

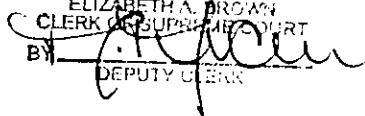
IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT ALAN ROGINSKY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 89006

FILED

SEP 12 2025

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 first-degree murder with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Carli Lynn Kierny, Judge.

Factual Background

Appellant Robert Roginsky was convicted of killing his girlfriend, Laura. Laura's friend became concerned about her after receiving texts from Roginsky stating that Laura had been attacked by two men and that Roginsky was being held hostage by those men. Finding discrepancies in Roginsky's story, the friend called the police, and officers were dispatched to Roginsky and Laura's apartment. When police arrived, neighbors reported that they had heard a woman's scream coming from the apartment. The police repeatedly knocked and announced their presence and after getting no response, forced the door open. Inside, police found Laura dead on the hallway floor and Roginsky in the living room. An autopsy determined that Laura died as a result of strangulation and that the manner of death was homicide.

Roginsky was arrested and removed from the apartment by police who thought they heard Roginsky say, "I f—ing strangled her." Using this phrase, a detective on the scene made a telephonic request for warrants to search Roginsky's home, car, and numerous cell phones. Those warrants were issued based at least partly on the understanding that Roginsky had confessed to murdering Laura.

At trial, Roginsky testified that Laura had been murdered by two men when they arrived at the apartment to collect a debt. Roginsky claimed that an argument ensued, one of the men restrained him and then knocked him unconscious, and when he awoke, he found Laura dead. He testified that he tried to revive Laura and when he was unable to, he attempted to end his own life by ingesting a large quantity of narcotics. Roginsky testified that he had no memory of the period between taking the narcotics and being removed from the apartment by the police, attributing this lack of memory to being knocked unconscious and then blacking out. The jury did not find Roginsky's version of events credible and found him guilty of first-degree murder for Laura's death.

The district court did not err in denying the motion to suppress evidence and for a Franks hearing

Roginsky argues that the search warrants that permitted the search of his home, car, and various cell phones were improperly granted because they were based on a statement of confession that was falsely attributed to him and statements made when he was impaired. He argues that the district court erred in failing to hold a *Franks* hearing and suppress the evidence gathered as a result of these warrants. *See Franks v. Delaware*, 438 U.S. 154, 155-56 (1978). We disagree.

A district court's resolution of a motion to suppress evidence presents a mixed question of law and fact. *State v. Beckman*, 129 Nev. 481,

485, 305 P.3d 912, 916 (2013). The district court's findings of historical fact are reviewed for clear error, but the legal consequences of those factual findings are reviewed de novo. *Somee v. State*, 124 Nev. 434, 441, 187 P.3d 152, 157-58 (2008). A criminal defendant is entitled to a *Franks* hearing to challenge the veracity of statements in a search warrant affidavit if (1) the defendant makes a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included in the warrant affidavit, and (2) the allegedly false statement is necessary to find probable cause. *Franks* 438 U.S. at 155-56 . If, after setting aside any false material, the affidavit's remaining content is sufficient to establish probable cause, no hearing is warranted. *Id.* at 171-72.

The officers who removed Roginsky from the apartment thought Roginsky said, "I f—ing strangled her," and the search warrants used this phrase. However, Roginsky's statement, which was recording on body cam video, was later determined to be, "*He* f—ing strangled her." (emphasis added). Additionally, Roginsky made statements to police in the hours after he was arrested but while still impaired from narcotics. These statements were later suppressed because they were deemed to be involuntary and unknowing, but Roginsky claims that his statements were improperly used in the grant of the warrants.

Even if the warrant affidavit contained misinformation, the other stated facts in the warrant affidavit supported probable cause. These facts included Laura's friend's call to the police, reports from the neighbors of a woman screaming in the apartment, Roginsky's failure to respond to the police's knocking, and the discovery of Roginsky with Laura's dead body inside the apartment. The inclusion of these facts in the warrant affidavit

is also why Roginsky's later-suppressed statements that he made while incapacitated did not require a hearing. Accordingly, we conclude that Roginsky failed to make the necessary showing to satisfy the second prong of *Franks*, that the false statement was essential to the finding of probable cause. We therefore conclude that the district court did not abuse its discretion by declining to hold a *Franks* hearing, nor did it err in denying the motion to suppress evidence.

The evidence was sufficient to establish use of a deadly weapon

Roginsky next argues that even when viewing the evidence in the light most favorable to the prosecution, there was insufficient evidence for a rational jury to find, beyond a reasonable doubt, that a ligature was used to strangle Laura. We disagree.

In reviewing the sufficiency of the evidence, we decide "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." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *see also Origel-Candido v. State*, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998). "[I]t is the jury's function, not that of the [reviewing] court, to assess the weight of the evidence and determine the credibility of witnesses." *McNair v. State*, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992). When there is conflicting testimony presented, it is up to the jury to determine the weight and credibility of the testimony. *Allen v. State*, 99 Nev. 485, 487, 665 P.2d 238, 240 (1983).

We conclude that the evidence was sufficient for a jury to find beyond a reasonable doubt that Roginsky used a deadly weapon. The jury was presented with photos of a green latex tourniquet found underneath Laura's body and evidence of Roginsky's DNA on the tourniquet. The doctor

who testified about the autopsy report presented a series of medical observations, including fingernail injuries on Laura's chin and lip, parallel abrasion lines, and evidence of a hemorrhage in her neck, which were consistent with the use of a ligature. Based on the evidence presented, a jury could reasonably conclude that Laura was strangled with a ligature at some point leading up to her murder, even if her eventual death was caused by other means, such as manual strangulation. *State v. Dunckhurst*, 99 Nev. 696, 697, 669 P.2d 243, 243-44 (1983) (concluding that a deadly weapon enhancement was proper where the defendant used a knife to inflict superficial wounds on the victim, even if the knife was not the cause of the victim's death). Because there was sufficient evidence to support the use of a deadly weapon, Roginsky fails to demonstrate any error by the district court in allowing the jury to deliberate on the deadly weapon enhancement. *The district court did not err by denying Roginsky's motion to dismiss for failure to collect evidence*

Roginsky argues that the district court erred by not conducting an evidentiary hearing to determine whether the police had breached a duty to collect evidence from the crime scene. Specifically, Roginsky posits that the police were negligent in attempting to gather video evidence because they did not issue a subpoena to the custodian of a surveillance video camera until after the video was written over. Roginsky contends that the video evidence was material to his defense and would have exonerated him. In a pretrial motion to dismiss, Roginsky argued that the police's failure to gather this exculpatory evidence entitled him to either dismissal of the charges or a jury instruction that the video would have been unfavorable to the State, and he requested an evidentiary hearing on the matter. This motion was set to be discussed at a status check, however the status check was cancelled and Roginsky failed to further address the issue. Because

Roginsky failed to preserve his request for an evidentiary hearing, we review the district court's decision for plain error. *Martimorellan v. State*, 131 Nev. 43, 48-49, 343 P.3d 590, 593 (2015) ("To amount to plain error, the error must be so unmistakable that it is apparent from a casual inspection of the record.") (internal quotations omitted).

While police officers "generally have no duty to collect all potential evidence from a crime scene[,] . . . this rule is not absolute." *Daniels v. State*, 114 Nev. 261, 268, 956 P.2d 111, 115 (1998) (internal quotations omitted). This court has adopted a two-part test holding that a dismissal of a case may be warranted if (1) the defendant first shows that evidence that the State failed to gather was material to the case, and (2) if the evidence is material, the failure to gather the evidence was the result of bad faith or negligence. *Id.* at 267-68, 956 P.2d at 115. Evidence is material if "there is a reasonable probability that, had the evidence been available to the defense, the result of the proceedings would have been different." *Id.* at 267, 956 P.2d at 115.

Roginsky has failed to show that the surveillance video would have altered the results of the trial. There is no indication that the video would have supported Roginsky's version of events or show that Roginsky didn't commit the murder. Because Roginsky has failed to successfully show that the evidence was material to his case, review of the second prong of the test is unwarranted. Therefore, we conclude that Roginsky has failed to demonstrate plain error.

The district court did not err in denying the motion to continue trial

Roginsky argues that the district court abused its discretion by denying his motion to continue trial based on the need to repair and extract data from two of the impounded cell phones. Roginsky argues that the data

on the cell phones—including recordings, text messages, location history, and photos—was central to his case. The district court denied the motion because the case was old, had been continued by the defense several times, and there was no assurance that the extraction would be fruitful. Roginsky argues that the delay in repairing the cell phones was through no fault of his own and that he was making progress on finding a lab that could extract the data.

This court reviews a decision regarding a motion for continuance for an abuse of discretion. *Rose v. State*, 123 Nev. 194, 206, 163 P.3d 408, 416 (2007). The district court's denial of a continuance is not an abuse of discretion if the defendant fails to demonstrate that he was prejudiced by the denial. *Higgs v. State*, 126 Nev. 1, 9, 222 P.3d 648, 653 (2010).

We conclude that Roginsky has failed to demonstrate that he was prejudiced by the court's denial of the motion to continue. Roginsky failed to present a compelling argument that additional time and forensic investigation would be fruitful or would support his version of events. He further failed to show how data could be extracted from the damaged phones. And while location data could potentially support Roginsky's version of events bolstering his credibility, his assertion of what the phone data might have shown is generally unspecific and speculative. Therefore, we conclude that the district court did not abuse its discretion in denying Roginsky's motion to continue the trial.

Cumulative error does not warrant reversal

Lastly, Roginsky argues that the cumulative effect of the errors violated his right to a fair trial. *See Byford v. State*, 116 Nev. 215, 241-42, 994 P.2d 700, 717 (2000). We conclude that the district court did not err

and, therefore, there are no errors to cumulate. Thus, cumulative error does not warrant reversal of Roginsky's convictions. We therefore

ORDER the judgment of conviction AFFIRMED.

Pickering, J.
Pickering

Cadish, J.
Cadish

Lee, J.
Lee

cc: Hon. Carli Lynn Kierny, District Judge
Steven S. Owens
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk