

IN THE SUPREME COURT OF THE STATE OF NEVADA

DANIELLE RONALD JOHNS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 89893

FILED

MAR 12 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 trial, of sexual assault, second-degree kidnapping, and grand larceny of a motor vehicle. Fourth Judicial District Court, Elko County; Kriston N. Hill, Judge. Appellant Danielle Johns sexually assaulted a woman, tied her up and placed her in her car, and, after she fled to a neighbor's apartment, stole the car. Johns raises five issues on appeal.

Denial of the pretrial motion to dismiss and petition for habeas corpus

Johns contends the district court erred by denying a pretrial motion to dismiss the information and a pretrial petition for a writ of habeas corpus based on the failure to hold a preliminary hearing within fifteen days. Johns argues that the district court should have considered his constitutional interest in conditional pretrial liberty when determining whether the almost-five-month delay of the preliminary hearing warranted dismissal of the information. Johns was arrested in Missouri on unrelated charges in December 2021 and extradited to Nevada in August 2022. Johns's attorneys stipulated to several continuances to prepare for the preliminary hearing, which took place in January 2023. Thus, the record supports the district court's findings that the delays were caused by Johns,

and the district court did not err by denying the motion to dismiss or pretrial writ of habeas corpus.

Denial of the motion to dismiss based on discovery violations

Johns argues the district court erred by denying a motion to dismiss and a motion for sanctions based on discovery violations. Specifically, Johns contends the State cancelled DNA testing on the victim's clothing after promising to test the clothing. "We review the district court's resolution of discovery disputes for an abuse of discretion." *Means v. State*, 120 Nev. 1001, 1007, 103 P.3d 25, 29 (2004).

Police seized the victim's clothing, DNA swabs from the victim's body, a jar of petroleum jelly, and packing tape and a drawstring used to bind the victim's hands as evidence. Johns orally requested the State test the victim's clothing for DNA shortly after the preliminary hearing, but Johns made no formal request for the clothing to be tested. After finding Johns's DNA on swabs taken from the victim's body, the State decided not to test the clothing based on the probative DNA results. Several weeks before trial, Johns filed a request for DNA testing of the tape and drawstring used to bind the victim's hands but did not request testing of the victim's clothing. The State agreed to the request and expedited testing. Shortly before trial, Johns learned the State cancelled DNA testing on the victim's clothing and Johns then moved to dismiss for failure to disclose evidence. The district court denied the motion to dismiss but offered a continuance to obtain more DNA results, which Johns refused.

Johns fails to demonstrate the district court abused its discretion. Johns did not move to compel testing of the victim's clothing, instead focusing on the tape and drawstring used to bind the victim's hands. The State had already agreed to expedite DNA testing on the tape and drawstring and delivered the results prior to trial even without a

continuance. *See State v. Tapia*, 108 Nev. 494, 498, 835 P.2d 22, 24 (1992) (explaining that dismissal is inappropriate when the State has not acted in bad faith and the district court takes other actions to protect the defendant's rights).

Further, Johns's DNA was present on the tape and drawstring. This DNA evidence, along with the presence of Johns's DNA on the victim's neck and genitals, corroborated the victim's testimony. Thus, even crediting Johns's allegation that his DNA would not be present on the victim's clothing, the absence of Johns's DNA on the victim's clothing would not have affected the verdict. *See Mazzan v. Warden*, 116 Nev. 48, 66, 992 P.2d 25, 36 (2000) (holding that withheld evidence is material when there is a reasonable possibility the omitted evidence would have affected the outcome).

Denial of requested adverse inference jury instruction

Johns asserts the district court abused its discretion by refusing to instruct the jury it could presume uncollected evidence would be unfavorable to the State. A district court's refusal to give a jury instruction is reviewed for an abuse of discretion. *Jackson v. State*, 117 Nev. 116, 120, 17 P.3d 998, 1000 (2001). The victim's neighbor had security cameras that pointed towards the parking lot where Johns forced the victim into a car. The police were aware of the cameras but never attempted to collect recordings. However, the neighbor ultimately testified that the cameras were not recording at the time of the offense, so there was nothing for the police to collect. Thus, Johns did not demonstrate that the government failed to collect evidence. *See Randolph v. State*, 117 Nev. 970, 987, 36 P.3d 424, 435 (2001) (providing that adverse inference instructions are appropriate when the government fails to collect evidence that is favorable and material).

To the extent Johns argues on appeal that the district court also failed to give adverse-inference instructions regarding DNA evidence, Johns did not argue that point before the district court and thus forfeited the issue. *Jeremias v. State*, 134 Nev. 46, 60, 412 P.3d 43, 48 (2018). Thus, this court will only consider the issue if it amounts to plain error. *See id* (defining plain error as error that is clear from a casual inspection of the record and affected the defendant's substantial rights). As discussed, the absence of Johns's DNA on the victim's clothing was not material. Because Johns did not show the government failed to collect favorable, material evidence, we conclude the district court did not abuse its discretion by refusing to give an adverse inference instruction.

Denial of motions for a secondary expert evaluation of the victim

Johns alleges the district court erred by denying requests for a defense expert to perform a secondary evaluation of the victim to determine whether her mental health symptoms were consistent with a survivor of sexual assault. The parties rely on *Koerschner v. State*, 116 Nev. 1111, 1115, 13 P.3d 451, 454 (2000), for the proposition that a district court may compel such an examination in cases of compelling need. Since *Koerschner*, the Legislature has enacted NRS 50.700(1), which states "a court may not order the victim of or a witness to [a] sexual offense to take or submit to a psychological or psychiatric examination." The court may instead exclude the State's psychological expert if there is a compelling need for an additional examination, and the victim does not consent to the additional examination. Because courts may not compel such examinations, the district court did not err by denying Johns's requests for a secondary examination of the victim.

Further, the district court correctly found there was no compelling need for an examination that warranted exclusion of the State's

expert. The victim's testimony was corroborated, and the evidence did not establish a reasonable basis to question the victim's ability to perceive or relate events related to the crimes. NRS 50.700(3) (laying out factors to consider when determining whether a compelling need for a secondary examination exists). Thus, we conclude no relief is warranted on this claim.

Permitting the State to amend the information

Lastly, Johns contends the district court erred by permitting the State to amend the charging information after the close of evidence. We review for an abuse of discretion. *State v. Eighth Jud. Dist. Ct.*, 116 Nev. 374, 379, 997 P.2d 126, 130 (2000). The operative information at the close of evidence charged three counts: (1) sexual assault, (2) first-degree kidnapping, and (3) larceny of a vehicle. After the close of evidence, the district court indicated it would instruct the jury to acquit Johns of first-degree kidnapping due to a lack of evidence about his specific intent. NRS 200.310(1) (first-degree kidnapping). The district court then permitted the State to amend the information to charge second-degree kidnapping rather than first-degree kidnapping. The district court "may permit an indictment or information to be amended at any time before verdict or finding if no additional or different offense is charged and if substantial rights of the defendant are not prejudiced." NRS 173.095(1).

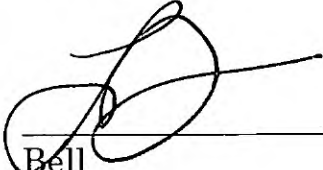
First, we conclude the amended information did not charge an additional or different offense. "[A] lesser-included offense is not a new or different offense under NRS 173.095." *Henderson City Att'y v. Cerrone*, 140 Nev., Adv. Op. 68, 557 P.3d 979, 983 (2024). Second-degree kidnapping is a lesser-included offense of first-degree kidnapping. *See McNamara v. State*, 132 Nev. 606, 620, 377 P.3d 106, 116 (2016) (recognizing that second-degree kidnapping is a lesser-included offense of first-degree kidnapping); *Gazlay v. State*, No. 66105, 2016 WL 2848905, at *2 (Nev. May 12, 2016)

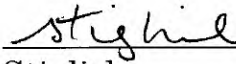
(Order of Affirmance). Because the amended information only changed first-degree kidnapping to the lesser-included offense of second-degree kidnapping, the amendment did not charge an additional or different offense.


Second, allowing the State to amend the indictment did not prejudice Johns's substantial rights. The State made no changes to the essential facts upon which the State based its theories of prosecution. And Johns's defense relied on attacking the reliability of witnesses and the adequacy of the investigation, not on any specific element of first-degree kidnapping such that Johns's defense was undercut by the amendment. Although Johns asserts he would have engaged in additional cross-examination about the acts that constitute second-degree kidnapping, those acts are the same for first-degree kidnapping. Because the amended information did not charge an additional or different offense and did not prejudice Johns, the district court did not abuse its discretion by permitting the State to amend the information.

Having considered Johns's arguments and concluded that no relief is warranted, we

ORDER the judgment of the conviction AFFIRMED.


_____, J.
Bell


_____, J.
Stiglich


_____, J.
Cadish

cc: Hon. Kriston N. Hill, District Judge
Kirsty E. Pickering Attorney at Law
Attorney General/Carson City
Elko County District Attorney
Elko County Clerk