IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID LEVOYD REED, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 87042

FILED

JAN 14 2026

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 two counts of robbery with the use of a deadly weapon, first-degree kidnapping with the use of a deadly weapon of a victim 60 years of age or older, battery with the intent to commit a crime, conspiracy to commit robbery, robbery with the use of a deadly weapon of a victim 60 years of age or older, burglary while in the possession of a deadly weapon, assault with the use of a deadly weapon, possession of a stolen vehicle, and stop required on the signal of a police officer. Eighth Judicial District Court, Clark County; Monica Trujillo, Judge.

Appellant David L. Reed attacked seventy-two-year-old Barbara Sgrillo in her garage in September 2017. Reed and another assailant moved her into her master bedroom where they ordered her to tell them where her money was. Sgrillo saw her assailants in the mirror, one of whom she later identified as Reed. Once Reed had taken her cash, he shoved her into the master bathroom and told her not to come out for two minutes. When she was sure they had left, Sgrillo called the police, who gathered DNA evidence at the scene. Two days later, officers caught and arrested Reed fleeing from a stolen vehicle.

Reed was indicted in February 2018 and later tried on various charges related to this and other robberies. The district court conducted a

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Faretta canvass, and Reed elected to proceed pro se starting in March 2019. Reed's trial was continued several times, often at Reed's request, and due to the COVID-19 shutdowns. On the first day of trial, Reed's standby counsel was sick with COVID-19. Rather than have the trial continued once more, Reed waived standby counsel and proceeded to trial on his own. Reed decided not to testify in his defense after the district court indicated that it would limit the scope of his testimony. During closing arguments, Reed continually argued facts not in evidence despite the district court's repeated admonitions. The district court ended up removing Reed from the courtroom during his closing argument due to his disruptive behavior.

A jury convicted Reed on all counts, and the district court sentenced him to an aggregate prison term of 12 to 35 years. On appeal, Reed argues that: (1) the district court acted improperly in removing him from the courtroom during his closing argument and allowing the State to deliver its rebuttal in his absence; (2) the court violated his Sixth Amendment right to present a complete defense by limiting his proffered testimony; (3) the court abused its discretion in not issuing an adverse inference instruction based on the State's destruction of evidence; (4) the five-year delay between indictment and trial violated his Sixth Amendment right to a speedy trial; (5) the State presented insufficient evidence to sustain his first-degree kidnapping conviction; (6) the court abused its discretion in not proactively revoking Reed's pro se status; and (7) the court erroneously rejected his motion for a new trial as untimely.

The district court did not err by removing Reed from the courtroom

Reed argues that the district court violated various of his constitutional rights by removing him from the courtroom during closing arguments and allowing the State to give its rebuttal without him present.

He further argues that the district court failed to follow the proper steps in doing so and that his behavior was not disruptive enough to warrant removal.

Under the Sixth Amendment's Confrontation Clause, a criminal defendant has the "right to be present in the courtroom at every stage of his trial." *Illinois v. Allen*, 397 U.S. 337, 338 (1970). The defendant may lose this right, however, when he or she engages in disruptive conduct justifying removal from the courtroom. *Id.* at 345-46. A trial court may then conduct the trial in the defendant's absence, subject to some safeguards. *See id.* at 345-47 (describing some appropriate safeguards). "A district court's decision to remove a defendant from the courtroom for disruptive behavior is reviewed under an abuse-of-discretion standard." *Collins v. State*, 133 Nev. 717, 719, 405 P.3d 657, 661 (2017). We have previously laid out suggested steps for district courts to follow when faced with a disruptive defendant:

> (1) advise the defendant that his or her conduct is not acceptable; (2) warn the defendant that persisting in the disruptive conduct will lead to removal; (3) if the conduct persists, determine whether it warrants the defendant's removal or a lesser measure will suffice; and (4) bring the defendant back to court periodically to advise that he or she may return if the defendant credibly promises to desist from the disruptive conduct.

Id. at 720, 405 P.3d at 661; *see also* NRS 175.387(1) (detailing district court's options when faced with a disruptive defendant).

Contrary to Reed's assertion, the district court did follow each of these steps when removing him. The district court repeatedly advised Reed during his closing argument not to reference facts that were not introduced into evidence and dismissed the jury three separate times in

order to advise Reed of the limits on closing arguments and address his disruptive and improper behavior. During the second break, the court warned Reed that he could forfeit his right to closing argument and to be present in the courtroom by failing to follow the court's orders. Yet Reed persisted in his conduct. Given Reed's escalating disruptiveness and demonstrated unwillingness to preserve the dignity of the proceedings, we conclude the district court did not abuse its discretion by removing Reed during closing arguments. Moreover, Reed chose to be absent for the remainder of the trial, declining the district court's invitation to return for the jury's verdict.[1]

The district court did not err by limiting Reed's proposed testimony in support of his defense theory

Reed claims that the district court violated his right to present a complete defense by barring his proposed testimony that he was on parole for an allegedly false conviction when he was found in the stolen SUV on the day of his arrest. After the district court limited the scope of Reed's proposed testimony, he decided not to testify.

"Whether rooted directly in the Due Process Clause of the Fourteenth Amendment, or in the Compulsory Process or Confrontation clauses of the Sixth Amendment, the Constitution guarantees criminal

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[1]As for Reed's claim that, consistent with authorities such as *United States v. Mack*, 362 F.3d 597, 601 (9th Cir. 2004), his absence as a pro se defendant during the State's rebuttal argument was structural error even if his removal were justified, he presents neither a cogent argument nor a single citation to legal authority substantively addressing this issue in his opening brief. It is not until his reply brief that Reed adequately develops this argument. We therefore decline to address this issue. *See Elvik v. State*, 114 Nev. 883, 888, 965 P.2d 281, 284 (1998) (explaining that arguments made for the first time in a reply brief prevent the respondent from responding to appellant's contentions with specificity).

defendants a meaningful opportunity to present a complete defense." *Crane v. Kentucky*, 476 U.S. 683, 690 (1986) (citations and internal quotation marks omitted). We review whether a district court's evidentiary rulings violate the Sixth Amendment right to present a complete defense de novo. *See Farmer v. State*, 133 Nev. 693, 702, 405 P.3d 114, 123 (2017) ("We review a trial court's evidentiary rulings for an abuse of discretion and the ultimate question of whether a defendant's Confrontation Clause rights were violated de novo.").

Reed's proposed testimony that he was wrongfully convicted of a prior crime was properly excluded because it "is marginally relevant and could inject collateral issues which would divert the jury from the real issues in the case. . . ." *Hansen v. Universal Health Servs., Inc.*, 115 Nev. 24, 27, 974 P.2d 1158, 1160 (1999); *see also Holmes v. South Carolina*, 547 U.S. 319, 326 (2006) ("[W]ell-established rules of evidence permit trial judges to exclude evidence if its probative value is outweighed by certain other factors such as unfair prejudice, confusion of the issues, or potential to mislead the jury."). Notably, the district court allowed Reed the opportunity, which he rejected, to testify that officers unfairly zeroed in on him as the suspect in this case due to his prior conviction. It simply would not allow "a trial within a trial" regarding whether the prior conviction was wrongful. This was an acceptable application of evidentiary rules that did not violate Reed's right to present a complete defense. *See People v. Gibbs*, 55 N.E.3d 233, 241 (Ill. App. Ct. 2016) ("Indeed, testimony regarding the particulars of a prior conviction can lead to a 'trial within a trial' and distract from the relevant issues." (quoting *People v. Oaks*, 576 N.E.2d 299, 302 (Ill. App. Ct. 1991)).

Reed was not entitled to a Sanborn *instruction*

Reed claims that he was entitled to a *Sanborn* instruction based on the State's grossly negligent mishandling of evidence. He points to three pieces of evidence that the State failed to preserve: body camera footage and gloves and a hat found in the SUV Reed was driving the day of his arrest.

Under *Sanborn v. State*, a defendant prejudiced by the State's failure to preserve evidence may be entitled to a jury instruction that the lost evidence is irrebuttably presumed to have been favorable to the defense. 107 Nev. 399, 407-08, 812 P.2d 1279, 1285-86 (1991). The State's mere negligence is insufficient to warrant an instruction; there must be a showing of gross negligence or bad faith. *See Munoz v. State*, No. 66264, 2016 Nev. Unpub. LEXIS 54, at *3 (Nev. Jan. 15, 2016) (Order of Affirmance). A district court's decisions settling jury instructions are subject to abuse-of-discretion review. *Crawford v. State*, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005).

As to the body camera footage, it is unclear whether it ever existed in the first place. As to the gloves and hat found in the stolen SUV, the State's destruction of this evidence was certainly negligent. But even if the State were grossly negligent, Reed has not shown prejudice. Reed's bare assertions that others' DNA may have been on the clothing are insufficient to demonstrate prejudice. *See Randolph v. State*, 117 Nev. 970, 987, 36 P.3d 424, 435 (2001) (explaining that defendant's mere speculation that DNA testing would have incriminated another suspect is insufficient to show materiality). Reed's DNA was identified through a swab of a victim's fingernails, and there is no evidence to suggest that additional forensic testing would have been exculpatory.

When the State fails to preserve evidence, the default remedy is to allow the defendant to comment upon it during closing argument before

the jury. *See Patterson v. State*, 741 A.2d 1119, 1121 (Md. 1999) ("If the State fails to produce evidence that is reasonably available to it[,] . . . a defendant is permitted to comment about the missing evidence in his or her closing argument to the jury."). The district court did not preclude Reed from doing so prior to the time he was removed. We conclude that the district court did not abuse its discretion in determining that Reed was not entitled to the remedy of a *Sanborn* instruction.

Reed's Sixth Amendment right to a speedy trial was not violated

Reed claims that the five-year delay between his indictment and trial violated his Sixth Amendment right to a speedy trial. A district court's decision to deny a motion to dismiss an indictment based on a Sixth Amendment speedy trial violation is reviewed for an abuse of discretion. *State v. Inzunza*, 135 Nev. 513, 516, 454 P.3d 727, 730 (2019).

A criminal defendant has a constitutional right to a speedy trial. *Id.* at 516, 454 P.3d at 731. But "pretrial delay is often both inevitable and wholly justifiable." *Doggett v. United States*, 505 U.S. 647, 656 (1992). In *Barker v. Wingo*, the United States Supreme Court identified four factors that courts should weigh in determining whether a defendant was deprived of the right to a speedy trial: "[1] [l]ength of delay, [2] the reason for the delay, [3] the defendant's assertion of his right, and [4] prejudice to the defendant." 407 U.S. 514, 530 (1972); *see also Inzunza*, 135 Nev. at 516, 454 P.3d at 731 (adopting the *Barker-Doggett* test in Nevada).

Under the first factor, unless the length of the delay is presumptively prejudicial, there is no need for an inquiry into the other factors. *Barker*, 407 U.S. at 530. A one-year delay is the usual threshold that is considered presumptively prejudicial. *Inzunza*, 135 Nev. at 516-17, 454 P.3d at 731. The five-year delay between Reed's indictment and his

trial was "extraordinary" and warrants inquiring into the remaining *Barker* factors. *See Barker*, 407 U.S. at 533 (characterizing five-year delay as extraordinary). The remaining factors, however, lean against Reed. The record shows many of the delays were attributable to Reed and to the COVID-19 shutdowns rather than to the State. *Cf. Inzunza*, 135 Nev. at 517, 454 P.3d at 731 (explaining this factor focuses on whether the government was responsible for the delay). Next, though Reed at a pretrial hearing stated that he was "not waiving [his] trial under no circumstances," on the eve of the continued trial date, Reed apparently changed his mind and asked for a continuance, making his assertions inconsistent. *See Laws v. Stephens*, 536 F. App'x 409, 413 (5th Cir. 2013) (weighing inconsistent assertions of this right in favor of the State). Finally, Reed identifies two forms of possible prejudice: the destruction of physical evidence in government custody and the death of a potential witness. However, Reed's bare assertions that the lost physical evidence would have been exculpatory are insufficient to prove prejudice for the reasons discussed above, and the potential witness died about a year after Reed was indicted and thus was not the product of the delay. On these facts, we conclude Reed's Sixth Amendment right to a speedy trial was not violated.

Sufficient evidence supports the first-degree kidnapping conviction

Reed argues that insufficient evidence supported his first-degree kidnapping conviction because any movement of the victim was incidental to the robbery and did not increase the risk of harm. Namely, he contends that moving the victim into the house and down the hall into the bedroom and closet was directly instrumental to accomplishing the robbery and thus was not an independent act of kidnapping. He also argues that

moving the victim into the bathroom was necessary for the escape and was not a distinct act of kidnapping.

"Robbery is the unlawful taking of personal property from the person of another, or in the person's presence, against his or her will, by means of force or violence or fear of injury . . . ." NRS 200.380(1). As relevant in Reed's case, first-degree kidnapping occurs when a person "willfully seizes, confines, inveigles, entices, decoys, abducts, conceals, kidnaps or carries away a person by any means whatsoever" for the purpose of committing robbery. NRS 200.310(1). If the movement of a victim is merely incidental to the commission of another crime, that movement will not support a separate kidnapping conviction. *Mendoza v. State*, 122 Nev. 267, 274-75, 130 P.3d 176, 180-81 (2006). To sustain both a kidnapping conviction and a robbery conviction based on the same incident, "any movement or restraint must stand alone with independent significance from the act of robbery itself, create a risk of danger to the victim substantially exceeding that necessarily present in the crime of robbery, or involve movement, seizure or restraint substantially in excess of that necessary to its completion." *Id.* at 275, 130 P.3d at 181. Whether the movement of the victim was incidental to the robbery is a question of fact for "the jury in all but the clearest cases." *Langford v. State*, 95 Nev. 631, 638-39, 600 P.2d 231, 236-37 (1979). In reviewing the sufficiency of the evidence, this court must 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).

Sgrillo testified that Reed forced her from her open garage into her house. Moving a victim from an open place where she may be seen by onlookers to a private one substantially increases her risk of harm and can sustain a kidnapping conviction; it also lessened her ability to escape, substantially increasing the risk of danger. *See Guerrina v. State*, 134 Nev. 338, 343-44, 419 P.3d 705, 710-11 (2018) (holding that moving the victim from a public place to a secluded store and locking her inside were acts which could support a kidnapping conviction by increasing risk of harm and exceeding the movement necessary to complete the robbery). Moreover, a reasonable juror could find that forcing Sgrillo from the bedroom closet into the master bathroom after acquiring the money in the safe substantially exceeded the movement necessary to complete the robbery. Therefore, we conclude that Reed's contention is without merit.

The district court did not abuse its discretion by allowing Reed to maintain his pro se status and continue to represent himself

Although Reed does not argue that the district court abused its discretion in initially allowing him to proceed pro se, he contends that the district court should have sua sponte revoked that status either before or during trial. Reed also argues that, despite Reed having expressly waived the appointment of standby counsel, the district court abused its discretion in not appointing new standby counsel for Reed after the counsel Reed had been working with fell ill.

"[C]riminal defendants have an unqualified right to self-representation, so long as there is a voluntary and intelligent waiver of the right to counsel." *Lyons v. State*, 106 Nev. 438, 443, 796 P.2d 210, 213 (1990) (internal quotation marks omitted). It follows that "the constitutional right to self-representation should not be reflexively revoked once granted." *State v. Underwood*, 527 P.3d 891, 894 (Ariz. Ct. App. 2023). But a district court

may deny a defendant's right to self-representation when a defendant abuses that right by disrupting the judicial process. *Tanksley v. State*, 113 Nev. 997, 1001, 946 P.2d 148, 150 (1997). A defendant's pretrial activity is relevant for determining whether he or she is likely to disrupt the trial. *Id.* A district court's decision of whether to revoke a defendant's right of self-representation is reviewed for an abuse of discretion. *Vanisi v. State*, 117 Nev. 330, 341, 22 P.3d 1164, 1171 (2001).

The district court's decision to allow Reed to proceed pro se is entitled to great deference because that court is the one that has personally observed him in the courtroom. *See Gorbey v. United States*, 54 A.3d 668, 679 (D.C. 2012) ("We accord great deference to the trial court's inferences from its personal observations of, and conversations with, the defendant."); *Tanksley*, 113 Nev. at 1002, 946 P.2d at 151 ("This court will not substitute its evaluation for that of the district court judge's own personal observations and impressions."). Reed insisted on representing himself, participated in a *Faretta* canvass, and largely avoided disrupting his trial until closing arguments. On this record, we conclude that Reed has not shown that he so abused his right of self-representation that the district court abused its discretion by not revoking it or appointing new standby counsel sua sponte either before or during trial.

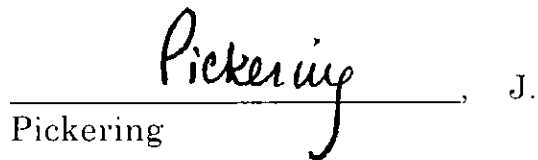
Reed's motion for a new trial was untimely

The jury returned its verdict on July 7, 2023. Reed filed a motion for a new trial in the district court on August 10. Reed offered evidence below that he gave his documents to prison officials within the proper timeframe, but the district court rejected the motion for a new trial as untimely. We review the denial of a motion for a new trial for an abuse of discretion. *Sanborn*, 107 Nev. at 406, 812 P.2d at 1284.

A motion for a new trial must generally be made within seven days of the verdict. NRS 176.515(4). Under the prison mailbox rule, an incarcerated pro se litigant's motions are deemed filed on the date they are handed to prison officials. *Milton v. Nev. Dep't of Prisons*, 119 Nev. 163, 164, 68 P.3d 895, 895 (2003). Reed's motion was not filed in the district court until 34 days after the verdict. The evidence Reed offered that he timely submitted his motion to prison officials was contradicted by other evidence in the record. Given the conflicting evidence in this case, we conclude that the district court did not abuse its discretion in denying Reed's motion for a new trial as untimely. *See Maestas v. State*, 128 Nev. 124, 138 (2012) (stating that the district court's findings of fact on a motion for a new trial will not be disturbed absent clear error).

Accordingly, we

ORDER the judgment of conviction AFFIRMED.



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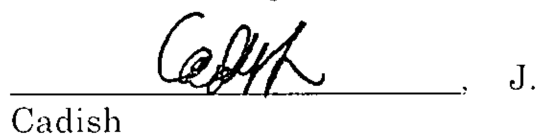

_____________________, J.
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Lee

cc: Wright Marsh & Levy
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk