IN THE SUPREME COURT OF THE STATE OF NEVADA

GARY WINKLER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 57547

FILED

FEB 09 2012

TRACIE K. LINDEMAN
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ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of four counts of sexual assault of a minor under 14 years of age. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge. Eighth Judicial District Court, Clark County; Abbi Silver, Judge. Appellant Gary Winkler raises seven issues on appeal.

First, Winkler argues that the district court failed to conduct a sufficient canvass, pursuant to SCR 253 and Faretta v. California, 422 U.S. 806 (1975), before granting his request to represent himself. He argues that his waiver was not knowing and voluntary because he was not aware of the incomplete status of his case. He specifically contends that the district court should have asked defense counsel about the status of witness subpoenas and discovery, which would have revealed that the case was not ready for trial. We disagree. The record shows that the district court conducted a thorough canvass, during which Winkler indicated that he understood the nature of the charges against him and the potential penalties, and the district court apprised him of the dangers and disadvantages of self-representation. See Faretta, 422 U.S. at 835; Hooks v. State, 124 Nev. 48, 54, 176 P.3d 1081, 1084 (2008); SCR 253. Winkler asserted that he "knew his case backwards and forwards" and was ready

for trial. There is no requirement under SCR 253 or Faretta for the district court to ascertain the readiness of the defense's case for trial before accepting a defendant's waiver of counsel. Accordingly, we conclude that the district court conducted a thorough Faretta hearing and did not abuse its discretion in finding that Winkler knowingly, voluntarily, and intelligently waived his right to counsel. See Hooks, 124 Nev. at 54-55, 176 P.3d at 1084-85.

Second, Winkler argues that the district court's refusal to appoint standby counsel violated his Sixth Amendment right to counsel. However, a defendant who waives his right to counsel and chooses to represent himself does not have a constitutional right to standby counsel, and the district court does not have a duty to appoint standby counsel. Harris v. State, 113 Nev. 799, 804, 942 P.2d 151, 155 (1997). Therefore, we conclude that Winkler's claim is without merit.

Third, Winkler argues that the district court erred by failing to compel an out-of-state witness to testify. We conclude that, although the district court indicated incorrectly that an out-of-state witness cannot be compelled to appear in a Nevada court, the district court's refusal to issue such a subpoena was not an abuse of discretion. See Wyman v. State, 125 Nev. 592, 603, 217 P.3d 572, 580 (2009) (a district court has discretion to issue a certificate summoning the attendance of an out-of-state witness when the moving party "demonstrate[s] that the witness is material and that the moving party would be prejudiced absent the court's issuance of the certificate"); see also Wilson v. State, 121 Nev. 345, 366, 114 P.3d 285, 299 (2005). At trial, Winkler argued that the out-of-state witness—an 11-year-old friend of one of the victims—had been present in the room with them when one of the sexual assaults allegedly occurred

and would testify that she did not observe any sexual assault. However, Winkler has failed to show that the exclusion of the witness's testimony was prejudicial, in light of (1) the victim's testimony that Winkler sexually assaulted her in a storage room, and (2) Winkler's statements to the police that he may have accidentally touched the victim's vaginal area when he fell on top of her, and that he did not believe that the victim's friend could have seen what happened because she was in a different area of the room when it occurred. Thus, because Winkler did not show that the testimony of the out-of-state witness would have helped him, the district court did not abuse its discretion in refusing to subpoena the witness. See Wilson, 121 Nev. at 368, 114 P.3d at 300.

Fourth, Winkler argues that the State's delay in providing him with a videotape of his police interview was a violation of Brady v. Maryland, 373 U.S. 83 (1963), because he was unable to use the videotape to impeach the interviewing officer's credibility at trial. This claim lacks merit, as the videotape of his interview was not exculpatory and there is no reasonable probability that the outcome of his trial would have been different if he had obtained the videotape prior to the officer's testimony. See Lay v. State, 116 Nev. 1185, 1194, 14 P.3d 1256, 1262 (2000).

Fifth, Winkler argues that the district court improperly limited his cross-examination by preventing him from asking one of the victims and her mother if they intended to file a civil lawsuit against his former employer—the apartment complex where the offenses took place—if he were to be convicted. We conclude that the district court's restriction of his ability to cross-examine the witnesses as to bias was in error, but we conclude that the error was harmless in light of overwhelming evidence of

guilt. See Jackson v. State, 104 Nev. 409, 412, 760 P.2d 131, 133-34 (1988).

Sixth, Winkler argues that the district court improperly admitted evidence of uncharged bad acts without first conducting a hearing outside the presence of the jury to weigh the probative value of the evidence against its prejudicial impact. We have held that the State may introduce extrinsic evidence "specifically rebutting the [defendant's] proffered evidence of good character," as long as the evidence "squarely contradict[s] the potentially false impression" caused by the defendant's evidence. Jezdik v. State, 121 Nev. 129, 139-40, 110 P.3d 1058, 1065 (2005). Here, Winkler put his character at issue when he testified, "I've never ever been, to my knowledge, accused of something like this." See id. at 136, 110 P.3d at 1063. On cross-examination, he denied any knowledge that his daughter—who was not one of the victims in this case—alleged that he sexually abused her, and he also denied that a Child Protective Services caseworker had informed the court in his presence about these allegations. Based on his absolute denial of misconduct, the district court allowed the State to call the caseworker to the stand to testify that she had reported these allegations of sexual abuse to the court in Winkler's presence several days earlier. We conclude that the district court did not abuse its discretion by allowing the State to rebut Winkler's misleading testimony with extrinsic evidence that squarely contradicted it. See id. at 139-40, 110 P.3d at 1065; NRS 48.045(1)(a); see also Daniels v. State, 119 Nev. 498, 513, 78 P.3d 890, 900 (2003) (to admit rebuttal evidence pursuant to NRS 48.045(1)(a), the district court need only determine that the prosecution has a "reasonable, good-faith basis for its belief that the defendant committed the acts"). We also note that, to the extent that

Winkler asserts that his statement was ambiguous because he had not formally been accused of sexual abuse of his daughter, he had the opportunity to explain his statement on cross-examination, but instead chose to deny awareness of any allegations. Thus, his claim does not warrant relief.

Finally, Winkler contends that the cumulative effect of errors deprived him of a fair trial and requires the reversal of his convictions. However, he has demonstrated, at most, a singular error, which was harmless. Consequently, cumulative error does not warrant reversal of his convictions. See Mulder v. State, 116 Nev. 1, 17, 992 P.2d 845, 854-55 (2000). For the foregoing reasons, we

ORDER the judgment of conviction AFFIRMED.

Cherry, J.
Cherry

Pickering, J.
Pickering

Hardesty, J.
Hardesty

cc: Hon. Abbi Silver, District Judge
Hon. Donald M. Mosley, District Judge
Bunin & Bunin
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk