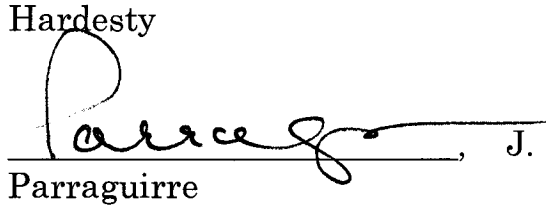
Having considered Hooks' contentions and concluding that they lack merit, we

ORDER the judgment of conviction AFFIRMED.

_____, C. J.
Douglas



_____, J.
Hardesty



_____, J.
Parraguirre

cc: Hon. Valerie Adair, District Judge
Craig W. Drummond
Simon Law Office
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk