


IN THE SUPREME COURT OF THE STATE OF NEVADA

MACK WOODS A/K/A MACK LEE
WOODS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 55318

FILED

SEP 09 2010

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 robbery. Eighth Judicial District Court, Clark County; James M. Bixler, Judge.

First, appellant Mack Woods contends that the district court erred and his right to confrontation under Crawford v. Washington, 541 U.S. 36 (2004), was violated by the admission of a 911 call despite the caller's unavailability for cross-examination. Whether a defendant's right to confrontation was violated is a question of law subject to de novo review. Chavez v. State, 125 Nev. ___, ___, 213 P.3d 476, 484 (2009). Here, the district court found that the 911 call, describing an ongoing emergency, was nontestimonial in nature and thus not barred by Crawford. We agree and conclude that the district court did not err by overruling Woods' objection. See Harkins v. State, 122 Nev. 974, 987-88, 143 P.3d 706, 714-15 (2006) (identifying relevant factors used in determining whether hearsay statement is testimonial); see also Davis v. Washington, 547 U.S. 813, 822 (2006).

Second, Woods contends that the district court erred by allowing the admission of bad act evidence without conducting a Petrocelli hearing, specifically, the victim's testimony that she witnessed Woods attacking another individual soon after she was robbed. See NRS 48.045(2); Petrocelli v. State, 101 Nev. 46, 52, 692 P.2d 503, 508 (1985). We review a district court's decision to admit or exclude evidence for an abuse of discretion. McLellan v. State, 124 Nev. 263, 267, 182 P.3d 106, 109 (2008). Here, the district court admitted the evidence as res gestae. See NRS 48.035(3); Bellon v. State, 121 Nev. 436, 444, 117 P.3d 176, 181 (2005). Although the district court abused its discretion by admitting the evidence as res gestae, Woods has failed to demonstrate that its admission had a "substantial and injurious effect or influence in determining the jury's verdict," McLellan, 124 Nev. at 269-70, 182 P.3d at 111 (internal quotation marks omitted), and we conclude, in light of the overwhelming evidence of his guilt, that the errors were harmless beyond a reasonable doubt. See id. at 271, 182 P.3d at 112.

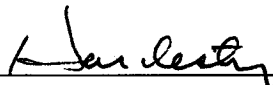
Third, Woods contends that the district court erred by denying his motion for a mistrial after the victim testified that she thought he had pleaded guilty in the instant case. "Denial of a motion for a mistrial is within the sound discretion of the district court, and that ruling will not be reversed absent a clear showing of abuse of discretion." McKenna v. State, 114 Nev. 1044, 1055, 968 P.2d 739, 746 (1998). Here, the district court found that the victim's statement was not prejudicial and denied the motion. See NRS 178.598; see also Manning v. Warden, 99 Nev. 82, 86, 659 P.2d 847, 850 (1983) (the test for determining whether a witness has referred to a defendant's "criminal history is whether a juror could reasonably infer from the facts presented that the accused had engaged in

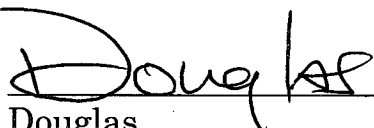
prior criminal activity” (internal quotation marks omitted)). Further, Woods declined the court’s offer to provide the jury with a limiting instruction. See Rice v. State, 108 Nev. 43, 44, 824 P.2d 281, 282 (1992). We conclude that the district court did not abuse its discretion.


Fourth, Woods contends that the district court abused its discretion by imposing a sentence constituting cruel and unusual punishment. See U.S. Const. amend. VIII; Nev. Const. art. 1, § 6. This court will not disturb a district court’s sentencing determination absent an abuse of discretion. Randell v. State, 109 Nev. 5, 8, 846 P.2d 278, 280 (1993). Woods has not alleged that the district court relied on impalpable or highly suspect evidence or that the relevant sentencing statute is unconstitutional. See Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996); Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976). Further, Woods’ 5-20 year prison term falls within the parameters provided by the small habitual criminal statute. See NRS 207.010(1)(a). Therefore, we conclude that the district court did not abuse its discretion.

Having considered Woods’ contentions and concluded that he is not entitled to relief, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Pickering

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