

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL JOSEPH SILVA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 36306

FILED

JUN 05 2002

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richard*  
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction of one count each of first-degree murder with use of a deadly weapon, robbery with the use of a deadly weapon, and burglary. On appeal, Silva makes several arguments.

First, Silva argues that the district court erred in allowing him to proceed in proper person. More specifically, Silva contends that the district court did not make a penetrating inquiry of whether he had an understanding of the complexity of the case against him. Thus, he contends that in the absence of such comprehensive and penetrating inquiry, it is impossible to determine whether his decision to represent himself was knowingly and intelligently made.<sup>1</sup> We disagree.

In order for a defendant to proceed in proper person, there must be a demonstration that the defendant has knowingly and intelligently relinquished his rights to counsel.<sup>2</sup> In Harris v. State,<sup>3</sup> this court noted the following:

<sup>1</sup>Silva relies on Meegan v. State, 114 Nev. 1150, 1154, 968 P.2d 292, 294 (1998).

<sup>2</sup>Faretta v. California, 422 U.S. 806, 835 (1974).

<sup>3</sup>113 Nev. 799, 801, 942 P.2d 151, 153 (1997).

"The test of a valid waiver is not whether specific warnings or advertisements were given but whether the record as a whole demonstrates that the defendant understood the disadvantages of self-representation, including the risks and complexities of the particular case."<sup>4</sup>

Moreover, in determining whether the defendant understood the disadvantages of self-representation, the relevant inquiry is whether the accused was competent to choose self-representation, not whether he was competent to actually represent himself.<sup>5</sup> This court gives deference to the district court's determination that the defendant is competent to proceed in proper person.<sup>6</sup>

Here, Silva is correct in stating that the district court failed to conduct a comprehensive inquiry concerning his understanding of the actual complexity of the case. However, we have previously held that the complexity of a case is one factor in determining whether a counsel waiver was knowingly made; it is not an independent basis upon which to base this decision.<sup>7</sup> Thus, in viewing the record as a whole, we find that Silva understood the disadvantages of self-representation and knowingly and intelligently relinquished his rights to counsel.

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... *continued*

<sup>3</sup>113 Nev. 799, 801, 942 P.2d 151, 153 (1997).

<sup>4</sup>*Id.* (quoting Arajakis v. State, 108 Nev. 976, 980, 843 P.2d 800, 802-03 (1992)).

<sup>5</sup>*Id.* at 802, 942 P.2d at 154.

<sup>6</sup>*Id.*

<sup>7</sup>Vanisi v. State, 117 Nev. \_\_\_, \_\_\_, 22 P.3d 1164, 1173 (2001) (abrogating Meegan).

Accordingly, we conclude that the district court did not err in allowing Silva to proceed in proper person.

Second, Silva argues that the district court's denial of his request for additional investigative fees to locate two alleged alibi witnesses deprived him of a fair trial. We disagree.

Pursuant to NRS 7.135, the district court has discretion to authorize expenses related to investigative services. However, this court has held that the State "has a duty to provide reasonable and necessary defense services at public expense to indigent criminal defendants."<sup>8</sup> It follows that although an indigent defendant has a constitutional right to investigative services, the right comes into existence only when the defendant demonstrates some need.<sup>9</sup>

Here, at the time Silva made the request, he had the assistance of an investigator employed by the Public Defender's Office. We find that Silva failed to explain how an additional investigator would be able to locate the purported alibi witnesses while the current and four previous investigators were not successful. Thus, we find that at the time of Silva's request, an additional investigator was not reasonably necessary for his defense.

Accordingly, we conclude that the district court's denial of Silva's request for additional investigative fees did not deprive him of a fair trial.

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<sup>8</sup>Widdis v. Dist. Ct., 114 Nev. 1224, 1228, 968 P.2d 1165, 1167 (1998) (emphasis added).

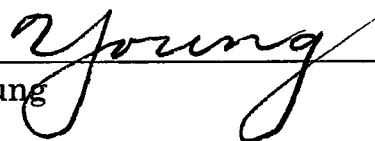
<sup>9</sup>Smith v. Enomoto, 615 F.2d 1251, 1252 (9<sup>th</sup> Cir. 1980); see also Sonner v. State, 112 Nev. 1328, 1340, 930 P.2d 707, 715 (1996).

Third, Silva argues that the testimony of Stewart and Stroehelin concerning hearsay statements made by Silva's accomplice denied him his right to cross-examination. We conclude that Silva is not entitled to relief, because he did not object to the admission of these statements at trial.<sup>10</sup> Nonetheless, after careful examination of the record, we conclude that any alleged hearsay and confrontation clause errors were harmless.<sup>11</sup>


Accordingly, we conclude that Silva is not entitled to relief on this ground.

Finally, Silva argues that the loss of potentially exculpatory evidence prejudiced his right to a fair trial and that there was insufficient evidence to support enhancing his sentence based on use of a deadly weapon. After careful consideration, we conclude that these arguments lack merit. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Young

  
\_\_\_\_\_, J.  
Agosti

  
\_\_\_\_\_, J.  
Leavitt

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<sup>10</sup>Sterling v. State, 108 Nev. 391, 394, 834 P.2d 400, 402 (1992).

<sup>11</sup>Wood v. State, 115 Nev. 344, 350, 990 P.2d 786, 790 (1999).

cc: Hon. John S. McGroarty, District Judge  
Gregory L. Denué  
Attorney General/Carson City  
Clark County District Attorney  
Clark County Clerk