

IN THE SUPREME COURT OF THE STATE OF NEVADA

JONATHAN JIMENEZ,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 59412

FILED

SEP 14 2012

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY A. Ingersoll  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of robbery with the use of a deadly weapon and assault with a deadly weapon. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Appellant Jonathan Jimenez argues that the district court erred by denying motions to admit evidence. We disagree. A district court has “considerable discretion in determining the relevance and admissibility of evidence,” and we do not disturb evidentiary decisions absent a clear abuse of discretion. Crowley v. State, 120 Nev. 30, 34, 83 P.3d 282, 286 (2004) (internal quotation marks omitted). In general, there is no error in admitting or excluding evidence unless a “substantial right” is affected. See NRS 47.040(1).

First, Jimenez argues that it was error to prohibit him from introducing evidence that the victim had been convicted of carrying a concealed weapon. Jimenez argued that it was the victim who had shot at Jimenez and that the victim had concocted the allegations against Jimenez because the victim was on probation. Relying on Petty v. State,

116 Nev. 321, 326-27, 997 P.2d 800, 802-03 (2000), Jimenez argues that he should have been allowed to present evidence of the victim's conviction because it tended to prove that the victim was the likely aggressor. But Jimenez' argument fails to meet the Petty "likely aggressor" standard. Here, witnesses observed Jimenez watching the victim shortly before the incident. The victim and his associate testified that Jimenez attacked them. And the pistol was registered to Jimenez's girlfriend. Because Jimenez did not show that the victim was the likely aggressor we conclude that there was no abuse of discretion in excluding this evidence.

Second, Jimenez complains that the district court erred by prohibiting him from introducing evidence that the victim had his probation reinstated four days after testifying against Jimenez at the preliminary hearing. Even assuming error, we are not persuaded that its admission would have altered the outcome of his trial. Jimenez was able to attack the victim's motive to lie about the robbery because the victim was afraid of being arrested. Thus, no relief is warranted on this claim.


Third, Jimenez contends that the district court erred by prohibiting him from mentioning during opening statements that the victim's associate had been convicted of petty larceny. The district court initially prohibited any discussion of the conviction. At the conclusion of opening statements, however, the district court altered its ruling and allowed Jimenez to introduce evidence about the conviction. Because opening statements are not evidence, State v. Olivieri, 49 Nev. 75, 75, 236 P. 1100, 1101 (1925), and Jimenez was able to cross-examine the victim's

associate about the conviction, we conclude that any error was harmless, see Zana v. State, 125 Nev. 541, 545 n. 3, 216 P.3d 244, 247 n.3 (2009) (reviewing erroneous evidentiary ruling for harmless error).

Having considered Jimenez' claims and concluded that no relief is warranted, we

ORDER the judgment of conviction AFFIRMED.<sup>1</sup>

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Parraguirre

cc: Hon. Michelle Leavitt, District Judge  
Keith C. Brower  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

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<sup>1</sup>In light of this order, the motion for an extension of time to file a supplemental fast track statement is denied.