IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN PATRICK INGRAHAM,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 57962

FILED

JAN 12 2012

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 battery with a deadly weapon causing substantial bodily harm. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge. Appellant John Patrick Ingraham raises three issues on appeal.

First, Ingraham argues that the district court erred by instructing the jury that the victim, Walter Winward, and the victim's girlfriend, Raedean Anderson, would be legally justified in threatening Ingraham with bodily injury if (1) they were defending their property or residence or (2) they were defending themselves and they reasonably believed that Ingraham intended to harm them and there was imminent danger of harm to them. Ingraham contends that this jury instruction shifted the burden of proof on self-defense to him.

We agree that this jury instruction was erroneous. See Runion v. State, 116 Nev. 1041, 1051-52, 13 P.3d 52, 59 (2000) (providing sample instructions relating to self-defense). Nevertheless, we are convinced beyond a reasonable doubt that the error did not contribute to the jury's verdict and was harmless under the facts and circumstances of this case. See Crawford v. State, 121 Nev. 744, 756, 121 P.3d 582, 590

(2005). The other instructions that were provided to the jury correctly advised the jury as to the elements of self-defense and that the State must prove beyond a reasonable doubt that the defendant did not act in self-defense. Furthermore, we note that the evidence presented in this case overwhelmingly established that Ingraham did not act in self-defense. The evidence at trial established that Ingraham—who was upset with Anderson, his ex-girlfriend, and jealous of Winward, her new boyfriend—drove over to Anderson's residence late at night, broke a window on her trailer, and damaged Winward's truck. When Anderson and Winward came out of the trailer, Ingraham and Anderson had an argument and Anderson threw items at him and told him to leave her property. Anderson went inside to call the police, and Ingraham approached Winward, who swung a shovel at him. Ingraham caught the shovel and, as Winward was running away from him, hit Winward on the head with the shovel, fracturing his skull and causing severe brain trauma. Under these facts,[1] we conclude that no reasonable jury could have found that the State failed to prove beyond a reasonable doubt that Ingraham did not act in self-defense.

Second, Ingraham argues that the district court erred at sentencing by (1) relying on a stale conviction from 2002 in adjudicating him a habitual criminal, (2) considering evidence of a prior misdemeanor conviction, and (3) considering evidence of uncharged crimes in sentencing him. Because Ingraham failed to object below, we review these arguments

---

[1]This evidence was presented by the State, but Ingraham did not testify on his own behalf or present evidence that conflicted with these facts.

for plain error affecting his substantial rights. See NRS 178.602; Cordova v. State, 116 Nev. 664, 666, 6 P.3d 481, 482-83 (2000). We conclude that Ingraham has failed to show any error. Contrary to his argument that his 2002 conviction could not be used to adjudicate him as a habitual offender, the habitual criminal statute does not make a special allowance for the remoteness of convictions but rather leaves that consideration to the district court's discretion. Arajakis v. State, 108 Nev. 976, 983, 843 P.2d 800, 805 (1992); see also NRS 207.010(1)(a). There is no indication that the district court relied on Ingraham's prior misdemeanor conviction in concluding that he was eligible for habitual criminal adjudication. Ingraham had two prior felony convictions (third-offense domestic battery in 2002 and eluding a police officer in 2007), which were sufficient to sustain the habitual criminal adjudication. See NRS 207.010(1)(a). Furthermore, it was not error for the district court to consider Ingraham's prior misdemeanor conviction and uncharged crimes in determining an appropriate sentence. See O'Neill v. State, 123 Nev. 9, 16, 153 P.3d 38, 43 (2007) ("[A] district court may consider facts such as a defendant's criminal history, mitigation evidence, victim impact statements and the like in determining whether to dismiss such a count."); Denson v. State, 112 Nev. 489, 494, 915 P.2d 284, 287 (1996) (a district court may consider uncharged crimes during sentencing but "must refrain from punishing a defendant for prior uncharged crimes").

Finally, Ingraham argues that the district court erred in its determination of the restitution award in the amount of $20,136.31 because (1) no documentation was submitted in support of the amount other than the statements in the presentence investigation report and the statements made by an officer with the Division of Parole and Probation at

sentencing, and (2) the amount was based almost entirely on medical expenses paid by the Victims of Crime Fund, rather than by the victim, which permitted double recovery for the victim. Ingraham failed to object at sentencing to the imposition or amount of restitution. Therefore, he has waived the issue of the restitution amount and we need not address it. See Martinez v. State, 115 Nev. 9, 12-13, 974 P.2d 133, 135 (1999) (declining to disturb district court's determination as to amount of restitution where defendant failed to challenge restitution amount at time of sentencing). We also conclude that Ingraham has failed to show plain error in regard to the imposition of restitution for medical bills paid by the Victims of Crime Fund. See Gaxiola v. State, 121 Nev. 638, 648, 119 P.3d 1225, 1232 (2005) ("For an error to be plain, it must, at a minimum, be clear under current law." (quotation marks omitted)); Martinez, 115 Nev. at 12, 974 P.2d at 135 ("[R]estitution of medical expenses . . . is not inappropriate when the payment, regardless of reimbursement, is ordered to be made to the victim.").

Accordingly, having considered Ingraham's claims and concluded that he is not entitled to relief, we

ORDER the judgment of conviction AFFIRMED.

Douglas, J.

Gibbons, J.

Parraguirre, J.

cc: Hon. Steven P. Elliott, District Judge
Janet S. Bessemer
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk