IN THE SUPREME COURT OF THE STATE OF NEVADA

SYLVESTER TATUM,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 57119

FILED

OCT 05 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER AFFIRMING AND REMANDING

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of trafficking in a controlled substance and possession of a controlled substance.[1] Eighth Judicial District Court, Clark County; Kenneth C. Cory, Judge.

First, appellant Sylvester Tatum contends that the district court erred by denying his motion to suppress because the traffic stop was pretextual. We disagree. The district court conducted a hearing, heard the arresting officers' testimony that Tatum was stopped for speeding in a residential area prior to the search of his vehicle, and found that the detention was proper. See State v. Rincon, 122 Nev. 1170, 1173-74, 147 P.3d 233, 235-36 (2006); see also NRS 171.123(1). We conclude that the district court did not err by denying Tatum's motion to suppress. See Somee v. State, 124 Nev. 434, 441, 187 P.3d 152, 157-58 (2008) (we review

[1]In his fast track statement, Tatum requests full briefing. Tatum fails to demonstrate that full briefing is warranted and we deny his request. See NRAP 3C(j).

the district court's factual findings regarding suppression issues for clear error and review the legal consequences of those findings de novo).

Second, Tatum contends that the district court erred by allowing the admission of uncharged bad act evidence without conducting a pretrial hearing, specifically, that cocaine and "large sums of cash" were found in his vehicle during the traffic stop which eventually lead to separate charges in the instant case. "A district court's decision to admit or exclude evidence of prior bad acts rests within its sound discretion and will not be reversed . . . absent manifest error." Somee, 124 Nev. at 446, 187 P.3d at 160.

The parties agreed prior to the start of the trial that the district court would provide the jury with a limiting instruction regarding the evidence discovered during the traffic stop. On three occasions during the State's case-in-chief, the district court provided the jury with a limiting instruction. The district court found that the evidence was "relevant and probative and that the probative value exceeds any possible prejudice to the defendant." See NRS 48.035(1). The district court also provided the jury with a limiting instruction prior to their deliberations. See generally Leonard v. State, 117 Nev. 53, 66, 17 P.3d 397, 405 (2001) (providing that this court presumes that the jury follows the district court's instructions). Even assuming, without deciding, that the evidence in question was improperly admitted, Tatum failed to demonstrate that the result of the trial would have been different, see Ledbetter v. State, 122 Nev. 252, 259, 129 P.3d 671, 677 (2006) (the failure to conduct a hearing does not require reversal of the conviction "where the result would have been the same if the trial court had not admitted the evidence" (quotation marks omitted)), and we conclude, in light of the overwhelming

evidence of his guilt, that any error was harmless beyond a reasonable doubt. See Mclellan v. State, 124 Nev. 263, 271, 182 P.3d 106, 112 (2008).

Third, Tatum contends that the district court erred by denying his motion to suppress because the telephonic search warrant obtained prior to the second search of his house was invalid and did not provide authorization for the digging up of his mother's backyard. Initially, we note that Tatum fails to provide any argument in support of his contention that the search warrant was invalid. See generally Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) ("It is appellant's responsibility to present relevant authority and cogent argument; issues not so presented need not be addressed by this court."); see also Garrettson v. State, 114 Nev. 1064, 1068-69, 967 P.2d 428, 431 (1998) (probable cause determination will not be overturned on appeal "unless the evidence in its entirety provides no substantial basis for the magistrate's finding"). Additionally, the officer's telephonic application for the search warrant included a probable cause declaration which detailed why the "affiant believes that Tatum has more narcotics buried in the back yard." In denying Tatum's motion to suppress, the district court found that the search did not exceed the scope permitted by the magistrate because the request included the backyard. We agree and conclude that the district court did not err by denying Tatum's motion to suppress. See Somee, 124 Nev. at 441, 187 P.3d at 157-58.

Finally, we note that the judgment of conviction contains an error and states that Tatum was convicted pursuant to a guilty plea when, in fact, he was convicted pursuant to a jury verdict. Therefore, we remand the matter to the district court for the entry of a corrected judgment of conviction following the issuance of the remittitur. See NRS 176.565

(providing that clerical errors in judgments may be corrected at any time); Buffington v. State, 110 Nev. 124, 126, 868 P.2d 643, 644 (1994) (the district court does not regain jurisdiction following an appeal until the supreme court issues its remittitur). Accordingly, we

ORDER the judgment of conviction AFFIRMED AND REMAND this matter to the district court for proceedings consistent with this order.[2]

Pickering, J.

Rose, Sr.J.

Shearing, Sr.J.

cc: Hon. Kenneth C. Cory, District Judge
Kirk T. Kennedy
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

[2]The Honorables Robert Rose and Miriam Shearing, Senior Justices, participated in the decision of this matter under general orders of assignment.