IN THE SUPREME COURT OF THE STATE OF NEVADA

DELBERT M. GREENE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42110

FILED

MAY 18 2004

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

ORDER AFFIRMING IN PART AND REMANDING

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count each of burglary while in the possession of a deadly weapon (count I), conspiracy to commit robbery (count II), and robbery with the use of a deadly weapon (count III). The district court orally sentenced appellant Delbert M. Greene on September 9, 2003, to serve a prison term of 36-156 months for count I, a consecutive prison term of 18-60 months for count II, and a prison term of 48-180 months plus an equal and consecutive term for the deadly weapon enhancement for count III; the district court ordered count III "to run concurrently with count I and consecutively to Count II." Greene was also ordered to pay $996.00 in restitution jointly and severally with his accomplice. The formal judgment of conviction was entered on October 3, 2003, and once again ordered the sentence imposed for count III to run concurrently with count I and consecutively to count II. Additionally, the judgment of conviction failed to reference the equal and consecutive sentence imposed for the deadly weapon enhancement. The district court erred in sentencing Greene in two ways: (1) the sentence for count III cannot run concurrently with count I and consecutively to count II when the sentence imposed for count II was ordered to run consecutively to count I; and (2) as

noted, there is no mention of the deadly weapon enhancement imposed for count III. Therefore, we conclude that this case must be remanded to the district court for a new sentencing hearing.[1]

Greene contends that the district court erred during the trial by allowing the State to introduce into evidence a letter written by Greene to his incarcerated former codefendant, Gregory Harris. Greene argues that: (1) the contents of the handwritten letter "were unduly prejudicial, in light of [its] limited probative value"; and (2) the State never authenticated the letter or provided any proof that it was, in fact, authored by Greene. We conclude that Greene's contentions are without merit.

NRS 48.015 allows for the admission of 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." Nevertheless, even if evidence is relevant, it is "not admissible if its probative value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues or of misleading the jury."[2] With regard to the authentication of a letter, "[t]he requirement of

---

[1]One of Greene's contentions on appeal is that the district court abused its discretion at sentencing. Citing to Tanksley v. State, 113 Nev. 844, 852, 944 P.2d 240, 245 (1997) (Rose, J., dissenting), and Sims v. State, 107 Nev. 438, 441, 814 P.2d 63, 65 (1991) (Rose, J., dissenting), for support, Greene argues that this court should review the sentence imposed to determine whether justice was done. Because we conclude that a new sentencing hearing is required, we need not address Greene's contention at this time.

[2]NRS 48.035(1).

authentication or identification as a condition precedent to admissibility is satisfied by evidence or other showing sufficient to support a finding that the matter in question is what its proponent claims."[3] NRS 52.055 states that "[a]ppearance, contents, substance, internal patterns or other distinctive characteristics are sufficient for authentication when taken in conjunction with [other] circumstances." And finally, this court has stated that "[t]he district court has discretion to admit or to exclude evidence after balancing the prejudicial effect against the probative value. The decision to admit evidence is within the sound discretion of the district court and will not be disturbed unless it is manifestly wrong."[4]

We conclude that the district court did not err in admitting into evidence at trial the letter Greene wrote to his former codefendant, Harris. In the letter, Greene informed Harris that he intended on calling him to testify at his trial, and he provided Harris with detailed instructions on what exactly he wanted Harris to say. Greene explained to Harris why he was writing to him, stating, "you know where I'm coming from, I'm just trying to get shit right between us before I go to (trial)." And Greene also reminded Harris that "we don't want them thinking we conspired in what to say." On appeal, Greene contends that the State

---

[3]NRS 52.015(1) (emphasis added); see also Lopez v. State, 105 Nev. 68, 75, 769 P.2d 1276, 1281 (1989)("trial court has the discretion to determine whether, by 'other showing,' the requirement of authentication has been met").

[4]Elvik v. State, 114 Nev. 883, 897, 965 P.2d 281, 290 (1998) (citations omitted); see also Johnson v. State, 118 Nev. 787, 795, 59 P.3d 450, 456 (2002).

introduced the letter "for the purpose of intimating to the jury that it was necessary for Mr. Greene to suborn perjury to support his case . . . . [And] that it was an effort to influence Mr. Harris to testify in a manner inconsistent with the truth."

The district court concluded that the letter, although obviously prejudicial, was highly probative and relevant to rebut Greene's claim that he was not a willing and voluntary participant in the crime. And based on the earlier trial testimony of Greene, the district court stated that the letter was admissible and "goes directly to the claims that [Greene] made and to his credibility." We also note that the letter was redacted to delete any reference to the fact that Greene was incarcerated, his criminal history, his potential habitual criminal adjudication, any plea negotiations, and where the letter was mailed from. Based on all of the above, we conclude that the district court properly balanced the prejudicial effect of the letter versus its probative value, and did not commit manifest error in allowing for its admission.

Additionally, we conclude that the district court did not err in determining that the letter written by Greene met the statutory requirements and was sufficiently authenticated. The district court made a detailed finding on the record, and concluded that the letter "is what it purports to be – a letter from the defendant at the jail." In making that determination, the district court noted that the contents of the letter "spells out almost verbatim what [Greene] testified to," and therefore, was written either by Greene or someone at his request. More specifically: (1) Harris is referred to as "G," his nickname, while his full name appears on the front of the envelope; (2) the letter is signed, "Golde," which is

Greene's nickname; (3) there are references to the crime; (4) the return address on the outside of the envelope is that of the Clark County Detention Center (CCDC) where Greene was housed; (4) the letter was dated and postmarked at a time when Greene was present at CCDC; (5) the bar code at the bottom of the envelope indicates that the United States Postal Service processed it as mail coming from the jail; (6) Greene's testimony is nearly identical to how the letter instructs Harris to testify; and (7) a senior correctional officer with the Ely State Prison testified that he received and processed the letter sent by Greene to Harris in the ordinary course of business.[5]

After the district court orally ruled on the letter's admissibility, defense counsel stated that in light of the court's determination, Greene insisted on re-testifying and explaining his reasons for writing the letter to Harris. And finally, because Greene eventually admitted to writing the letter, he was unable to rebut the authentication.[6] Therefore, based on all of the above, we conclude that the district court did not err in finding that the letter was sufficiently authenticated as being written by Greene.

Having considered Greene's contentions and concluded that they are either without merit or moot, we

---

[5]See NRS 52.025 ("The testimony of a witness is sufficient for authentication or identification if he has personal knowledge that a matter is what it is claimed to be.").

[6]See NRS 52.015(3) ("Every authentication or identification is rebuttable by evidence or other showing sufficient to support a contrary finding.").

ORDER the judgment of the district court AFFIRMED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.[7]

Becker, J.
Becker

Agosti, J.
Agosti

Gibbons, J.
Gibbons

cc: Hon. Valerie Adair, District Judge
Brent D. Percival
Robert L. Langford & Associates
Delbert M. Greene
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

[7]Because Greene is represented by counsel in this matter, we decline to grant him permission to file documents in proper person in this court. See NRAP 46(b). Accordingly, the clerk of this court shall return to Greene unfiled all proper person documents he has submitted to this court in this matter.