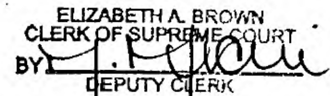
IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHNNY ALFONSO TERRELL, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 86076



NOV 14 2024

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 attempted burglary, grand larceny auto, malicious destruction of property, carrying a concealed firearm or other deadly weapon, robbery with use of a deadly weapon of a victim 60 years of age or older, battery resulting in substantial bodily harm, battery resulting in substantial bodily harm to a victim 60 years of age or older, three counts of possession of a stolen vehicle, five counts of burglary while in possession of a deadly weapon, three counts of conspiracy to commit robbery, five counts of robbery with the use of a deadly weapon, and three counts of battery with intent to commit a crime. Eighth Judicial District Court, Clark County; Tara D. Clark Newberry, Judge.

Appellant Johnny Terrell, Jr. raises six issues on appeal. We address each in turn and conclude that none warrant relief from the judgment of conviction.

First, Terrell argues there was insufficient evidence to sustain the convictions on counts 3-5 (offenses related to the robbery of a valet parking attendant), 19-30 (offenses related to the robbery of three tourists), and 35-36 (offenses related to a stolen van), primarily because the State relied on circumstantial evidence. We disagree, as "circumstantial evidence

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alone may support a conviction," *Hernandez v. State,* 118 Nev. 513, 531, 50 P.3d 1100, 1112 (2002), and conclude that the State presented sufficient evidence from which a rational trier of fact could have found the elements of those crimes, including Terrell's admission to being part of one of the robberies, Terrell's clothing and gun matching descriptions given by the victims, and Terrell being arrested after fleeing from the stolen van. Therefore, Terrell has not shown that relief is warranted on this ground. *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").

Second, Terrell argues that the district court erred in denying a motion for a continuance because Terrell needed time to investigate witnesses named in the State's amended witness list.[1] We disagree because the State's amended witness list was timely, as the list was filed five judicial days before the start of trial. *See* NRS 174.234(1) (stating that such lists must be filed "not less than 5 judicial days before trial"). All the newly named witnesses were police officers whose names were available in previously provided discovery, and Terrell could clearly anticipate the type of testimony that would be elicited from them. *See Wesley v. State*, 112 Nev. 503, 511, 916 P.2d 793, 799 (1996) (holding that appellant "could clearly anticipate the type of testimony that would be elicited from the added witnesses" who were police department employees and that the district court did not abuse its discretion when it denied the defense motion to

[1]The record shows that Terrell made 6 requests to continue the trial, and the trial date had already been reset 12 times.

continue). Furthermore, Terrell did not demonstrate prejudice due to the district court's denial of a continuance. *See 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."). Therefore, we conclude Terrell 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).

Third, Terrell argues that the district court erred when it denied a motion to dismiss for failure to preserve police body camera recordings.[2] "This court will not disturb a district court's decision on whether to dismiss a charging document absent an abuse of discretion." *Morgan v. State*, 134 Nev. 200, 205, 416 P.3d 212, 220 (2018). "The State's loss or destruction of evidence constitutes a due process violation only if the defendant shows either that the State acted in bad faith or that the defendant suffered undue prejudice and the exculpatory value of the evidence was apparent before it was lost or destroyed." *Leonard v. State*, 117 Nev. 53, 68, 17 P.3d 397, 407 (2001). Terrell did not demonstrate that the loss of the body camera recordings was in bad faith, as the recordings were deleted in the ordinary course after one year in accordance with the

[2]The record on appeal does not include the transcript of the district court's hearing on the motion. We presume that materials omitted from the record on appeal support the district court's decision. *Riggins v. State*, 107 Nev. 178, 182, 808 P.2d 535, 538 (1991), *rev'd on other grounds by Riggins v. Nevada*, 504 U.S. 127 (1992).

police department's retention policies at the time. *See State v. Hall*, 105 Nev. 7, 9, 768 P.2d 349, 350 (1989) (holding that the State does not act in bad faith when law enforcement officers act in conformance with routine policies and procedures). Terrell also does not demonstrate that the exculpatory value of the recordings was apparent before they were lost or destroyed, as Terrell only speculates that there may have been something on the recordings that may have benefited the defense. *See Leonard*, 117 Nev. at 68, 17 P.3d at 407 ("It is not sufficient to show merely a hoped-for conclusion or that examination of the evidence would be helpful in preparing [a] defense." (internal quotation marks omitted)); *Sheriff, Clark Cnty. v. Warner*, 112 Nev. 1234, 1242, 926 P.2d 775, 779 (1996) ("Mere assertions by the defense counsel that an examination of the evidence will potentially reveal exculpatory evidence does not constitute a sufficient showing of prejudice."). Therefore, the district court did not abuse its discretion by denying the motion to dismiss.

Fourth, Terrell argues the district court erred in refusing to give several jury instructions. We address each rejected instruction in turn and conclude that the district court did not abuse its discretion in failing to give the requested jury instructions. *See Crawford v. State*, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005) ("The district court has broad discretion to settle jury instructions, and this court reviews the district court's decision for an abuse of that discretion or judicial error.").

Terrell first argues that the district court should have given an adverse inference jury instruction regarding the deletion of the body camera recordings. We disagree because Terrell fails to demonstrate that the State acted in bad faith or that the defense was prejudiced from the loss of the body camera recordings. *See Daniel v. State*, 119 Nev. 498, 519-20, 78 P.3d

890, 904-05 (2003) (finding that an adverse inference jury instruction was not warranted when appellant showed "neither bad faith nor that it could be reasonably anticipated the evidence in question would have been exculpatory and material.").

Next, Terrell argues the district court erred in rejecting a proposed adverse jury instruction under NRS 47.250(3) regarding the State not calling a listed witness. A presumption such as that found in NRS 47.250(3) only arises "where the witness is available to testify and the circumstances create a suspicion that the failure to call the witness has been a willful attempt to withhold competent evidence." *Langford v. State*, 95 Nev. 631, 637, 600 P.2d 231, 235 (1979); *See* NRS 47.250(3) ("That evidence willfully suppressed would be adverse if produced."). Here, the witness was unavailable to testify, as the witness resided outside of the country, did not have a passport, and was in a location without reliable internet service. Further, there is no evidence that the witness's testimony was willfully suppressed by the State. Therefore, there was no basis for the proposed instruction. *See Langford*, 95 Nev. at 637, 600 P.2d at 235 ("Because the record indicates that the witness could not be located, and that there is no evidence of willful suppression, NRS 47.250(3) provides no basis for the proposed instruction.").

Lastly, Terrell argues the district court erred in rejecting a proposed jury instruction regarding witness identification of suspects. The district court reasonably found that the proposed jury instruction could be misleading and instead gave a more detailed alternative instruction on weighing witness credibility proposed by the State. *See Crawford*, 121 Nev. at 754, 121 P.3d at 589 (explaining that a defendant is not entitled to misleading, inaccurate, or duplicative jury instructions).

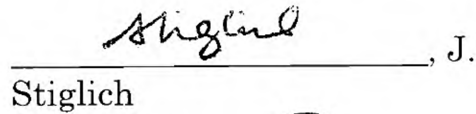
Fifth, Terrell argues that the district court erred in sustaining several objections by the State and improperly limited Terrell's closing argument. Terrell first argues the district court should have overruled the State's objection that defense counsel misstated a detective's testimony. We disagree. Because the district court could reasonably have found the closing argument misstated the detective's testimony, we cannot conclude the district court abused its discretion in this regard.

Terrell also argues that the district court should have overruled the State's objection when Terrell mentioned a witness who did not testify and allowed Terrell to argue that the State could have called the witness but did not. The witness did not testify at trial, and the district court determined the witness was unavailable. Further, the State had dropped all charges related to the witness, and no evidence regarding the witness was presented at trial. *See Glover v. Eighth Jud. Dist. Ct.*, 125 Nev. 691, 705, 220 P.3d 684, 694 (2009) (observing that it is improper for prosecutors or defense attorneys to address facts that were not introduced into evidence). Thus, we conclude that the district court did not abuse its discretion by sustaining the State's objections and did not improperly limit Terrell's closing argument. *See id.* at 704, 220 P.3d at 693 (explaining that this court reviews a district court's "rulings respecting the latitude allowed counsel in closing arguments for [an] abuse of discretion" (internal citation omitted)).

Finally, Terrell argues cumulative error requires reversal. *See Mulder v. State*, 116 Nev. 1, 17, 992 P.2d 845, 854-55 (2000) (stating the

relevant factors to consider for a claim of cumulative error). As we have found no errors, there is nothing to cumulate. Accordingly, we

ORDER the judgment of conviction AFFIRMED.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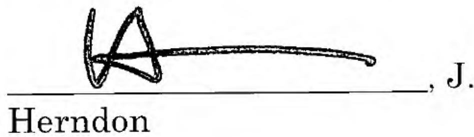
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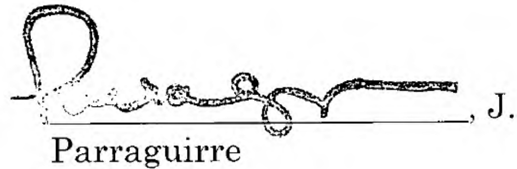
_______________, J.
Parraguirre

cc: Hon. Tara D. Clark Newberry, District Judge
Law Offices of Anthony M. Goldstein
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk