

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID PHILLIP RUFFA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46569

FILED

JAN 24 2008

TRACEE K. LINDEMAN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, upon a jury verdict, of one count each of first-degree murder, first-degree kidnapping, and third-degree arson and from an order denying a motion for a new trial based on prosecutorial misconduct. Eighth Judicial District Court, Clark County; Joseph S. Pavlikowski, Senior Judge. The district court sentenced Ruffa to life imprisonment without the possibility of parole for the murder charge, plus a concurrent life sentence without the possibility of parole for the kidnapping charge, plus a concurrent sentence of a minimum of 19 months to a maximum of 48 months for the arson charge. The district court gave Ruffa 575 days credit for time served.

The parties are acquainted with the facts, and we recount them only as necessary for our decision.

Ruffa's right to a speedy trial was not violated

Ruffa contends that the State violated his Sixth Amendment constitutional right to a speedy trial. We disagree.

The Sixth Amendment to the United States Constitution guarantees an accused's right to a speedy trial.¹ Nevada courts follow the United States Supreme Court decision in Barker v. Wingo² to determine whether the government violated a defendant's constitutional right to a speedy trial.³ Barker created a four-factor balancing test that weighs the "[l]ength of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant."⁴ None of these factors alone are outcome determinative and each factor must be carefully considered in light of the circumstances of each case.⁵

After weighing all four of the Barker factors, we conclude that the State did not violate Ruffa's constitutional right to a speedy trial. Ruffa was arrested in May 2002, arraigned in July 2002, and the trial commenced in July 2005. The first factor weighs in Ruffa's favor because there was a three-year period between Ruffa's arraignment and his trial.⁶ However, that the second factor weighs against Ruffa because the four continuances arose mostly because of witness unavailability. The third

¹U.S. Const. amend. VI. NRS 178.556(2) states that the district court may dismiss the complaint against a defendant who is not brought to trial within 60 days of the arraignment.

²407 U.S. 514 (1972).

³Furbay v. State, 116 Nev. 481, 484-85, 998 P.2d 553, 555 (2000).

⁴Barker, 407 U.S. at 530.

⁵Id. at 533; Sheriff v. Berman, 99 Nev. 102, 107, 659 P.2d 298, 301 (1983).

⁶A delay in excess of one year is presumptively prejudicial. Doggett v. U.S., 505 U.S. 647, 652 n.1 (1992).

factor weighs in Ruffa's favor because he asserted his right at his initial arraignment on July 30, 2002, and again at calendar call on September 26, 2002. Lastly, and most importantly, the prejudice factor weighs against Ruffa because he was not in state custody for two of the three relevant years.⁷ Ruffa's argument that his alibi witness' memory became impaired after three years lends him little support because he does not provide any evidence of how the alleged impairment affected the witness' testimony at trial. Accordingly, we reject this contention.

The district court did not abuse its discretion when it admitted the statement the victim made to her supervisor

Ruffa contends that his conviction must be overturned because the district court abused its discretion when, over his pretrial motion to suppress, it admitted part of a statement that the victim made to her supervisor under a hearsay exception. We disagree. This court reviews a district court's decision to admit evidence for an abuse of discretion and will reverse only if the objecting party demonstrates that a manifest error occurred.⁸

NRS 51.105(1) states in pertinent part that a "statement of the declarant's then existing state of mind, . . . such as intent[] [or] plan . . . , is not inadmissible under the hearsay rule." For a statement to be admitted under NRS 51.105(1), the declarant's state of mind must be more

⁷Of the four Barker factors, this court may most heavily weigh a showing of prejudice, or absence thereof, to the defendant. Berman, 99 Nev. at 107, 659 P.2d at 301.

⁸Tabish v. State, 119 Nev. 293, 310, 72 P.3d 584, 595 (2003).

relevant than prejudicial and either accompanied by a limiting instruction or parsed to exclude the objectionable portions.⁹

We conclude that the district court did not abuse its discretion when it admitted the victim's statement to her supervisor on the night of her murder for three reasons. First, the statement was relevant because it tended to disprove Ruffa's claim that he did not meet with the victim on the night of her murder. Second, the statement was more relevant than prejudicial because it evidenced the victim's plan to meet with Ruffa, and the district court minimized the statement's prejudicial impact by providing a limiting instruction and by also parsing a unduly prejudicial portion of the statement that implicated Ruffa in the murder. Third, the hearsay statement satisfied NRS 51.105(1) because it evidenced the victim's then existing state of mind and showed her intent to meet with Ruffa later on in the evening after work. Accordingly, we reject this contention.

The district court did not abuse its discretion when it admitted the temporary protective order

Ruffa contends that his conviction must be overturned because the district court abused its discretion when it allowed the State to introduce evidence concerning the victim's temporary protective order (TPO) against Ruffa. We disagree.

Under NRS 48.035(1), relevant evidence "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." Under NRS 48.045(2), "[e]vidence of other . . . wrongs . . . is not admissible to prove the

⁹Id. at 310, 72 P.3d at 595.

character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.”

We conclude that the district court did not abuse its discretion when it admitted the TPO into evidence. At trial, witnesses testified that (1) Ruffa believed that if the victim did not appear at the custody hearing, he would obtain sole custody of their son, and (2) Ruffa was extremely angry at the victim for having obtained the TPO and temporary custody of their son. Thus, the TPO was relevant to show proof of motive and intent. Furthermore, we conclude that NRS 48.035 does not apply because the TPO’s probative value was not substantially outweighed by the danger of unfair prejudice. Accordingly, we reject this contention.

Ruffa’s due process rights were not violated when the prosecutor withheld certain DNA evidence until one week before trial

Ruffa contends that the State violated his due process rights when it did not disclose its possession of certain DNA evidence, which was material to the case and favorable to his defense, until approximately one week before trial. Ruffa further contends that the district court should have granted his motion for a mistrial. We disagree.

The prosecution violates a defendant’s due process rights if it does not timely disclose material evidence that is favorable to the defense.¹⁰ To determine whether a due process violation occurred, this court will examine whether: (1) the State suppressed the evidence after

¹⁰Rippo v. State, 113 Nev. 1239, 1256-57, 946 P.2d 1017, 1028 (1997) (discussing suppression, favorability, and materiality); see United States v. Pollack, 534 F.2d 964, 973 (D.C. Cir. 1976) (discussing timeliness).

the defendant requested to review it; (2) the evidence is favorable to the defendant's case; and (3) the evidence is material.¹¹ "Evidence is material if there is a reasonable probability that the result would have been different if the evidence had been disclosed."¹² A disclosure is timely if it permits the party to effectively evaluate, prepare, and present his or her claim or defense at trial.¹³

We conclude that Ruffa's due process rights were not violated when the State did not release certain DNA evidence to Ruffa until shortly before trial for three reasons. First, the DNA evidence was not material to the State's murder, kidnapping, and arson charges because the DNA did not implicate Ruffa; thus, there was not a reasonable probability that this case's result would have been different if the State had more timely disclosed the evidence. Second, the DNA evidence was not favorable to Ruffa because it did not match the DNA located at the crime scene; thus, Ruffa remained a suspect. Third, Ruffa waived his due process claim when he failed to seek a trial continuance after receiving the DNA evidence. Accordingly, we conclude that Ruffa's due process rights were not violated.

The district court did not violate Ruffa's right to confrontation by limiting his cross-examination of Detective Collins

Ruffa contends that the district court violated his constitutional right to confront witnesses when it limited his ability to cross-examine Detective Collins about his potential bias and his

¹¹Rippo, 113 Nev. at 1257, 946 P.2d at 1028.

¹²Lay v. State, 116 Nev. 1185, 1194, 14 P.3d 1256, 1262 (2000).

¹³Pollack, 534 F.2d at 973.

instruction to the DNA laboratory not to disclose DNA evidence that implicated two other individuals. We disagree.

“[T]rial judges retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on such cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness’ safety, or interrogation that is repetitive or only marginally relevant.”¹⁴ “However, the trial court’s discretion is [narrower] where bias is the object to be shown, and an examiner must be permitted to elicit any facts which might color a witness’s testimony.”¹⁵ The district court cannot prohibit a defendant from “engaging in otherwise appropriate cross-examination designed to show a prototypical form of bias . . . ‘relating to the reliability of the witness.’”¹⁶ The district court must allow the proposed cross-examination if questions would lead a “reasonable jury [to] . . . receive[] a significantly different impression of [the witness’s] credibility had . . . counsel been permitted to pursue his proposed line of cross-examination.”¹⁷

We conclude that the district court did not violate Ruffa’s confrontation rights when it limited his cross-examination of Detective Collins for three reasons. First, Ruffa sought to question Detective Collins about his motive for creating a separate file for the DNA evidence of two

¹⁴Delaware v. Van Arsdall, 475 U.S. 673, 679 (1986).

¹⁵Bushnell v. State, 95 Nev. 570, 572, 599 P.2d 1038, 1040 (1979).

¹⁶Van Arsdall, 475 U.S. at 680 (quoting Davis v. Alaska, 415 U.S. 308, 318 (1974)).

¹⁷Id.

other suspects. However, Ruffa fails to explain how his proposed line of questioning would have exposed any bias. Second, Ruffa's proposed line of questioning was irrelevant because the State dropped the conspiracy charge; thus, the DNA evidence did not implicate him in a crime. Third, and most importantly, the district court gave Ruffa wide latitude to cross-examine Detective Collins about: (1) the fact that additional DNA samples were sent to the lab and that Detective Collins discussed the matter with the district attorney, (2) the other suspects' names, and (3) the negative test results. Accordingly, we conclude that the district court did not violate Ruffa's confrontation rights.

The State did not violate Ruffa's right to a fair trial

Ruffa contends that the prosecutor's comments during his opening statement deprived him of his right to a fair trial and that the district court correctly sustained his objection. Additionally, Ruffa argues that the State improperly questioned crime scene analyst, Maria Weir. We disagree.

The prosecutor's opening comments were not prejudicial

"To determine if prejudicial prosecutorial misconduct occurred, the relevant inquiry is whether a prosecutor's statements so infected the proceedings with unfairness as [to result in] a denial of due process."¹⁸ This court considers the context of such statements, and "a criminal conviction is not to be lightly overturned on the basis of a prosecutor's comments standing alone."¹⁹ "The standard for determining whether such remarks are prejudicial is whether the error is harmless beyond a

¹⁸Thomas v. State, 120 Nev. 37, 47, 83 P.3d 818, 825 (2004).

¹⁹Id. (quoting United States v. Young, 470 U.S. 1, 11 (1985)).

reasonable doubt.”²⁰ Improper statements are “harmless beyond a reasonable doubt if” (1) the comments were merely passing in nature, or (2) “there is overwhelming evidence of guilt.”²¹

We conclude that the prosecutor’s opening statements did not violate Ruffa’s right to a fair trial for three reasons. First, the prosecutor’s opening statements about Ruffa’s marital problems and “crumbling” life were harmless beyond a reasonable doubt because they were made in passing, and Ruffa does not show any evidence of bad faith. Second, the prosecutor’s statements did not infect the proceedings with unfairness because the State produced overwhelming evidence of guilt at trial. Third, the district court sustained Ruffa’s objection and admonished the jury not to consider the statement, curing any potential unfairness.

The State did not improperly question Weir

Failure to object to an issue at trial generally “precludes appellate review” of that issue unless there is plain error.²² Under plain error review, “the burden is on the defendant to show actual prejudice or a miscarriage of justice.”²³ Actual prejudice or a miscarriage of justice occurs when “a prosecutor’s statements so infect[] the proceedings with unfairness as to [result in] a denial of due process.”²⁴

²⁰Harkness v. State, 107 Nev. 800, 803, 820 P.2d 759, 761 (1991).

²¹Morris v. State, 112 Nev. 260, 264, 913 P.2d 1264, 1267-68 (1996) (using the two-part test to determine whether references to the defendant’s silence were harmless beyond a reasonable doubt).

²²Green v. State, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003).

²³Id. at 545, 80 P.3d at 95.


²⁴Thomas v. State, 120 Nev. 37, 47, 83 P.3d 818, 825 (2004).

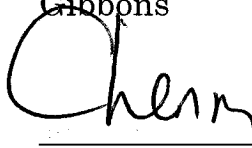
We review Ruffa's argument for plain error because he did not object to the State's questions at trial. Under plain error review, we conclude that the State's questioning of crime scene analyst, Maria Weir, did not violate Ruffa's right to a fair trial. The district court ordered that one of the State's expert witnesses could not testify about a fingerprint discovered on the victim's eyeglasses. At trial, the State asked Weir whether that fingerprint could be compared to another known fingerprint. Weir responded that a comparison could be made, but that she had not undertaken any such comparison. We conclude that the State's line of questioning was not prosecutorial misconduct and that the district court did not plainly err when it allowed the State to conduct its examination. Accordingly, we conclude that Ruffa's due process rights were not violated.

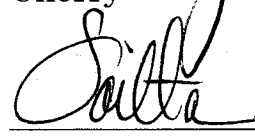
CONCLUSION

We conclude that the district court did not abuse its discretion and that Ruffa's arguments lack merit. Accordingly, we

ORDER the judgment of conviction **AFFIRMED**.


_____, C.J.
Gibbons


_____, J.
Cherry


_____, J.
Saitta

cc: Chief Judge, Eighth Judicial District
Hon. Joseph S. Pavlikowski, Senior Judge
Special Public Defender David M. Schieck
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk