IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES SHEA EUBANKS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 64116

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of first-degree murder with the use of a deadly weapon, attempted murder with the use of a deadly weapon, and attempted robbery with the use of a deadly weapon. Fifth Judicial District Court, Nye County; Robert W. Lane, Judge. Appellant Charles Shea Eubanks raises several claims of error.

First, Eubanks contends that the evidence presented at trial was insufficient to support the jury's finding of guilt. Our review of the record on appeal, however, reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact. *See Origel-Candido v. State*, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998); *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). Specifically, he argues that the evidence is insufficient because the surviving stabbing victim, Antionette Bell, testified that she did not see him stab Michael Frasher, the murder victim, forensic evidence suggested that his codefendant, Troy

Jackson, killed Frasher, and that any evidence contradicting those matters was not credible.

The evidence shows that Eubanks and Jackson called on Frasher to collect a drug debt at the behest of Michael Maxwell, Jr. During the visit, Jackson received a call from Maxwell. Jackson handed the cell phone to Eubanks and walked away. After the phone call, Eubanks indicated that he and Jackson had a "green light" to kill Frasher. Immediately thereafter, Jackson began stabbing Bell and Eubanks commenced stabbing Frasher. During the attacks, Jackson told Eubanks that "the bitch won't die," referring to Bell. Eubanks then stabbed Bell several times. Frasher suffered multiple stab wounds to his head, neck, and torso; Bell suffered multiple stab wounds to her head, chest, and abdomen and nearly died. Consistent with her pretrial statements, Bell testified that Jackson was the only one with a knife and that he stabbed Frasher. Bell also testified that she was "a little out of it" during the attacks and she was heavily medicated when she spoke to the police in the hospital. Several inmates with whom Eubanks had been housed after his arrest testified that he admitted to stabbing Frasher to death and provided details about the attacks as related to them by Eubanks. Additionally, Maxwell testified that Eubanks admitted that he "assaulted" Frasher and said to Maxwell, "I thought you wanted me to kill him." Jackson testified that Eubanks stabbed Frasher. Eubanks' girlfriend also testified that, during a brief encounter with him at the courthouse, he admitted that he killed "the guy."

The jury could reasonably infer from the evidence presented that Eubanks was guilty of the charged offenses. *See* NRS 193.165 (deadly

weapon enhancement); NRS 193.330 (attempt); NRS 200.030 (murder); NRS 200.380 (robbery). While Bell's testimony contradicted the testimony of other witnesses, the jury was aware of those contradictions, and Eubanks had the opportunity to challenge the credibility and possible bias of the witnesses, including any benefits they received for their testimony and their criminal records. Further, the forensic evidence did not exculpate Eubanks as Frasher's killer. It is for the jury to determine the weight and credibility to give conflicting testimony, and the jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict. *See Bolden v. State*, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981); *see also McNair v. State*, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

Second, Eubanks argues that his Sixth Amendment right to a speedy trial was violated by a nearly two-year delay in proceeding to trial. It appears that Eubanks only invoked his statutory speedy-trial rights below, NRS 178.556(1); however, to the extent his request may be construed as invoking his constitutional speedy-trial rights, we conclude that his claim lacks merit. We look at a four-part balancing test to determine whether continuances have encroached on a defendant's constitutional right to a speedy trial: (1) the length of the delay, (2) the reason for the delay, (3) the defendant's assertion of the right, and (4) prejudice to the defendant. *Barker v. Wingo*, 407 U.S. 514, 530 (1972). These four factors "must be considered together with such other circumstances as may be relevant." *Id.* at 533. Here, the initial trial date was set for June 5, 2012, 11 months after Eubanks invoked his right, due

to the district court's congested calendar.[1] Subsequently, Eubanks' counsel requested a continuance of trial, to which Eubanks consented, based on counsel's receipt of additional discovery that required additional investigation and counsel's belief that other discovery had not yet been provided to the defense. The district court set trial for October 29, 2012. On October 12, 2012, counsel filed a second motion for a continuance, again with Eubanks' consent, on the ground that additional investigative work and additional discovery was required to adequately prepare for trial. Subsequently, the district court granted a continuance and the trial began on May 13, 2013. These circumstances militate against concluding that a constitutional violation has occurred. *See Snyder v. Sumner*, 960 F.2d 1448, 1454 (9th Cir. 1992) (concluding that defendant's request for continuance waived his right to speedy trial); *Manley v. State*, 115 Nev. 114, 125-26, 979 P.2d 703, 710 (1999) (concluding that approximately two-year delay did not violate defendant's constitutional speedy-trial right because defendant was partially responsible for delay and other reasons for delay were legitimate conflicts with prosecution's and district court's schedule); *Bailey v. State*, 94 Nev. 323, 324, 579 P.2d 1247, 1248 (1978) (concluding that 224-day delay due to congested trial calendar did not violate defendant's constitutional speedy-trial right); *Ingle v. State*, 92 Nev. 104, 105, 546 P.2d 598, 599 (1976) (concluding no constitution violation of speedy-trial right occurred where record reflected that delays

[1]Counsel also represented that he could not be prepared to proceed to trial within 60 days.

were substantially caused by defendant's actions). Additionally, Eubanks' prejudice argument—that the two-year delay allowed the prosecution to gather evidence against him, "including the testimony of several jailhouse snitches"—is unavailing. Accordingly, we conclude that Eubanks has not established a violation of his constitutional speedy-trial right.

Third, Eubanks argues that the district court erred by admitting bad act evidence as consciousness of guilt and res gestae.

Over Eubank's objection, the district court admitted evidence that he had asked a fellow inmate, upon the inmate's impending release, to circulate around the community the prosecution's witness list because Eubanks "wanted the witnesses gone" so that he could "beat" his case. The district court admitted the testimony as evidence of his consciousness of guilt. Eubanks argues that the inmate's testimony was inadmissible because it was speculative and not credible. "Declarations made after the commission of the crime which indicate consciousness of guilt, or are inconsistent with innocence, or tend to establish intent may be admissible." *Abram v. State*, 95 Nev. 352, 356, 594 P.2d 1143, 1145 (1979); *see Santillanes v. State*, 104 Nev. 699, 701, 765 P.2d 1147, 1148 (1988) (observing that evidence showing consciousness of guilt is admissible). Threats against witnesses are relevant to consciousness of guilt. *See Abram*, 95 Nev. at 356-57, 594 P.2d at 1145. We conclude that the testimony was sufficiently specific, *see Bellon v. State*, 121 Nev. 436, 444-45, 117 P.3d 176, 181 (2005), and the defense challenged the inmate's credibility through cross-examination. Therefore, the district court did not abuse its discretion by admitting the challenged testimony. *See Wesley v. State*, 112 Nev. 503, 512, 916 P.2d 793, 799 (1996) ("The admissibility of

evidence is within the sound discretion of the trial court and will not be disturbed unless manifestly wrong.").

As to Eubanks' res gestae claim, he argues that the district court abused its discretion by admitting evidence from several witnesses that he threw items, including clothing and knives, into a lit fire pit shortly after the stabbings. He argues that the testimony was not res gestae because the witnesses could testify about the charged offenses without referring to the fire pit evidence. "The State may present a full and accurate account of the crime, and such evidence is admissible even if it implicates the defendant in the commission of other uncharged acts." *Bellon*, 121 Nev. at 444, 117 P.3d at 181; *see* NRS 48.035(3). But res gestae must be narrowly construed and therefore, "a witness may only testify to another uncharged act or crime if it is so closely related to the act in controversy that the witness cannot describe the act without referring to the other uncharged act or crime." *Bellon*, 121 Nev. at 444, 117 P.3d at 181. Because Eubanks did not object to the challenged testimony, his claim is reviewed for plain error.[2] *See Valdez v. State*, 124 Nev. 1172, 1190, 196 P.3d 465, 477 (2008). Even if the challenged evidence did not fall within the purview of res gestae, it was clearly

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[2]After much of the challenged testimony was presented, Eubanks made an oral motion for a mistrial based in part on the admission of this evidence, which the district court denied. To the extent Eubanks may construe the motion for a mistrial as an objection to the admission of the challenged testimony, it was untimely. *See* NRS 47.040(1)(a); *Neely v. State*, 88 Nev. 332, 497 P.2d 898 (1972).

admissible as consciousness of guilt. *See Abram*, 95 Nev. at 356, 594 P.2d at 1145. Accordingly, no relief is warranted.

Finally, Eubanks argues that the district court erred by sentencing to maximum consecutive prison terms because his codefendants received lesser terms and his sentence is grossly disproportionate to the crimes he committed in violation of the Eighth Amendment.[3] His arguments lack merit for several reasons. First, "sentencing is an individualized process; therefore, no rule of law requires a court to sentence codefendants to identical terms," *Nobles v. Warden*, 106 Nev. 67, 68, 787 P.2d 390, 391 (1990); *Martinez v. State*, 114 Nev. 735, 738, 961 P.2d 143, 145 (1998) (observing that district court has discretion to consider "wide, largely unlimited variety of information to insure that the punishment fits not only the crime, but also the individual defendant"), and "[t]he Eighth Amendment requires that defendants be sentenced individually, taking into account the individual, as well as the charged crime," *Martinez*, 114 Nev. at 737, 961 P.2d at 145. Consequently, the sentences of others involved in the crimes were irrelevant here. Second, even if those matters were relevant, his codefendants pleaded guilty to offenses less than murder and their

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[3]Eubanks was sentenced as follows: life imprisonment without the possibility of parole plus a consecutive term of 96 to 240 months for murder with the use of a deadly weapon; 96 to 240 years imprisonment plus an equal and consecutive term for attempted murder with the use of a deadly weapon; and 72 to 180 months plus an equal and consecutive term for attempted robbery with the use of a deadly weapon.

complete criminal histories, as well as any mitigation, are unknown. Third, Eubanks had incurred an extensive juvenile and adult criminal history by the time he was 22 years old (his age at the time of the crimes). His sentence is not surprising considering the viciousness of the attacks and his criminal history. We discern no abuse of discretion by the district court or Eighth Amendment violation regarding sentencing.

Having considered Eubanks' arguments and concluded that no relief is warranted, we

ORDER the judgment of conviction AFFIRMED.[4]

Pickering, J.
Pickering

Parraguirre, J.
Parraguirre

Saitta, J.
Saitta

[4]Eubanks argues that cumulative error requires reversal of his convictions. There is nothing to cumulate and we therefore reject this claim.

cc: Hon. Robert W. Lane, District Judge
David R. Fischer & Assoc., LLC
Nye County District Attorney
Attorney General/Carson City
Nye County Clerk