IN THE SUPREME COURT OF THE STATE OF NEVADA

LESEAN TARUS COLLINS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 55716

FILED

FEB 09 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Malone
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of first-degree arson, burglary, and malicious injury to a vehicle. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

First, appellant Lesean Collins argues that the district court erred in denying him a continuance because his counsel was not prepared to try the case. He asserts that the district court's denial was arbitrary and capricious because it was based solely on the fact that the trial date was a "firm setting" and did not take into consideration the reasons asserted for a continuance. We disagree. Collins previously had requested and received an 11-week continuance and was informed at that time that the rescheduled trial date was a "firm setting." His counsel's request for a second continuance less than a week before the rescheduled trial date was premised on both Collins's failure to provide counsel with witness information and conclusory assertions that counsel was not prepared for trial. The district court denied his motion for a continuance but moved the trial date back two days to give him additional time to prepare. First, we note that a district court's denial of a motion for continuance is not an abuse of discretion when the delay is the defendant's fault. See Rose v.

State, 123 Nev. 194, 206, 163 P.3d 408, 416 (2007). Moreover, while Collins's motion to continue was also based on his counsel's unpreparedness, he has failed to explain what additional evidence would have been disclosed at trial had a continuance been granted. Rather, Collins makes general assertions about additional actions that he would have taken, such as subpoenaing telephone records of the witnesses and interviewing "at least four different witnesses"—but he fails to explain what this would have shown or how it would have affected the jury's verdict. Therefore, he has not demonstrated that he was prejudiced or that the district court abused its discretion by denying his motion for a continuance. See id.; see also Wesley v. State, 112 Nev. 503, 511, 916 P.2d 793, 799 (1996) ("The decision to grant or deny trial continuances is within the sound discretion of the district court and will not be disturbed absent a clear abuse of discretion.").

Second, Collins argues that the district court erred in granting the State's motion, filed two days before trial, to conduct a videotaped deposition of a material witness who was unavailable at trial because the State did not provide Collins with at least one full judicial day of notice as required by EDCR 3.60. Collins asserts that the State's untimely motion prevented him from adequately cross-examining the witness during the deposition and nullified the additional time that he had been given to prepare for trial. We conclude that this claim does not merit relief. The need for the videotaped deposition arose when the date of the trial was pushed back several days at Collins's behest. Immediately after learning that the witness, who had been subpoenaed to appear on the original trial date, would be unavailable to testify on the new trial date, the State contacted the district court and Collins to schedule a deposition. See NRS

174.175; NRS 174.185. Although Collins technically did not receive a full judicial day of notice, the district court noted that he had three full days (a holiday weekend) to prepare for the cross-examination of a witness whose testimony he had known about for months. As to Collins's assertion that he was unable to cross-examine the witness adequately because he did not have her telephone records, any impediment in this regard was attributable to his own failure to obtain those records earlier. Accordingly, we conclude that this claim is without merit.

Third, Collins contends that the district court erred by allowing the State's witness, Captain Jeffrey Lomprey, to testify even though the State failed to provide notice that it intended to call Lomprey as an expert witness, pursuant to NRS 174.234(2), and failed to provide a copy of his curriculum vitae prior to trial. Collins also contends that the district court erred by rejecting his proposed jury instruction as to expert testimony. Assuming that Lomprey offered expert testimony, Collins's arguments lack merit because he has failed to show any prejudice arising from the State's failure to give him proper notice of expert witness testimony. Collins acknowledged that he had notice that Lomprey would be a witness, he received a copy of Lomprey's report, and he was aware of the substance of Lomprey's testimony and background based on Lomprey's testimony during the grand jury proceedings. Collins has failed to explain how the State's failure to strictly comply with the requirements of NRS 174.234(2) made any difference to his case. See Jones v. State, 113 Nev. 454, 473, 937 P.2d 55, 67 (1997). Furthermore, any error in failing to offer the proposed jury instruction was harmless, given that Collins did not dispute that the fire was incendiary, and we have no reason to believe that the jury would have rejected Lomprey's opinion had the jury been

specifically instructed on expert witness testimony. See Crawford v. State, 121 Nev. 744, 756, 121 P.3d 582, 590 (2005).

Having considered Collins's contentions and concluded that no relief is warranted, we

ORDER the judgment of conviction AFFIRMED.

Cherry, J.
Cherry

Pickering, J.
Pickering

Hardesty, J.
Hardesty

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