

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DARRYL DARRNELL TEAGUES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 68327

FILED

MAY 26 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a jury verdict finding appellant guilty of pandering, sex trafficking, and living from the earnings of a prostitute. Eighth Judicial District Court, Clark County; Douglas Smith, Judge.

On appeal, we consider whether 1) sufficient evidence supported Teagues' indictment, 2) the district court abused its discretion in admitting evidence of other bad acts, and 3) the district court violated Teagues' statutory and constitutional right to have counsel argue at sentencing.¹ We conclude that the jury's finding of guilt cured any alleged

¹Teagues also argues that the district court was biased against him; however, Teagues presents this argument for the first time on appeal, arguing that because the alleged bias revealed itself at the sentencing hearing his only recourse is to raise the issue for the first time on appeal. Teagues ignores the fact that he could have filed a motion to disqualify based on Canon 3E of the Nevada Code of Judicial Conduct after the district court's signing and filing the judgment of conviction, or with a motion to reconsider to the district court while simultaneously filing a motion to disqualify prior to appeal. *See also* NRS 1.235. Therefore, Teagues' argument regarding the district court's bias is improperly before this court and we need not consider it. *See Davis v. State*, 107 Nev. 600, 606, 817 P.2d 1169, 1173 (1991) *overruled on other grounds by Means v. State*, 120 Nev. 1001, 103 P.3d 25 (2004).

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error regarding the grand jury indictment. We further conclude that although the district court abused its discretion in admitting the other bad act evidence, reversal is not warranted. Finally, we conclude that the district court did not violate Teagues' constitutional and statutory right to counsel. We therefore affirm his sentence.

NRS 175.291(1) requires that the testimony of a prostitute be corroborated to support an indictment for pandering. See *Sheriff, Clark Cty. v. Horner*, 96 Nev. 312, 313-14, 608 P.2d 1106, 1107 (1980). A defendant can only object to the sufficiency of the evidence presented to a grand jury by filing a writ of habeas corpus. NRS 172.155(2). "When the accused proceeds to trial without challenging the sufficiency of the information or indictment an element of waiver is involved." *Collura v. State*, 97 Nev. 451, 453, 634 P.2d 455, 456 (1981). A jury finding of guilt after a fair trial renders any alleged grand jury error harmless. *Hill v. State*, 124 Nev. 546, 552, 188 P.3d 51, 54-55 (2008) (quoting *United States v. Mechanik*, 475 U.S. 66, 71-73 (1986)).

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Teagues additionally argues that the district court abused its discretion in adjudicating him a habitual criminal. We have considered this argument and conclude it is without merit. See *Hughes v. State*, 116 Nev. 327, 331, 996 P.2d 890, 892 (2000) (a district court has broad discretion in adjudicating a defendant as a habitual criminal), and *Cameron v. State*, 114 Nev. 1281, 1283, 968 P.2d 1169, 1171 (1998) (appellate courts "decline[] to interfere with sentencing when the sentence is legal and within the statutory limits and where the appellant cannot show that the district court relied on highly suspect or impalpable evidence").

Here, the State presented the grand jury all of the text messages between Teagues and A.B., corroborating her testimony.² Importantly, Teagues did not file a writ of habeas corpus challenging this alleged error prior to trial, thereby failing to preserve this argument on appeal. Finally, even if the district court had erred, that error would have been harmless because the jury's finding of guilt after a fair trial would have rendered that alleged error harmless. Thus, reversal is not warranted.

We next consider whether the district court abused its discretion by allowing the State to present testimony that Teagues prostituted two other women. We review the district court's decision to admit or exclude evidence for abuse of discretion or manifest error. *Thomas v. State*, 122 Nev. 1361, 1370, 148 P.3d 727, 734 (2006). “[A] manifest abuse of discretion is a clearly erroneous interpretation of the law or a clearly erroneous application of a law or rule.” *Jones v. Eighth Judicial Dist. Court*, 130 Nev. ___, ___, 330 P.3d 475, 481 (2014) (internal quotation omitted). We review the erroneous admission of evidence under NRS 48.035(3) for harmless error. *Bellon v. State*, 121 Nev. 436, 445, 117 P.3d 176, 181 (2005). Here, the State argues that the testimony regarding other prostitutes was not evidence of other bad acts but was instead admissible under NRS 48.035(3).

NRS 48.035(3), the *res gestae* statute, permits the district court to admit evidence that “is so closely related to . . . [the] crime charged that an ordinary witness cannot describe the act in controversy or the crime charged without referring to the other act or crime.” This

²We do not recount the facts except as necessary to our disposition.

exception is narrowly construed and limited to the express provisions of NRS 48.035(3). *Bellon*, 121 Nev. at 444, 117 P.3d at 181; *Tabish v. State*, 119 Nev. 293, 307, 72 P.3d 584, 593 (2003). To admit evidence of other uncharged bad acts pursuant to res gestae, the act must be so interconnected to the crime at issue that it would be impossible for the witness to describe the act in controversy without reference to the other act or crime. *Bellon*, 121 Nev. at 444, 117 P.3d at 181 (citation omitted). Because the statute refers to a witness's ability to describe, rather than explain, the charged crime, evidence of other acts may not be admitted under NRS 48.035(3) "to make sense of or provide a context for a charged crime." *Weber v. State*, 121 Nev. 554, 574, 119 P.3d 107, 121 (2005). Nevertheless, an error in admitting evidence is not reversible if other evidence supporting the conviction is overwhelming. See *Richmond v. State*, 118 Nev. 924, 934, 59 P.3d 1249, 1255 (2002); *Coffman v. State*, 93 Nev. 32, 34, 559 P.2d 828, 829 (1977).

A.B.'s testimony regarding Teagues' pandering of two other prostitutes was not so closely related to the charged crimes that she was unable to describe Teagues' acts against her without referencing the collateral bad acts. The record is clear that A.B. could have testified about the acts and physical violence supporting the charged counts without referencing the other prostitutes. Therefore, pursuant to NRS 48.035(3), the State impermissibly used the testimony to provide context for the charges, and the district court erred in admitting this evidence pursuant to this statute.³ Reversal, however, is not warranted as the evidence

³Teagues objected to the introduction of the prior bad acts before the trial. Here, the district court abused its discretion by failing to conduct a *Petrocelli* hearing prior to admitting the testimony. Critically, the district

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supporting conviction is overwhelming⁴ and Teagues' counsel conceded that Teagues was guilty of both pandering and living from the earnings of a prostitute.⁵

Finally, we consider whether the district court violated Teagues' constitutional and statutory right to have counsel argue at sentencing when the judge interrupted counsel during his argument at sentencing. "The right to counsel extends to any *critical* stage of the criminal proceeding." *Brinkley v. State*, 101 Nev. 676, 678, 708 P.2d 1026,

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court never expressed its findings on the specific relevance, whether the bad acts were proven by clear and convincing evidence, or whether the danger of unfair prejudice substantially outweighed the evidence's probative value. *See Fields v. State*, 125 Nev. 776, 782, 220 P.3d 724, 728 (2009) (a district court must "determine whether: (1) the evidence is relevant, (2) the prior bad act is proven by clear and convincing evidence, and (3) the danger of unfair prejudice substantially outweighs the evidence's probative value"). We note that although the district court gave a limiting instruction at the conclusion of the trial, the instruction should also have been given prior to the introduction of the testimony describing the other bad acts and failure to do so is an error. *See Tavares v. State*, 117 Nev. 725, 733, 30 P.3d 1128, 1133 (2001). Similarly to a violation of NRS 48.045(2), reversal is not warranted because the evidence supporting conviction is overwhelming.

⁴Teagues' own text messages admitted into evidence at trial demonstrate that he pandered A.B., required A.B. to give him any money earned from prostitution, and corroborated A.B.'s testimony that Teagues used physical violence to ensure A.B. continued prostituting. Finally, we note that during defense counsel's closing statement he conceded Teagues was guilty of pandering and living from the earnings of a prostitute.

⁵The district court canvassed Teagues outside the presence of the jury confirming Teagues gave permission to his counsel to concede guilt involving the two lesser-crimes to strategically avoid being convicted of the crime of sex trafficking.

1028 (1985) (emphasis original). A sentencing hearing is a critical stage of criminal proceedings. *Cunningham v. State*, 94 Nev. 128, 130, 575 P.2d 936, 938 (1978). Before imposing a sentence, the court shall allow "counsel an opportunity to speak on behalf of the defendant." NRS 176.015(2)(a). Where the defendant fails to object at sentencing this court employs a plain error review. *Truesdell v. State*, 129 Nev. ___, ___, 304 P.3d 396, 403 (2013).

Teagues failed to object during the sentencing hearing or after the sentence was imposed, therefore we employ plain error review. A review of the record does not demonstrate that the district court violated Teagues' right to have counsel argue at sentencing. Instead, the record shows that Teagues' counsel was afforded the opportunity to argue before a sentence was imposed and does not indicate that the district court was aware Teagues' counsel had more to say when it imposed the sentence. Further, Teagues' counsel never objected or alerted the district court that he wanted to continue to argue on Teagues' behalf prior to the imposition of sentence by the court. Given these facts, we cannot say the district court plainly erred and violated Teagues' right to counsel. Accordingly, we


ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Silver

TAO, J., concurring:

I concur in the judgment but believe that the district court should not have interrupted Teagues' counsel when he attempted to argue prior to imposition of sentence. However, no evidence exists that Teagues' sentence was based upon inaccurate or improper information, or that it was legally defective in any way, and therefore any error was harmless.


_____, J.
Tao

cc: Hon. Douglas Smith, District Judge
Law Offices of Martin Hart, LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk