IN THE SUPREME COURT OF THE STATE OF NEVADA

DANA WILLIAM TERRY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 87527

FILED

DEC 11 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 guilty plea, of causing the death of another by driving a vehicle while having a prohibited amount of marijuana in the blood. Second Judicial District Court, Washoe County; Tammy Riggs, Judge. Appellant Dana Terry raises two issues on appeal.

First, Terry argues that the district court erred when it denied a motion to dismiss for failure to preserve Terry's blood sample. Terry preserved the right to challenge the district court's denial of this motion to dismiss on appeal. *See* NRS 174.035(3).

"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). Terry did not demonstrate that the failure to preserve the blood sample was in bad faith. The analysis of

the blood sample was memorialized in a report available to Terry, and the blood sample was destroyed after 13 months in accordance with the laboratory's policy. *See State v. Hall*, 105 Nev. 7, 9, 768 P.2d 349, 350 (1989) (concluding that the State did not act in bad faith when a chemist disposed of laboratory samples in accordance with routine policies and procedures).

Terry also does not demonstrate that the exculpatory value of the blood sample was apparent before it was lost or destroyed. Terry's argument is premised on a theory that THC could be released from fat cells in response to trauma, resulting in inflated levels of THC in the bloodstream after an accident. The record shows that laboratory employees were not familiar with this theory, that the theory itself was based on speculation, and that the district court had held that Terry's expert could not testify as to the theory because it was not the product of reliable methodology, pursuant to *Hallmark v. Eldridge*, 124 Nev. 492, 500-01, 189 P.3d 646, 651-52 (2008). Thus, it was not apparent that the blood sample could be exculpatory, as opposed to inculpatory, before it was destroyed. Further, Terry only speculates that retesting may have revealed evidence to support the defense's theory. *See Leonard*, 117 Nev. at 68, 17 P.3d at 407 (holding that a mere "hoped-for conclusion" that the evidence in question supported defendant's case is insufficient to show prejudice); *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."). To the extent Terry argues the case should have been dismissed because the State violated NRS 179.105 and NRS 176.0912, this argument lacks merit as those statutes are not applicable to the facts of this case. *See* NRS 179.105 (providing for the retention and restoration of

property taken on a warrant); NRS 176.0912(1) (providing for the preservation of biological evidence upon the conviction of a defendant for a category A or B felony). Therefore, the district court did not abuse its discretion by denying the motion to dismiss.

Second, Terry argues that the district court erred when it denied the motion to suppress the blood evidence because the seizure order was not supported by probable cause. Terry did not expressly preserve this issue when he pleaded guilty and, thus, waived the right to raise the issue on appeal. *See* NRS 174.035(3); *Webb v. State,* 91 Nev. 469, 470, 538 P.2d 164, 165 (1975) (explaining that the entry of a guilty plea generally waives any right to appeal from events occurring before the entry of the plea). Accordingly, we

ORDER the judgment of conviction AFFIRMED.

_____, J.
Stiglich

_____, J.
Pickering

_____, J.
Parraguirre

cc: Hon. Tammy Riggs, District Judge
Richard F. Cornell
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk