IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARK ALLEN WALKER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 69688

FILED

DEC 13 2016

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of possession of a controlled substance for the purpose of sale. First Judicial District Court, Carson City; James Todd Russell, Judge.

The Carson City Sheriff's Department began investigating the appellant, Mark Walker, for possible violations of the Uniform Controlled Substances Act after receiving information from a confidential informant (CI). A sheriff's deputy directed the CI to contact Walker via cell phone to arrange a drug purchase while the deputy would listen on a speaker phone. Walker was subsequently arrested for possession of a controlled substance for the purpose of sale following a traffic stop and search of his vehicle that revealed bags of suspected methamphetamine. At the trial, one of the State's witnesses, Deputy Chaney, referred to statements made by the CI that implicated Walker, but the CI himself did not testify. The jury convicted Walker of possession of a controlled substance for the purpose of sale and this appeal followed.[1]

Walker argues the district court improperly allowed testimony regarding the CI in violation of the Confrontation Clause of the Sixth

[1]We do not recount the facts except as necessary to our disposition.

Amendment, and we disagree.[2] At trial, Walker objected to four statements made by the CI to Deputy Chaney as hearsay. The district court overruled all of them, reasoning that the statements were not hearsay because they were not offered for the truth of the matter asserted and were instead offered solely to demonstrate the effect on the listener and provide context for the police investigation.

The district court is correct that the statements were not hearsay because they were not offered to prove the truth of the matter asserted. *See* NRS 51.035. However, "[w]hile the protections afforded by the hearsay rules and the Confrontation Clause overlap and generally protect similar values, their protections are not, as demonstrated in *Crawford[v. Washington*, 541 U.S. 36 (2004)], exactly congruent." *Flores v. State*, 121 Nev. 706, 716, 120 P.3d 1170, 1176 (2005). Nonetheless, neither NRS 51.035 nor the Confrontation Clause bars the introduction of out-of-court statements that are not offered to prove the truth of the matter asserted. *See Crawford*, 541 U.S. at 59-60 n.9 ("The [Confrontation] Clause . . . does not bar the use of testimonial statements for purposes other than establishing the truth of the matter asserted.").

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[2]This court has carefully considered Walker's other arguments on appeal and concludes they do not warrant relief. We disagree that a *Brady* violation occurred (as the evidence was not material), that the State violated Nevada wiretapping laws, that there was prosecutorial misconduct, or that the evidence was insufficient to support the jury verdict. We note that any error that did occur—such as the prosecutor's misstatement during closing argument—was harmless and does not justify reversal as this was a technical error that did not affect Walker's substantial rights. *See* NRS 177.255.

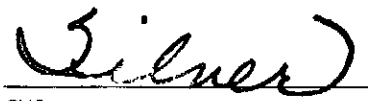
Thus, we conclude that reversal is not warranted.

In light of the foregoing reasoning, we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Gibbons

_____, J.
Tao



_____, J.
Silver

cc: Hon. James Todd Russell, District Judge
State Public Defender/Carson City
Attorney General/Carson City
Carson City District Attorney
Carson City Clerk