IN THE SUPREME COURT OF THE STATE OF NEVADA

WESLEY C. HUNSUCKER,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 35584

FILED

OCT 03 2000

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of three counts of unlawful possession of a gaming device. The district court sentenced appellant to serve three concurrent terms of 28-72 months in the Nevada State Prison, and to pay a fine of $10,000.00. Appellant was given credit for 330 days time served.

First, appellant contends his right to a speedy trial was violated and, therefore, the district court was required to dismiss his case. Appellant further argues that the district court erred by allowing appellant's counsel to withdraw twelve days before trial, thus "perpetuating the lack of trial within sixty days." We disagree.[1]

NRS 178.556(1) states in relevant part that "[i]f a defendant whose trial has not been postponed upon his application is not brought to trial within 60 days after the arraignment on the indictment or information, the district may dismiss the indictment or information." In other words, the district court has the discretion to dismiss a case based on a

[1]It must be noted that appellant did not cite any authority, case law, or statute in support of his contentions. "It is appellant's responsibility to present relevant authority and cogent argument; issues not so presented need not be addressed by this court." Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987).

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violation of the 60-day rule. See Meegan v. State, 114 Nev. 1150, 1153, 968 P.2d 292, 294 (1998). The dismissal of a case for failure to comply with the 60-day rule is mandatory only when there is a lack of good cause demonstrated for the delay. See Huebner v. State, 103 Nev. 29, 31, 731 P.2d 1330, 1332 (1987). A defendant, however, may waive the statutory right to a speedy trial, "and such a waiver can be expressed by counsel." Furbay v. State, 116 Nev. ___, ___, 998 P.2d 553, 555 (2000).

Our review of the arraignment transcript reveals that appellant waived his right to the 60-day rule. While in open court discussing the setting of a date for trial, appellant's counsel, on two occasions and with appellant present, expressly waived the 60-day rule.

Furthermore, the district court did not err in granting appellant's counsel's motion to withdraw. In his motion to withdraw, appellant's counsel stated, inter alia, that appellant refused his advice, attempted to intimidate his staff, contacted staff at their homes seeking legal advice, and refused to pay his fees. "The decision whether friction between counsel and client justifies appointment of new counsel is entrusted to the sound discretion of the trial court," whose decision will not be disturbed absent a clear showing of abuse of discretion. Thomas v. State, 94 Nev. 605, 607-08, 584 P.2d 674, 676 (1978); see also Good v. United States, 378 F.2d 934, 935 (9th Cir. 1967).

Second, appellant contends the admission at trial of "other bad act" evidence was improper. More specifically, appellant argues his Fifth Amendment right against self-

incrimination was violated by the admission of evidence from a pending trial in another jurisdiction. We disagree.[2]

Evidence of other wrongs cannot be admitted at trial solely for the purpose of proving that a defendant has a certain character trait and acted in conformity with that trait on the particular occasion in question. See NRS 48.045(1). NRS 48.045(2) states that evidence of prior bad acts committed by a defendant may be admitted at trial "as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." During an evidentiary hearing required by Petrocelli v. State, 101 Nev. 46, 692 P.2d 503 (1985), the district court must determine whether the evidence offered for admission is relevant to the charged offense, is proven by clear and convincing evidence, and whether the probative value "is not substantially outweighed by the danger of unfair prejudice." Qualls v. State, 114 Nev. 900, 902, 961 P.2d 765, 766 (1998); see also Tinch v. State, 113 Nev. 1170, 1176, 946 P.2d 1061, 1064-65 (1997). Furthermore, "[t]he decision to admit or exclude evidence rests within the trial court's discretion, and this court will not overturn that decision absent manifest error." Collman v. State, 116 Nev. ___, ___, ___ P.3d ___, ___ (Adv. Op. No. 82, August 23, 2000) (reh'g pending) (citing Daly v. State, 99 Nev. 564, 567, 665 P.2d 798, 801 (1983)).

Appellant argues that the admission of a videotape showing him using an illegal gaming device in a casino violated his Fifth Amendment right against self-incrimination. The videotape was to be used in a case against appellant in another jurisdiction, and appellant contends that he cannot

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[2]Once again, we note that appellant did not offer any authority or case law in support of his contentions. See Maresca, 103 Nev. at 673, 748 P.2d at 6.

defend himself in the present case. Appellant's contention is patently without merit and a misstatement of law. Prior to admitting this evidence, the district court conducted a thorough evidentiary hearing pursuant to Petrocelli and determined that the videotape was relevant and admissible to show appellant's motive, opportunity, intent, preparation, plan, knowledge, identity, and absence of mistake. The district court also determined that the probative value of the evidence was not substantially outweighed by the danger of unfair prejudice. We agree and conclude the district court did not err in admitting the evidence in question.

Third, appellant contends that NRS 465.080(3) is vague and that the district court precluded him from arguing that he lacked the intent to use the illegal gaming device within Mineral County.[3] Initially we note, once again, that appellant fails to cite any relevant authority in support of his proposition and, therefore, we need not consider it. See Maresca, 103 Nev. at 673, 748 P.2d at 6. Nevertheless, we have considered appellant's contention and conclude that it lacks merit.

A vague law, by definition, "'is one which fails to provide persons of ordinary intelligence with fair notice of what conduct is prohibited and also fails to provide law enforcement officials with adequate guidelines to prevent discriminatory enforcement.'" Sheriff v. Vlasak, 111 Nev. 59, 61, 888 P.2d 441, 442-43 (1995) (quoting State v. Richard, 108 Nev. 626, 629, 836 P.2d 622, 624 (1992)). Moreover, inherent

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[3]NRS 465.080(3) states that "[i]t is unlawful for any person, not a duly authorized employee of a licensee acting in furtherance of his employment within an establishment, to have on his person or in his possession on or off the premises of any licensed gaming establishment any device intended to be used to violate the provisions of this chapter."

in all statutes is a presumption that the words therein have settled and ordinary meaning. See generally Vlasak, 111 Nev. 59, 888 P.2d 441. We conclude that NRS 465.080(3) is not unconstitutionally vague.

Finally, appellant contends the district court erred in denying his pretrial motion to suppress evidence seized during his arrest. More specifically, appellant argues that he did not give the arresting officers consent to search his vehicle. We conclude that appellant's contention lacks merit.

Appellant's argument that the arresting officers lacked consent to search the vehicle is a misstatement of law. The United States Supreme Court has stated that "when a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile." New York v. Belton, 453 U.S. 454, 460 (1981) (footnote omitted). Our review of the motion to suppress hearing transcript reveals that probable cause existed to arrest appellant for failure to stop for a police officer, and "a search incident to arrest requires no additional justification" and is a "reasonable intrusion under the Fourth Amendment." United States v. Robinson, 414 U.S. 218, 235 (1973); see also Carstairs v. State, 94 Nev. 125, 575 P.2d 927 (1978). After appellant's custodial arrest, a search of the vehicle uncovered unlawful gaming devices above the driver's side visor, and in the open hatchback area accessible from the passenger compartment. The district court stated that the officers conducted a reasonable search and seizure and denied appellant's motion to suppress. We conclude that the district court did not err.

Having considered appellant's contentions and concluded that they lack merit, we affirm the judgment of conviction.[4]

It is so ORDERED.[5]

Shearing, J.

Agosti, J.

Leavitt, J.

cc: Hon. John P. Davis, District Judge
Attorney General
Mineral County District Attorney
Lewis S. Taitel
Mineral County Clerk

[4]Counsel's fast track statement is inadequate in its citation to relevant legal authority. See NRAP 3C(e)(1)(vi); Maresca, 103 Nev. at 673, 748 P.2d at 6. Counsel is cautioned that, in the future, such dereliction of his duty pursuant to the provisions of NRAP 3C may result in the imposition of monetary sanctions. See NRAP 3C(n).

[5]We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.