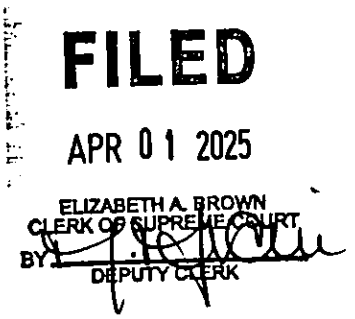
IN THE SUPREME COURT OF THE STATE OF NEVADA

CHAN SUN PARK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 86699



ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of first-degree kidnapping and first-degree murder with use of a deadly weapon, victim 60 years of age or older. Eighth Judicial District Court, Clark County; Tierra Danielle Jones, Judge.

Appellant Chan Sun Park bound his mother, So Kim, with duct tape around her wrists, ankles, and neck, and left her in a closet in their home. He stabbed Kim's boyfriend, Kevin Hackett, in the stomach when Hackett entered the home looking for Kim. Hackett attempted to flee by car but ultimately crashed into a nearby home. The homeowner alerted police and when they arrived on scene, officers were able to briefly speak to Hackett who, according to the police report, indicated that the attack had happened "a few houses down." Hackett later died in the hospital. Park now appeals, claiming that the district court erred in finding he knowingly, intelligently, and voluntarily waived his right to counsel, failing to appoint a language interpreter for a State witness, denying a motion to suppress evidence, denying motions for reasonable bail and house arrest, and failing to provide jury instructions for Park's theory of the case, that his rights were violated by discovery violations and delays, and that cumulative error

requires the reversal of his conviction. We disagree and affirm the judgment of conviction.

The district court did not err in finding Park knowingly, intelligently, and voluntarily waived his right to counsel

Park argues the district court erred in allowing him to represent himself because Park misunderstood his competency proceedings, there exist differences between Korean and American cultures, he did not understand the role of standby counsel, and the court failed to adequately inquire into Park's ability to represent himself. Park further argues that under our previous holding in *Miles v. State*, 137 Nev. 747, 500 P.3d 1263 (2021), he was not fully informed of the risks of self-representation because he was unable to correctly state the potential sentences he faced if convicted.

Though the Sixth Amendment provides a criminal defendant with the right to counsel, a defendant may waive this right and represent himself if this waiver is knowing, intelligent, and voluntary. *Id.* at 750, 500 P.3d at 1268; *Faretta v. California*, 422 U.S. 806, 834-35 (1975). For the waiver to be knowing and intelligent, the defendant must "be made aware of the dangers and disadvantages of self-representation." *Faretta*, 422 U.S. at 835. The record must "establish that he knows what he is doing and his choice is made with eyes open." *Id.* (internal quotations omitted). A defendant may waive his right to counsel even if the defendant lacks legal skills and experience. *Id.* "[A]lthough the defendant 'may conduct his own defense ultimately to his own detriment, his choice must be honored.'" *Godinez v. Moran*, 509 U.S. 389, 400 (1993) (quoting *Faretta*, 422 U.S. at 834). This court gives "deference to the district court's decision to allow the defendant to waive his right to counsel." *Hooks v. State*, 124 Nev. 48, 55, 176 P.3d 1081, 1085 (2008).

Here, a review of the *Faretta* hearing indicates that Park's waiver of his right to counsel was knowing, intelligent, and voluntary. The district court explained that Park had the right to counsel and that new counsel could be appointed if he no longer wished for his retained counsel to represent him. Park repeatedly replied that he wished to represent himself. Regarding competency, the court asked whether Park had ever had any competency issues, to which Park responded no. *See* SCR 253(3)(c). However, upon further questioning, Park acknowledged he had been referred to Lake's Crossing for competency proceedings, but asserted that he had been found competent and that he believed he was competent to represent himself.[1] The court additionally cautioned Park on his potential deportation upon conviction, on the potential negative perception by the jury if he continued without representation, *see* SCR 253(2)(a), that he would be bound by local court rules and the rules of evidence, *see* SCR 253(2)(b), on the role of standby counsel, *see* SCR 253(3)(i), and that Park would not receive special treatment, extensions, or help from the court simply because he elected to proceed without representation. The court also cautioned Park against self-representation because he did not know the process of voir dire, opening statements and closing arguments, admitting evidence, objections, cross-examination, and preserving issues for appeal. The court further questioned Park and expressed concerns when Park could not detail the elements or the sentencing ranges for the charged crimes. SCR 253(3)(g). The court confirmed with Park that he understood that he was facing a sentence of life without the possibility of parole and that the sentences for each offense could be run consecutively.

[1]Park spent three months at Lake's Crossing.

Though Park contends that this inquiry was insufficient under *Miles*, we conclude that the facts in *Miles* are distinguishable. In *Miles*, we held that the defendant's understanding that he faced a sentence of "[f]ive to life" was insufficient for a waiver because he was not informed that the sentences could run consecutively and that he might not have the opportunity to seek parole until after 12 years. 137 Nev. at 752, 500 P.3d at 1269. Here, however, Park was informed that the sentences could run consecutively and was aware of the aggregate potential sentence if convicted—life without the possibility of parole.

As required by *Faretta*, Park's waiver was "made with eyes open," 422 U.S. at 835, and the district court routinely pointed out his lack of legal knowledge and the potential negative consequences of his desire for self-representation. Accordingly, we conclude that Park's waiver of his right to counsel was knowing, intelligent, and voluntary, and that the district court did not err in accepting Park's waiver of his right to counsel and dismissing his retained attorney.

The district court did not err by failing to appoint an interpreter for witness-victim So Kim

Park argues that his Sixth Amendment right to confront the witnesses against him was violated because the district court failed to provide the State's main witness and victim, Kim, with a Korean interpreter.

The Sixth Amendment provides that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him." U.S. Const. amend. VI; Nev. Const. art. 1, § 8(1). Further, a primary tenet "underlying the constitutional confrontation rule

is to give a defendant charged with crime an opportunity to cross-examine the witnesses against him." *Pointer v. Texas*, 380 U.S. 400, 406-07 (1965). Whether a defendant's Confrontation Clause rights were violated is a question of law subject to de novo review. *Chavez v. State*, 125 Nev. 328, 339, 213 P.3d 476, 484 (2009); *see also Lilly v. Virginia*, 527 U.S. 116, 136-37 (1999).

Importantly, Park did not ask the district court to provide an interpreter for Kim. The record, also, does not indicate that Kim was unable to effectively communicate in English. Park points out that the district court had to reword questions asked of Kim by Park as she could not understand his questions. However, after Park rephrased the questions, Kim was able to answer them in clear English. Further, during the State's direct examination of Kim, the court or State did not need to clarify or rephrase any questions. Additionally, other evidence in the record, such as the domestic violence report completed by responding officers the day after the incident detailing the assault of Kim, and the fact that she worked as a supervisor for card dealers at a casino indicate that she was an English speaker. Thus, the record indicates that any challenges Kim faced in answering Park's questions were a result of his lack of legal proficiency or his particular phrasing, rather than her lack of English proficiency. Accordingly, we conclude that Park's Sixth Amendment right to confront witnesses was not infringed and the district court did not err in not sua sponte providing a Korean interpreter for Kim.

The district court did not err by denying Park's motion to suppress evidence

Park argues that officers lacked exigent circumstances to enter his and Kim's home, and any evidence collected during the warrantless search should have been suppressed at trial.

"A motion to suppress presents mixed questions of law and fact," and "[w]e review the district court's findings of fact for clear error, but we review application of the law de novo." *Smith v. State*, 140 Nev., Adv. Op. 19, 545 P.3d 716, 719 (2024). The Fourth Amendment and the Nevada Constitution protect against a warrantless home entry unless it is justified by a well-established exception such as exigent circumstances. *Hannon v. State*, 125 Nev. 142, 145, 207 P.3d 344, 346 (2009); *see also* U.S. Const. amend. IV; Nev. Const. art. 1, § 18. Exigent circumstances exist if there is a "need to render emergency assistance to an injured occupant or to protect an occupant from imminent injury." 125 Nev. at 145, 207 P.3d at 346 (internal quotations omitted). The reasonableness of an emergency entry into a home turns "on whether the circumstances, viewed *objectively*, justify [the] action," meaning "whether law enforcement had an objectively reasonable basis to believe that there was an immediate need to protect the lives or safety of themselves or others." *Id.* at 147, 207 P.3d at 347 (alteration in original) (internal quotations omitted).

Here, in determining that exigent circumstances existed for the warrantless entry, the district court reviewed the briefings by both parties and watched the officers' bodycam footage of their investigation leading to the scene of the crime. After a hearing, the district court concluded that there were objective exigent circumstances and it was reasonable for the officers to enter the home for that reason. Park failed to provide the bodycam footage for our review on appeal, and thus we presume it supports the district court's decision. *See Greene v. State*, 96 Nev. 555, 558, 612 P.2d 686, 688 (1980) ("The burden to make a proper appellate record rests on appellant."); *accord* NRAP 30(b)(3). Furthermore, the exhibits provided with Park's motion to suppress demonstrated that Hackett, after being

stabbed by Park, managed to drive down the street before crashing his car into a neighbor's house. When police responded to the scene, the police report noted that Hackett was able to communicate to them that the attack had happened "a few houses down," and given this information, officers began to search the immediate area. Three houses down from where Hackett was found injured, officers found a driveway covered in blood with the garage door open. There was additional blood leading from the driveway into the garage. And once in the open garage, officers found the door into the home open and covered in more blood. The record indicates that the officers had considerable evidence to support their determination that exigent circumstances existed as there could have been a need to render aid to other victims, and it was objectively reasonable for the officers to enter the home without a warrant. Accordingly, we conclude that the district court did not err in denying Park's motion to suppress the evidence found inside the home.

The district court did not err in denying Park's motions for reasonable bail and house arrest

Park argues that the district court erred by denying his motions for reasonable bail and house arrest, which he argues constituted punishment prior to conviction and obstructed his trial preparations. Because Park has been convicted and is serving his sentence, this claim is moot. *See Valdez-Jimenez v. Eighth Jud. Dist. Ct.*, 136 Nev. 155, 158, 460 P.3d 976, 982 (2020) (recognizing that bail and pretrial issues "become moot once the case is resolved by dismissal, guilty plea, or trial"). Park has not demonstrated that he can overcome mootness. *Id.* (citing *Bisch v. Las Vegas Metro. Police Dep't*, 129 Nev. 328, 334-35, 302 P.3d 1108, 1113 (2013) (recognizing that a party may overcome mootness of an issue by showing

"that (1) the duration of the challenged action is relatively short, (2) there is a likelihood that a similar issue will arise in the future, and (3) the matter is important")). Notably, rather than challenging the bail decisions by writ petition, Park waited over four years and after he was convicted to challenge the district court's decisions, and he presents no issue of first impression or of statewide importance warranting an exception to the mootness requirement. *Id.* (citing *Personhood Nev. v. Bristol*, 126 Nev. 599, 602, 245 P.3d 572, 574 (2010) (holding that we may consider an appeal that is moot "if it involves a matter of widespread importance that is capable of repetition, yet evading review")).

The district court did not err in failing to sua sponte provide the jury with instructions related to Park's defense theory of the case

Park asserts that the district court erred by failing to instruct the jury on his defense theory of the case regarding the lack of causal connection between the stabbing and later death of Hackett. Park acknowledges that he did not proffer the proposed jury instruction and that this typically precludes appellate review, however, he argues that the district court's failure to include this instruction constitutes plain error. Park further argues that the district court should have been put on notice of his theory of the case by a line of questioning of Kim and through his closing argument and pretrial motions arguing that the removal of Hackett from life support was the ultimate cause of death.

"A defendant has the right to have the jury instructed on his or her theory of the case as disclosed by the evidence, no matter how weak or incredible that evidence may be." *Davis v. State*, 130 Nev. 136, 142, 321 P.3d 867, 871 (2014) (alteration and internal quotations omitted). However,

"a party's failure to object to or request an instruction precludes appellate review." *Sanchez-Dominguez v. State*, 130 Nev. 85, 91, 318 P.3d 1068, 1073 (2014). There exists an exception to this general rule, however, when "a plain and obvious error occurred" that "affected the defendant's substantial rights." *Id.* And the appellant carries the burden of proving actual prejudice. *Id.*

Here, Park did not object to any of the proposed jury instructions, nor did he propose any instructions of his own. In fact, he specifically stated he had no jury instructions to proffer:

> THE COURT: Mr. Park, is the defense familiar with the Court's Proposed Jury Instructions 1 through 43?
>
> MR. PARK: I'm okay with it.
>
> THE COURT: Do you object to the giving of any of those instructions?
>
> MR. PARK: No.
>
> THE COURT: Do you have any additional instructions to propose?
>
> MR. PARK: No.

Further, not including a jury instruction relating to causal connection is not an error "so unmistakable that it is apparent from a casual inspection of the record" as required by *Vega*. *See id.* During trial, the medical examiner testified that Hackett died due to complications from the stab wounds inflicted by Park and "but for the stab wounds, [the victim] would not have been in the hospital. . . . [A]nd he would not have died." The medical examiner testified that the cause of death was homicide. The evidence that Hackett demonstrated signs of healing, though weak and

incredible, might have otherwise supported a causal connection instruction had Park requested it. However, we conclude that Park's substantial rights were not affected and the district court did not commit plain error by failing to sua sponte provide the jury with a causal connection instruction.

Park's rights were not violated by discovery violations and delays

Park argues that the State failed to provide him with necessary discovery materials, thereby constituting prosecutorial misconduct and violating his rights. When considering claims of prosecutorial misconduct, this court first "determine[s] whether the prosecutor's conduct was improper," and if so, "whether the improper conduct warrants reversal." *Valdez v. State*, 124 Nev. 1172, 1188, 196 P.3d 465, 476 (2008).

The State did not engage in improper conduct warranting reversal. During a hearing regarding the production of all discoverable material, the State represented to the district court that the requested hospital records were not made available to the State until the day before the hearing. The records were then provided to defense counsel only five days after the hearing. Further, during the same hearing, the State indicated that it had requested but had not yet received the autopsy report from the medical examiner and that once the State received it, it would provide the report to defense counsel. Upon receipt of the medical records and autopsy reports, the State timely provided them to Park. And all records were received by Park nearly three years before the start of trial.

The record thus shows that the State did not withhold discoverable information and timely provided the requested records to Park upon receipt. Accordingly, we conclude the State did not engage in prosecutorial misconduct.

Cumulative error does not warrant reversal

Finally, Park argues that his conviction should be reversed due to the cumulative effect of errors below. Because we discern no error, there is nothing to cumulate. *See Lipsitz v. State*, 135 Nev. 131, 140 n.2, 442 P.3d 138, 145 n.2 (2019) (concluding that there were no errors to cumulate when the court found only one error). Therefore, we conclude that Park's contention is without merit.

Accordingly, we ORDER the judgment of conviction AFFIRMED.

Pickering, J.
Pickering

Cadish, J.
Cadish

Lee, J.
Lee

cc: Hon. Tierra Danielle Jones, District Judge
Pitaro & Fumo, Chtd.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk