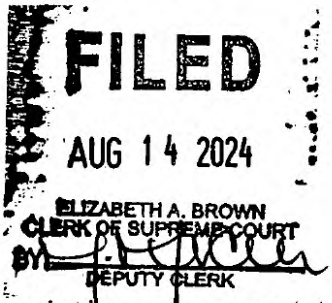
IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT LONNELL SMITH, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 86587



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.[1] Second Judicial District Court, Washoe County; Egan K. Walker, Judge. Appellant Robert Smith raises six issues on appeal.

First, Smith argues that the district court erred in denying a motion to suppress Smith's statements to law enforcement because those statements were made as the result of coercion and inducement. *See Passama v. State*, 103 Nev. 212, 213-14, 735 P.2d 321, 322-23 (1987) ("In order to be voluntary, a confession must be the product of a rational intellect and a free will," rather than "physical intimidation or psychological pressure[,]" and given without "compulsion or inducement." (internal quotation marks omitted)). Whether a confession was voluntary presents a mixed question of law and fact. *Rosky v. State*, 121 Nev. 184, 190, 111 P.3d 690, 694 (2005). The district court's purely historical fact findings are given deference and reviewed for clear error, but the court's legal determination as to whether the statement was voluntary is a question of law that we review de novo. *Id.* We look to the totality of the circumstances to determine whether the defendant's will was overborne by government

[1]Smith also pleaded guilty to felon in possession of a firearm.

actions when he confessed. *See Chambers v. State*, 113 Nev. 974, 981, 944 P.2d 805, 809 (1997).

Smith contends that the interview conditions were coercive, but even though the interview took place in the early morning after Smith's arrest the night before, there is no indication that his will was overborne under these circumstances. The district court found, and the record supports, that Smith was able to sleep while waiting in the interrogation room; he was provided with food, beverages, and opportunities to use the restroom; and he was animated, alert, and conversational when speaking with the detective. *Steese v. State*, 114 Nev. 479, 488, 960 P.2d 321, 327 (1998) (holding that this court will not impose its judgment in place of the district court's so long as the district court's ruling is based on substantial evidence); *Geary v. State*, 110 Nev. 261, 264, 871 P.2d 927, 929 (1994) (concluding that a confession was voluntary when, among other things, appellant was given coffee and allowed to sleep). Smith also argues he was improperly induced to make inculpatory statements by the detective's promises that Smith's girlfriend, who was also detained, would be let go. However, the police never brought up Smith's girlfriend, Smith did, and the detective never intimated, implicitly or explicitly, that the release of Smith's girlfriend was in any way conditioned on Smith's willingness to speak. *Cf. Passama*, 103 Nev. at 215, 735 P.2d at 323 (explaining that if implicit or explicit promises trick someone into confessing, the confession is involuntary). Accordingly, we conclude that Smith's will was not overborne by inducement and the confession was voluntary.[2]

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[2]To the extent that Smith argues his due process rights were violated because the detective did not advise him before his *Miranda* waiver that the detective was investigating a murder, Smith fails to cite any relevant

Second, in a related claim, Smith argues that there is insufficient evidence to sustain the conviction for first-degree murder with the use of a deadly weapon if the confession is excluded. As we have determined that the district court did not err in admitting the confession, this contention lacks merit. Further, even if the district court had excluded the confession, the State presented sufficient evidence from which a rational trier of fact could have found the elements of first-degree murder with use of a deadly weapon, such as Smith's admissions to other witnesses, Smith's cell phone activity, and Smith's possession of the gun used in the murder. *See Jackson v. Virginia*, 443 U.S. 307, 319 (1979) (explaining that to determine the sufficiency of evidence, the reviewing court considers "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt").

Third, Smith argues that the district court abused its discretion when it denied his motion for a continuance because the State delivered untimely discovery and Smith needed time to address that material and interview late named witnesses. Smith's trial had already been continued three times at Smith's request when the motion was made. The State provided the discovery material at issue 76 days before trial, well within the statutory requirements. *See* NRS 174.285(2) (requiring the parties to comply with their statutory discovery obligations not less than 30 days before trial). Moreover, much of the material was not new, and none of the

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authority. We therefore need not consider this issue. *See Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) ("It is appellant's responsibility to present relevant authority and cogent argument; issues not so presented need not be addressed by this court.").

new evidence was purely exculpatory material. Smith also did not demonstrate he was prejudiced by the district court's decision to deny his request for a continuance. Therefore, we conclude Smith fails to demonstrate the district court abused its discretion by denying the motion to continue trial. *See Rose v. State*, 123 Nev. 194, 206, 163 P.3d 408, 416 (2007) (reviewing the denial of a continuance for an abuse of discretion); *Higgs v. State*, 126 Nev. 1, 9, 222 P.3d 648, 653 (2010) ("[I]f a defendant fails to demonstrate that he was prejudiced by the denial of the continuance, then the district court's decision to deny the continuance is not an abuse of discretion.").

Fourth, Smith argues that the district court failed to instruct the jury on the proper evaluation of other act evidence, specifically regarding Smith's involvement in the victim's drug dealing business and Smith's sale of the murder weapon.[3] *See Tavares v. State*, 117 Nev. 725, 733, 30 P.3d 1128, 1133 (2001) (explaining that "the trial court should give the jury a specific instruction explaining the purposes for which the evidence is admitted immediately prior to its admission and should give a general instruction at the end of trial"). Regarding the drug dealing business, Smith requested a limiting instruction not be provided before the relevant testimony, *see Mclellan v. State*, 124 Nev. 263, 270, 182 P.3d 106, 111 (2008) (stating that a defendant may make the strategic decision to waive a limiting instruction), and instead, requested that a limiting instruction be "buried" along with the other instructions given to the jury

[3]To the extent Smith challenges the actual admission of the other act evidence, he provides no cogent argument as to how the district court erred. We therefore need not consider this issue. *See Maresca*, 103 Nev. at 673, 748 P.2d at 6.

before deliberations. However, Smith then failed to comply with the court's request that Smith provide such an instruction and did not object to the finalized jury instructions. *See Tavares*, 117 Nev. at 731, 30 P.3d at 1132 (recognizing "the defense may not wish a limiting instruction to be given for strategic reasons"). As to the gun-sale evidence, no testimony was elicited regarding methamphetamine as consideration for the sale of the gun, and the State did not elicit any information at trial about Smith being a felon. Rather, Smith briefly discussed his status as a convicted felon during cross-examination of a relevant witness, but he did not request a limiting instruction at any point. Because Smith was the one who introduced his status as a convicted felon, the district court was not obligated to provide an instruction sua sponte. *See Chadwick v. State*, 140 Nev., Adv. Op. 10, 546 P.3d 215, 228 (Ct. App. 2024) ("[W]hen a defendant introduces a bad act and fails to request a limiting instruction, the district court is not obligated to raise the issue or provide a *Tavares* instruction sua sponte."). Thus, we discern no abuse of discretion. *See Jackson v. State*, 117 Nev. 116, 120, 17 P.3d 998, 1000 (2001) (reviewing the omission of a jury instruction for an abuse of discretion).

Fifth, Smith argues that the sentence imposed is cruel and unusual considering his age, health issues, and non-violent criminal history. The sentence is within the statutory limits and is not so unreasonably disproportionate to the offense as to shock the conscience. *See* NRS 193.165(1); NRS 200.030(4)(b)(2); NRS 202.360(1); *Blume v. State*, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) ("A sentence within the statutory limits is not cruel and unusual punishment unless . . . the sentence is so unreasonably disproportionate to the offense as to shock the conscience." (internal quotation marks omitted)). Thus, Smith's sentence is not cruel or

unusual, and the district court acted within its discretion. *See Martinez v. State*, 114 Nev. 735, 737-38, 961 P.2d 143, 145 (1998) (recognizing that sentencing courts have wide discretion in imposing sentence).

Finally, Smith argues cumulative error requires reversal. *See Mulder v. State*, 116 Nev. 1, 17, 992 P.2d 845, 854-55 (2000) (providing the relevant factors to consider for a claim of cumulative error). As we have found no errors, there is nothing to accumulate. Accordingly, we

ORDER the judgment of conviction AFFIRMED.

Stiglich, J.
Stiglich

Pickering, J.
Pickering

Parraguirre, J.
Parraguirre

cc: Hon. Egan K. Walker, District Judge
Karla K. Butko
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk