

IN THE SUPREME COURT OF THE STATE OF NEVADA

RANDAL JOSEPH ZIMMERLI,

No. 37590

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

JUL 12 2001

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

ORDER OF REMAND

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of robbery with the use of a firearm upon a person aged 65 years or older. The district court sentenced appellant to a prison term of 62 to 180 months, with an equal and consecutive term for the deadly weapon enhancement, and an equal and concurrent term for the elderly enhancement. The district court further ordered appellant to pay restitution in the amount of \$96.75.

First, appellant contends the district court erred in denying his motion in limine. Specifically, appellant argues that the evidence of appellant's possession of drug paraphernalia was so prejudicial that it should have been excluded. Instead, the district court ruled that the evidence was admissible to show motive if the defense argued that appellant lacked motive to commit the robbery.¹

We conclude that appellant failed to preserve this issue for appellate review. This court has held that "[a] ruling on a motion in limine is advisory, not conclusive; after denial of a pretrial motion to exclude evidence, a party must object at the time the evidence is sought to be introduced in order to preserve the objection for appellate

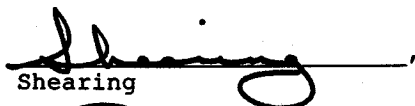
¹See NRS 48.045(2).

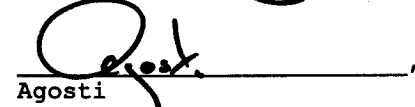
review."² In this case, appellant did not argue that he lacked motive to commit the crime, therefore, any potential harm arising from the denial of appellant's motion in limine is speculative.

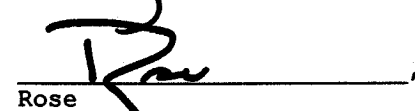
Appellant next contends that the district court erred by imposing sentencing enhancements for both the use of a deadly weapon and for the age of the victim. The State concedes that the district court erred. The district court may not impose a sentence for both the weapon enhancement and the elderly enhancement.³ Accordingly, the district court shall enter an amended judgment of conviction so that appellant receives only one enhancement sentence, which must run consecutively to the sentence for the primary offense.

Based on the foregoing, we

ORDER the judgment of conviction AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.


Shearing, J.


Agosti, J.


Rose, J.

cc: Hon. Janet J. Berry, District Judge
Attorney General
Washoe County District Attorney
Washoe County Public Defender
Washoe County Clerk

²Staude v. State, 112 Nev. 1, 5, 908 P.2d 1373, 1376 (1996) (citing Teegarden v. State, 563 P.2d 660, 662 (Okla. Crim. App. 1977)).

³NRS 193.169(1).