IN THE SUPREME COURT OF THE STATE OF NEVADA

RICK SHAWN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 58903

FILED

SEP 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 one count each of theft, grand larceny, fraudulent use of a credit or debit card, and exploitation of the elderly; two counts of possession of a credit or debit card without the cardholder's consent; three counts each of first-degree kidnapping of a person 60 years of age or older, robbery of a person 60 years of age or older, burglary, and attempted grand larceny; nine counts of personating another; and fifteen counts of obtaining money under false pretenses from a person 60 years of age or older. Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

First, appellant Rick Shawn contends that the district court violated his Sixth Amendment right to confront his accusers by overruling his objections and allowing the State to introduce hearsay statements from four unavailable victim-witnesses.[1] Shawn also contends that the district court erred by denying his motion to sever the counts pertaining to the unavailable victims. Shawn failed to provide, either below or on appeal, any relevant authority or cogent argument in support of his

[1]Three of the elderly victims died prior to the start of the trial and a fourth suffered from dementia.



12-28820

claims. See Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987). Moreover, the challenged statements were not testimonial in nature and thus not barred by Crawford v. Washington, 541 U.S. 36 (2004) (holding that admission of testimonial hearsay statements violates Confrontation Clause unless declarant is unavailable to testify and defendant had prior opportunity to cross-examine declarant). See Harkins v. State, 122 Nev. 974, 987, 143 P.3d 706, 714 (2006) (identifying relevant factors used in determining whether hearsay statement is testimonial); see also Davis v. Washington, 547 U.S. 813, 822 (2006). Therefore, we conclude that the district court did not abuse its discretion by denying Shawn's motion to sever, see Weber v. State, 121 Nev. 554, 570, 119 P.3d 107, 119 (2005), or err by overruling his objections to the challenged statements, see Chavez v. State, 125 Nev. 328, 339, 213 P.3d 476, 484 (2009).

Second, Shawn contends that the district court violated his right to a fair trial by granting the State's motion to admit evidence of other crimes.[2] "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 v. State, 124 Nev. 434, 446, 187 P.3d 152, 160 (2008). In its motion, the State sought the admission of evidence from district court case nos. C261008 and C258149 "because such evidence is highly probative on the issues of the defendant's identity, intent, as evidence of a common scheme or plan and to rebut any inference of mistake or accident." See NRS 48.045(2). The district court granted the motion in part and allowed the State to introduce evidence only from

[2]The Honorable Douglas W. Herndon, District Judge, ruled on the State's motion to admit evidence of other crimes and Shawn's motion to sever.

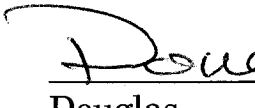
district court case no. C261008.[3] The district court found that the bad acts were established "by more than clear and convincing evidence" and highly relevant, and the probative value was not outweighed by its prejudicial nature. The district court also found the evidence admissible to show a common scheme or plan, identity, intent, and motive, and "[i]t also speaks to the lack of accident or innocent mistake that one might argue was behind the acts." We conclude that the factors for admissibility were met, see Tinch v. State, 113 Nev. 1170, 1176, 946 P.2d 1061, 1064-65 (1997), clarified by Bigpond v. State, 128 Nev. ___, ___, 270 P.3d 1244, 1249-50 (2012); see also Tavares v. State, 117 Nev. 725, 733, 30 P.3d. 1128, 1133 (2001), and the district court did not err by granting the State's motion in part.

Third, Shawn contends that because his "crimes were financial in nature," the district court abused its discretion by imposing a disproportionate sentence amounting to cruel and unusual punishment. This court will not disturb a district court's sentencing determination absent an abuse of discretion. See Parrish v. State, 116 Nev. 982, 989, 12 P.3d 953, 957 (2000). Shawn has not alleged that the district court relied solely on impalpable or highly suspect evidence or demonstrated that the sentencing statute is unconstitutional. See Chavez v. State, 125 Nev. 328, 348, 213 P.3d 476, 489-90 (2009). Shawn's prison terms fall within the

[3]In district court case no. C261008, there were five victims between the ages of 83-92 years, and Shawn was convicted of seventeen counts of obtaining money under false pretenses from a victim 60 years of age or older and one count of exploitation of the elderly.

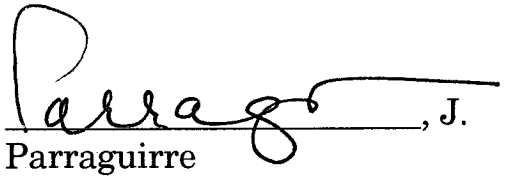
parameters provided by the relevant statute, see NRS 207.010(1)(b)(2),[4] and the sentence is not so unreasonably disproportionate to the gravity of the offenses and his history of recidivism as to shock the conscience, see Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979); see also Ewing v. California, 538 U.S. 11, 29 (2003) (plurality opinion); Harmelin v. Michigan, 501 U.S. 957, 1000-01 (1991) (plurality opinion). We conclude that the district court did not abuse its discretion at sentencing, and we

ORDER the judgment of conviction AFFIRMED.



_____, J.
Douglas

_____, J.
Gibbons



_____, J.
Parraguirre

cc: Hon. Valerie Adair, District Judge
Hon. Douglas W. Herndon, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

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[4]Shawn was adjudicated as a habitual criminal and sentenced to 10 years to life on all 42 counts. The prison terms were ordered to run both concurrently and consecutively for an aggregate total of 60 years to life to run consecutively to the sentences imposed in district court case nos. C200538 and C261008. Shawn was also ordered to pay $77,206.68 in restitution.