

IN THE SUPREME COURT OF THE STATE OF NEVADA

SEAN A. AMOS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39990

FILED

MAR 20 2003

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count each of burglary while in possession of a firearm and robbery with the use of a deadly weapon. The district court sentenced appellant Sean A. Amos to serve a prison term of 26 to 120 months for the burglary count and a concurrent prison term of 26 to 120 months for the robbery count with an equal and consecutive prison term for the deadly weapon enhancement.

Amos contends that the district court erred in denying his motion for a mistrial based on the improper admission of evidence. Specifically, Amos contends that the district court erroneously admitted hearsay testimony of Las Vegas Metropolitan Police Officers Jeff Goodwin and Paul Deangelis. We disagree.

Office Goodwin testified that, while on patrol, he responded to a high priority call of a robbery in progress. Over the hearsay objections of

defense counsel, Goodwin described the statements made by an officer pursuing Amos, which Goodwin heard live on the police radio:¹

The termination of the pursuit was when the suspect driving the vehicle lost control of the vehicle and run up onto a curb. From that point, the radio traffic was very loud, it was hard to understand right at that point. There was something where the officer almost rammed the vehicle due to the possibility of seeing the suspect with a firearm, and then the suspect immediately ran northbound over a wall into a residential area.

Officer Goodwin explained that he began to search the residential area identified on the radio and, thereafter, observed Amos come out of a residence. Goodwin testified that, initially, he assumed Amos lived at the residence and asked him to open the gate and house so that he could search the backyard. Amos agreed to Goodwin's request, but after several minutes of trying, was unable to open the gate or the house. Goodwin then observed a pile of clothes on the ground next to Amos, and based on that, and Amos' suspicious behavior, placed him under arrest.

After Amos was in custody, Officer Deangelis was assigned to take the report from the individual who lived at the residence. Officer Deangelis testified that he arrived at the residence within two minutes of Amos' arrest, and that Jae Soon Am, the individual who lived there, was a little nervous and fearful. Over the objections of defense counsel, Deangelis testified about Soon Am's statements describing the incident:

¹The statements were made by former Metro Officer William Butler, who did not testify at trial.

She told me that she was inside her house and she heard a lot of police sirens and a lot of confusion going on, and she then left her house and went into her garage to see what was going on. I guess that's when she opened her garage, and [saw] a black male adult hiding underneath her Lexus SUV that was parked inside the garage. At that time, the black male adult must have [seen] her and he then went through her inside garage door and out her front door, and I guess he closed it behind him or she closed it, I'm not sure about that.

The district court has broad discretion in deciding whether to admit evidence.² Additionally, “[a] statement merely offered to show that the statement was made and the listener was affected by the statement, and which is not offered to show the truth of the matter asserted, is admissible as non-hearsay.”³

In the instant case, we conclude that the district court acted within its broad discretion in admitting the officers' testimony and in denying Amos' motion for a mistrial.⁴ In denying Amos' motion for a mistrial, the district court expressly found that the officers' statements

²See Petrocelli v. State, 101 Nev. 46, 52, 692 P.2d 503, 508 (1985).

³Wallach v. State, 106 Nev. 470, 473, 796 P.2d 224, 227 (1990); see also NRS 51.035.

⁴See Geiger v. State, 112 Nev. 938, 942, 920 P.2d 993, 995 (1996) (“[I]t is within the sound discretion of the trial court to determine whether a mistrial is warranted. Absent a clear showing of abuse of discretion, the trial court's determination will not be disturbed on appeal.”) (citations omitted).

were not used to prove the truth of the matter asserted.⁵ Rather, the record reflects that the district court admitted both statements to explain the actions of the officers as they conducted their investigation of the robbery. The district court reasoned that Amos' flight from the officers and subsequent capture at Soon Am's residence was relevant to show the complete story of events on the day of the robbery, noting that Amos was not charged with any offenses arising from the pursuit or the subsequent entry into Soon Am's home.⁶ Accordingly, the district court did not abuse

⁵We note that Officer Goodwin's testimony about the pursuit would have been admissible under the present sense impression exception to the hearsay rule because his testimony concerned the perceptions of the officer-declarant as the pursuit of the robbery suspect was occurring. See NRS 51.085; Dearing v. State, 100 Nev. 590, 691 P.2d 419 (1984). Additionally, Officer Deangelis' testimony would have been admissible under the excited utterance exception to the hearsay rule because Soon Am's statements were made within minutes of finding a stranger hiding in her garage, while still under the stress of excitement caused by that startling event. See NRS 51.095; Lisle v. State, 113 Nev. 679, 941 P.2d 459 (1997). Because the statements contained particularized guarantees of trustworthiness in that they were made to report a crime as it occurred or immediately thereafter, we also conclude the admission of those statements did not violate Amos' right to confront the witnesses against him. See Franco v. State, 109 Nev. 1229, 1236-37, 866 P.2d 247, 252 (1993).

⁶See NRS 48.035(3); Brackeen v. State, 104 Nev. 547, 553, 763 P.2d 59, 63 (1988). Because the district court found that the statements were admissible to give a full and accurate account of the circumstances surrounding the commission of the crime, we also reject Amos' additional contentions that the district court erred in admitting the evidence without conducting a Petrocelli hearing because it was overly speculative or prejudicial. See Brackeen, 104 Nev. at 553, 763 P.2d at 63.

its discretion in finding that the statements concerning those events were admissible non-hearsay as they were not admitted to prove the truth of the matter.


Nonetheless, even assuming the district court's decision to admit the statements was erroneous, we conclude that the error was harmless in light of the overwhelming evidence of Amos' guilt presented at trial. In particular, two eyewitnesses identified Amos as the armed individual that entered the Ross Dress for Less Store, grabbed money from an open register, and ran out of the store. Additionally, Amos was caught in the vicinity where the suspect was last seen, exiting a residence in which he did not reside or know the occupant. Finally, after first denying driving the vehicle pursued by the police, at the second interrogation, Amos admitted that he was the driver of the vehicle police chased in the hot pursuit of the Ross robbery suspect, that he had crashed the vehicle and fled the scene; money and a gun were found in that vehicle, which was registered to Amos' relatives.⁷ In light of the overwhelming evidence of Amos' guilt, any error in admitting the alleged hearsay testimony was


⁷Although Amos did not testify at trial, during the second interrogation, Amos offered an alternative explanation for the hot pursuit. In particular, Amos explained that: (1) he did not stop when the police signaled him to because he had an outstanding traffic warrant; (2) the money inside the car was from a recently cashed paycheck; (3) the gun inside the car was always kept in the vehicle and belonged to his father-in-law; and (4) once he crashed the vehicle, he fled on foot and hid in an open garage because he thought the officer was trying to hit him with the patrol car.


harmless beyond a reasonable doubt.⁸ Therefore, we conclude that the district court did not err in denying Amos' motion for a mistrial.

Having considered Amos' contentions and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Gibbons

cc: Hon. Kathy A. Hardcastle, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Clark County Clerk

⁸See Turner v. State, 98 Nev. 243, 246, 645 P.2d 971, 972 (1982) (“Where the independent evidence of guilt is overwhelming, the improperly admitted evidence is harmless error and the resulting conviction will not be reversed.”).