



IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAMION MARQUIS BANKS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 90902-COA

ORDER OF AFFIRMANCE

Damion Marquis Banks appeals from a judgment of conviction, entered pursuant to a jury verdict, of trafficking in a schedule I controlled substance, 400 grams or more; trafficking in a schedule II controlled substance, 100 grams or more but less than 400 grams; possession of a schedule I controlled substance, 28 grams or more but less than 42 grams; possession of a schedule I controlled substance less than 14 grams; possession of a schedule I or II controlled substance for purpose of sales, third offense; possession of a modified semi-automatic firearm; possession of a machine gun; conspiring to violate the Uniform Controlled Substance Act, third offense; and two counts of possession of a firearm by a convicted felon. Second Judicial District Court, Washoe County; Hon. Barry L. Breslow, Judge.

Banks argues the district court abused its discretion in granting the State's request to continue the trial in violation of his constitutional and statutory speedy trial rights. The State argues that Banks forfeited this claim or, alternatively, that the continuance did not violate Banks' constitutional or statutory right to a speedy trial. Even assuming Banks sufficiently preserved this claim for review, *compare Anderson v. State*, 86 Nev. 829, 834, 477 P.2d 595, 598 (1970) (stating that, "before error for failure to accord a speedy trial

can be raised on appeal, objection to the trial date set must have been made in the trial court”), *with Belcher v. State*, No. 82255, 2022 WL 1261300, at *5 (Nev. Apr. 27, 2022) (Order of Affirmance) (reviewing a speedy-trial claim on the merits where the defendant “raised speedy-trial concerns in his motion for pretrial release or bail reduction”), we conclude he fails to demonstrate his speedy trial rights were violated.

This court applies a four-part balancing test in determining whether a defendant’s constitutional right to a speedy trial has been violated. *See State v. Inzunza*, 135 Nev. 513, 516, 454 P.3d 727, 731 (2019). However, to trigger this analysis, “the length of the delay must be presumptively prejudicial,” and “[a] post-accusation delay meets this standard as it approaches one year.” *Id.* (internal quotation marks omitted). Here, Banks’ trial began on March 25, 2025, less than seven months after Banks was arrested on August 27, 2024. Therefore, Banks fails to demonstrate that the delay was presumptively prejudicial, and we conclude he is not entitled to relief on this claim. *See Duckket v. State*, 142 Nev., Adv. Op. 9, 583 P.3d 241, 248 (2026) (“If no prejudice can be presumed from the delay, none of the other factors are considered.”).

Banks also contends that the delay violated his statutory right to a speedy trial. NRS 178.556(1) provides that, “[i]f a defendant whose trial has not been postponed upon the defendant’s application is not brought to trial within 60 days after the arraignment on the indictment or information, the district court may dismiss the indictment or information.” The supreme court has held that dismissal under NRS 178.556 is mandatory if the State fails to demonstrate good cause for the delay. *Duckket*, 142 Nev., Adv. Op. 9, 583 P.3d at 249. We review a district court’s determination of good cause for an abuse of discretion. *See Meegan v. State*, 114 Nev. 1150, 1153-54, 968 P.2d 292, 294

(1998), *abrogated on other grounds by Vanisi v. State*, 117 Nev. 330, 22 P.3d 1164 (2001). Here, the State sought a two-month continuance to obtain DNA results it believed were crucial to its case, and there is no indication in the record that the State was dilatory in preparing for trial. After review, we conclude the district court did not abuse its discretion in finding good cause and in granting the requested continuance. *See id.* Accordingly, we conclude no relief is warranted on this claim.

Banks also argues the district court abused its discretion by allowing the State to present evidence of his prior convictions. “NRS 48.045(2) allows litigants to present evidence of other acts when offered for certain limited nonpropensity purposes including proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.” *Dickey v. State*, 140 Nev. 8, 11, 540 P.3d 442, 448 (2024) (internal quotation marks omitted). However, other act evidence is presumed to be inadmissible; thus, such evidence may be admitted only when “(1) the [other] act is relevant to the crime charged and for a purpose other than proving the defendant’s propensity, (2) the act is proven by clear and convincing evidence, and (3) the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice.” *Bigpond v. State*, 128 Nev. 108, 116-17, 270 P.3d 1244, 1249-50 (2012). “The trial court’s determination to admit or exclude evidence of [other] acts is a decision within its discretionary authority and is to be given great deference[;] [i]t will not be reversed absent manifest error.” *Braunstein v. State*, 118 Nev. 68, 72, 40 P.3d 413, 416 (2002).

In this matter, the police observed Banks in the driver’s seat of a vehicle in a motel parking lot and ultimately discovered several controlled substances (including heroin), two firearms (including a .40 caliber Glock handgun), and several items related to the sale of narcotics in the vehicle or on

Banks' person. Prior to trial, the State sought to admit evidence that Banks had previously been convicted of possessing and selling heroin and of possessing a .40 caliber Glock handgun. The district court allowed the evidence to be admitted after determining that (1) the circumstances of the prior convictions were factually similar to the instant matter; (2) the prior convictions were relevant to show Banks' knowledge, motive, intent, and lack of accident or mistake; and (3) the prior convictions' high probative value was not outweighed by the danger of unfair prejudice.

Banks contends the district court abused its discretion in admitting this evidence because the convictions were old, he had offered to stipulate to his knowledge of heroin, and the State not only introduced the prior convictions but called two witnesses to testify to the underlying facts of two of the convictions. Even assuming the district court abused its discretion in admitting this evidence, *see Herbaugh v. State*, No. 91163, 2026 WL 2209103 (Nev. July 30, 2026) (Order of Affirmance) (concluding the district court abused its discretion in admitting evidence that the defendant had previously been convicted of possession of methamphetamine), we conclude any such error was harmless, *see Randolph v. State*, 136 Nev. 659, 668, 477 P.3d 342, 351 (2020) (recognizing that “[e]rrors in the admission of evidence under NRS 48.045(2) are subject to a harmless error review” (quotation marks omitted)).

The State presented independent and overwhelming evidence that Banks knowingly possessed the controlled substances and firearms found in the vehicle and that Banks was selling controlled substances from the vehicle. In particular, the State presented evidence that (1) the motel manager saw Banks parked at the motel on several occasions, saw Banks in the driver's seat at least once, and continually saw people approach the vehicle for a few minutes before leaving the vehicle; (2) surveillance video showed multiple

people approaching the vehicle Banks was in for a short time before leaving; (3) a police officer saw Banks in the driver's seat, saw he was holding heroin, and saw him place the heroin in his pocket; (4) the police officer told Banks to put his hands up, Banks did not initially comply with the order, and the officer saw Banks "feeling around the car, up onto the center console, as well as reaching down under the driver's seat"; (5) large quantities of controlled substances, as well as the two firearms, were found either in the immediate driver's area of the vehicle or were within arm's reach of the driver's seat; (6) Banks was likely a contributor to a DNA profile created from a swab of one of the firearms; and (7) messages recovered from Banks' phone showed Banks was organizing drug deals with people and telling them to meet him at the motel. In light of the foregoing, we conclude that Banks' prior convictions did not have a substantial and injurious impact on the verdict and that Banks is not entitled to relief on this claim. *See Tavares v. State*, 117 Nev. 725, 732, 30 P.3d 1128, 1132 (2001); *see also Dickey*, 140 Nev. at 15, 540 P.3d at 450 (concluding a district court's error in admitting other act evidence was harmless in light of the evidence of the defendant's guilt).

Banks also argues that his aggregate sentence of 25 to 79 years in prison shocks the conscience so as to constitute cruel and unusual punishment. Regardless of its severity, "[a] sentence within the statutory limits is not 'cruel and unusual punishment unless the statute fixing punishment is unconstitutional or the sentence is so unreasonably disproportionate to the offense as to shock the conscience.'" *Blume v. State*, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting *Culverson v. State*, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)); *see also Harmelin v. Michigan*, 501 U.S. 957, 1000-01 (1991) (plurality opinion) (explaining the Eighth Amendment does not require

strict proportionality between crime and sentence; it forbids only an extreme sentence that is grossly disproportionate to the crime).

The sentence imposed is within the parameters provided by the relevant statutes,¹ *see* NRS 193.130(2)(c)-(d); NRS 202.274(2); NRS 202.350(2)(b); NRS 202.360(1); NRS 453.336(2)(d)-(e); NRS 453.337(2)(c); NRS 453.3385(1)(a)-(b); NRS 453.401(1)(a), and Banks does not allege that those statutes are unconstitutional. After review, we conclude the sentence imposed is not grossly disproportionate to the crime and does not constitute cruel and unusual punishment.

Finally, Banks argues that cumulative error warrants reversal of his convictions. As previously discussed, even assuming the district court erred in admitting evidence of Banks' prior convictions, such error does not entitle Banks to relief. And Banks fails to demonstrate any additional error subject to cumulation. Therefore, we conclude Banks is not entitled to relief on this claim. *See Mulder v. State*, 116 Nev. 1, 17, 992 P.2d 845, 854-55 (2000). Accordingly, we

ORDER the judgment of conviction AFFIRMED.



Bulla, C.J.



Gibbons, J.



Westbrook, J.

¹Banks received concurrent and consecutive prison sentences of: 10 to 25 years in prison on Count I; 6 to 20 years in prison on Count II; 3 to 10 years in prison on Counts III and V; 1 to 4 years in prison on Counts IV, VI, and VII; 2 to 10 years in prison on Count VIII; and 2 to 6 years in prison on Counts IX and X.

cc: Hon. Barry L. Breslow, District Judge
Attorney General/Carson City
Ristenpart Law
Washoe County District Attorney
Second District Court Clerk