IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVE MCGEE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 38484

FILED

AUG 23 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of conspiracy to resist a police officer, one count of battery on an officer, and three counts of child endangerment. The district court sentenced appellant to a term of one year in the Clark County Detention Center for each count. The district court ordered three of the sentences to run consecutively to one another, and the other two to run concurrently.

Appellant first contends that the district court erred by denying appellant's request for substitute counsel or alternatively, to represent himself. The record shows that approximately two months prior to trial, appellant wrote a letter to the district court asking for the appointment of new counsel. At a pretrial hearing, appellant renewed his request, based on a lack of communication between appellant and his counsel. The district court urged appellant to cooperate with his attorney, and at a hearing the day of trial, appellant stated that he wished to have his attorney continue to represent him.

It is well-settled that a criminal defendant is not entitled to reject court-appointed counsel and obtain substitution of other counsel at public expense absent a showing of adequate cause.[1] Moreover, an indigent defendant's uncooperative attitude does not merit the appointment of substitute counsel.[2] Additionally, appellant abandoned his request for new counsel at trial, and expressed his satisfaction with his appointed counsel. We therefore conclude that the district court did not abuse its discretion by refusing to appoint new counsel.

Appellant next contends that the district court erred by admitting an audiotape made after appellant had been arrested. The day before trial, appellant objected to the tape based on relevance and an alleged Fifth Amendment violation. When the State sought to admit the tape at trial, however, defense counsel did not object.

We conclude that appellant failed to preserve this issue for appellate review. This court has held that "[a] ruling on a motion in limine is advisory, not conclusive; after denial of a pretrial motion to exclude evidence, a party must object at the time the evidence is sought to be introduced in order to preserve the objection for appellate review."[3]

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[1]Thomas v. State, 94 Nev. 605, 584 P.2d 674 (1978).

[2]State v. Lucero, 725 P.2d 266, 270-72 (N.M. Ct. App. 1986).

[3]Staude v. State, 112 Nev. 1, 5, 908 P.2d 1373, 1376 (1996) (citing Teegarden v. State, 563 P.2d 660, 662 (Okla. Crim. App. 1977)).

Finally, appellant contends that the district court erred by allowing evidence of appellant's nine-year-old daughter's statements and actions following appellant's arrest. In particular, appellant argues that the evidence that his daughter was screaming profanity at the police officers, that she grabbed a baton and attempted to strike an officer was irrelevant and highly prejudicial. We disagree.

District courts are vested with wide discretion in determining the relevance and admissibility of evidence.[4] The district court's determination will not be disturbed on appeal absent a clear abuse of that discretion.[5] Appellant was charged with conspiring to resist an officer because he was urging his wife and daughter to get a police officer's gun, which his wife and daughter attempted to do. Appellant's daughter's statements and actions are relevant to this charge.[6] Further, although the evidence is prejudicial, appellant fails to demonstrate that its probative value is substantially overweighed by unfair prejudice.[7] We therefore conclude that the district court did not abuse its discretion by admitting the evidence.

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[4]Castillo v. State, 114 Nev 271, 277, 956 P.2d 103, 107 (1998).

[5]Atkins v. State, 112 Nev. 1122, 1127, 923 P.2d 1119, 1123 (1996).

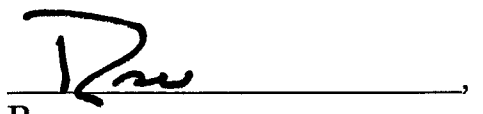
[6]See NRS 48.015 (relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence").

[7]See NRS 48.035(1).

Having considered appellant's contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.

Shearing, J.



Rose, J.

Becker, J.

cc: Hon. Valorie Vega, District Judge
Daniel J. Albregts, Ltd.
Attorney General/Carson City
Clark County District Attorney
Clark County Clerk