IN THE SUPREME COURT OF THE STATE OF NEVADA

LANCE BASSETT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 38513

FILED

AUG 22 2003

CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER OF AFFIRMANCE

Lance Bassett appeals from a judgment of conviction entered after a jury found him guilty of one count of trafficking in a schedule 1 controlled substance; one count of offering, attempting, or committing an unauthorized act relating to a controlled substance; one count of conspiracy; and one count of possession of a controlled substance.

Bassett first contends that the district court improperly admitted the jailhouse letters between trial witness Nanette Graham and Bassett because they were hearsay. The letters demonstrated that Graham and Bassett had an intimate relationship and discussed Graham's testimony. Therefore, the district court admitted the letters for impeachment purposes.

NRS 50.075 allows any party to impeach a witness. A witness may be impeached by showing that he or she is biased or has a motive to testify in a particular way.[1] This court has stated that counsel must be permitted to elicit any facts that might color a witness' testimony.[2] Given the contents of the jailhouse letters, we conclude that the district court did

[1]United States v. Abel, 469 U.S. 45, 49-52 (1984).

[2]Crew v. State, 100 Nev. 38, 45, 675 P.2d 986, 991 (1984).

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not err in allowing the State to use them to impeach Graham.[3] Additionally, we conclude that the district court did not err in admitting the letters because Graham was available for cross-examination.[4]

Related to this issue, Bassett argues that the district court erred in denying Bassett a continuance. After the district court ruled that the jailhouse letters were admissible, Bassett requested a continuance so that Graham's former attorney, John Momot, could be called as a witness to rebut the allegation of recent fabrication raised by the jailhouse letters. Bassett argued that Momot could potentially rehabilitate Graham's credibility given that she claimed she had told Momot that she, not Bassett, cooked the methamphetamine.

The State argues that Bassett failed to follow the proper procedure for a continuance. We agree.

DCR 14 provides:

> 1. All motions for the continuance of cases shall be made on affidavit except where it shall appear to the court that the moving party did not have time to prepare an affidavit, in which case counsel for the moving party need only be sworn

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[3]See K-Mart Corporation v. Washington, 109 Nev. 1180, 1186, 866 P.2d 274, 278 (1993) (observing that the decision to admit relevant evidence, after balancing the prejudicial effect against the probative value, is within the sound discretion of the district court, and the court's determination will not be overturned absent manifest error or abuse of discretion).

[4]Cf. Levi v. State, 95 Nev. 746, 748, 602 P.2d 189, 190 (1979) (observing that the confrontation clause is not violated when prior inconsistent statements are admitted, provided the declarant testifies as a witness at trial and is subject to cross-examination).

> and orally testify to the same factual matters as hereinafter required for an affidavit.
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> 2. When a motion for the continuance of a cause is made on the ground of absence of witnesses, the affidavit shall state:
>
> (a) The names of the absent witnesses and their present residences, if known.
>
> (b) What diligence has been used to procure their attendance or their depositions, and the causes of a failure to procure the same.
>
> (c) What the affiant has been informed and believes will be the testimony of each of such absent witnesses, and whether or not the same facts can be proven by other witnesses than parties to the suit whose attendance or depositions might have been obtained.
>
> (d) At what time the applicant first learned that the attendance or depositions of such absent witnesses could not be obtained.
>
> (e) That the application is made in good faith and not merely for delay.

Bassett was unable to definitively state what Momot would testify to and could not be sure whether Momot's testimony would even be helpful. Accordingly, we conclude that the district court did not abuse its discretion in denying Bassett's request for a continuance.[5]

Bassett next argues that the district court erred when it (1) allowed Detective Bret Empey to state that he went to Pahrump based upon an informant's statement to him that she was to deliver iodine to Graham and Bassett; (2) admitted various laboratory reports; and (3)

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[5]See Banks v. State, 101 Nev. 771, 773, 710 P.2d 723, 725 (1985) (observing that the decision whether to grant a continuance is within the discretion of the district court).

admitted a letter written by Graham to Bassett prior to their arrest. We conclude that the district court did not abuse its discretion in admitting any of this evidence.[6]

First, in allowing Detective Empey to testify about what the informant told him, the district court properly limited his testimony to information that was relevant to why the police set up a controlled delivery; hence, the testimony was not hearsay.[7] Second, the district court did not err in admitting the laboratory reports because they were reliable and contained information gathered in the performance of public officials' duties.[8] Moreover, witnesses were available for cross-examination

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[6]See Libby v. State, 115 Nev. 45, 52, 975 P.2d 833, 837 (1999) (observing that the district court has the discretion to admit or exclude evidence, and this court should not disturb that decision unless it is manifestly wrong).

[7]See Wallach v. State, 106 Nev. 470, 473, 796 P.2d 224, 227 (1990) (concluding that statements made by the victim to the detective were admissible as non-hearsay since they were merely offered to show that the statements were made and the listener was affected by the them, not to show the truth of the matter asserted); see also United States v. Freeman, 816 F.2d 558, 563 (10th Cir. 1987) (concluding that a confidential informant's out of court statements were not hearsay because they were offered for the limited purpose of explaining why an investigation was undertaken).

[8]See NRS 51.155(2) (stating that reports of public officials are not inadmissible under the hearsay rule if they set forth "matters observed pursuant to duty imposed by law"); NRS 51.075(1) ("A statement is not excluded by the hearsay rule if its nature and the special circumstances under which it was made offer assurances of accuracy not likely to be enhanced by calling the declarant as a witness, even though he is available.").

regarding the contents of the reports.[9] Third, the district court properly admitted the letter written by Graham to Bassett prior to their arrest because it was a prior inconsistent statement.[10]

Finally, Bassett argues that his conviction is not supported by sufficient evidence. This court has stated that the jury is to determine the weight and credibility to give conflicting testimony, and the jury's verdict should not be disturbed on appeal where sufficient evidence supports the verdict.[11]

The police discovered a methamphetamine lab in Tony Donn's residence, where Bassett was arrested. The police observed that a "cook" had recently taken place in the lab, but could not determine whether the cooking process had just begun or was already complete. The police matched Bassett's fingerprints to those found on a charcoal lighter and a canister of denatured alcohol in the lab.

There was conflicting evidence as to whether Bassett lived with Graham and Donn at the Pahrump residence. Several defense witnesses testified that Bassett lived in Las Vegas and that he went to

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[9]See State v. Kell, 61 P.3d 1019, 1031-32 (Utah 2002) (concluding that the district court did not err in admitting a medical examiner's report when the defendant had an opportunity to cross-examine the medical examiner regarding the contents of the report).

[10]See NRS 51.035 (permitting the admission of prior inconsistent statements made by a witness); NRS 50.135(2)(b) (allowing for the use of extrinsic evidence of a prior contradictory statement made by a witness if the witness is "afforded an opportunity to explain or deny the statement and the opposite party is afforded an opportunity to interrogate him thereon").

[11]Mason v. State, 118 Nev. ___, ___, 51 P.3d 521, 524 (2002).

Pahrump on the night of his arrest to return Graham's car. However, Donn testified that Bassett and Graham lived with him off and on at his residence. Moreover, upon searching the residence, the police found men's clothing in the master bedroom and women's and men's clothing in the other bedroom, and thus, opined that Graham and Bassett shared that bedroom. Although Graham testified that Bassett did not live with her and Donn, the State presented a letter from which it could be inferred that Bassett had been living with them and manufacturing methamphetamine for Donn to sell. Indeed, Detective Bret Empey testified that Donn admitted to being a small-time drug seller and informed him that Graham and Bassett had been living with him for a few weeks and were cooking methamphetamine for him.

Looking at the facts in the light most favorable to the State, we conclude that a rational trier of fact could have found the essential elements of the crimes charged beyond a reasonable doubt.[12] Accordingly, we conclude that sufficient evidence supports Bassett's conviction.

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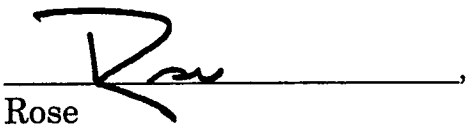
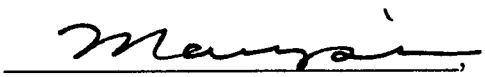
[12]See Grant v. State, 117 Nev. 427, 435, 24 P.3d 761, 766 (2001).

Having considered Bassett's arguments on appeal and concluding that they lack merit, we

ORDER the judgment of the district court AFFIRMED.



_____, J.
Rose



_____, J.
Maupin

_____, J.
Gibbons

cc: Hon. Robert W. Lane, District Judge
Robert E. Glennen III
Attorney General Brian Sandoval/Carson City
Nye County District Attorney/Pahrump
Nye County District Attorney/Tonopah
Nye County Clerk