IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES DEAN VIOX,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 58647

FILED

JUN 13 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Malone
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of battery with a deadly weapon resulting in substantial bodily harm. Fourth Judicial District Court, Elko County; Andrew J. Puccinelli, Judge. Appellant Charles Dean Viox raises three errors on appeal.[1]

First, Viox contends that the district court erred by admitting hearsay testimony, over his objection, in violation of the Confrontation Clause. See U.S. Const. amend. VI. The district court concluded that the hearsay statements of a unavailable witness were admissible, through the testimony of two officers, under the ongoing emergency exception to the

[1]Viox also contends that he was denied effective assistance of counsel; however, such claims are not appropriate for review on direct appeal from a judgment of conviction and we therefore decline to address Viox's arguments in this regard. See Pellegrini v. State, 117 Nev. 860, 883, 34 P.3d 519, 534-35 (2001). To the extent Viox contends that he was denied the right to counsel because the district court failed to substitute counsel for Frederick B. Lee, Jr., this contention is belied by the record. Viox was represented by Andrew M. Mierins at trial.

Confrontation Clause. See Michigan v. Bryant, 562 U.S. ___, ___, 131 S. Ct. 1143, 1157 (2011). We conclude that the district court erred.

When the first officer arrived at the scene, the victim was already being treated by paramedics for injuries from a baseball bat. Before questioning the unavailable witness, the officer spent approximately five minutes photographing the victim's injuries, located Viox in the backyard, and obtained a written statement from another witness. When asked if he was looking for potential information that could be turned over to the district attorney's office, the first officer answered in the affirmative. A second officer testified that before he spoke to the unavailable witness, other officers had secured the scene of the crime and that "[b]ased on the posture and actions of everybody" he did not believe there was a "threat of [ongoing] harm at that moment."

We conclude that both officers were focused on "'prov[ing] past events potentially relevant to later criminal prosecution,'" rather than "'end[ing] a threatening situation'" or "responding to the emergency." Bryant, 562 U.S. at ___, 131 S. Ct. at 1157 (alterations in original) (quoting Davis v. Washington, 547 U.S. 813, 822, 832 (2006)). Although the district court erred by admitting the hearsay testimony of the unavailable witness, we conclude that this error was harmless because the hearsay testimony was cumulative to the testimony from other witnesses including Viox's own statements to police officers. See Delaware v. Van Arsdall, 475 U.S. 673, 684 (1986) (explaining that Confrontation Clause errors are subject to harmless-error analysis); Stamps v. State, 107 Nev. 372, 377, 812 P.2d 351, 354 (1991) (listing the relevant factors).

Second, Viox contends that the State violated his due process and speedy trial rights because it waited 10 months after the incident to

file charges. We disagree. Viox's speedy trial rights did not attach, see State v. Gattuso, 108 Nev. 49, 51, 825 P.2d 569, 570 (1992), the statute of limitations had not run, see NRS 171.085, and Viox does not allege that the "delay was an intentional device to gain tactical advantage over the accused," see United States v. Marion, 404 U.S. 307, 324 (1971). Therefore, we conclude that his claim lacks merit. See State v. Autry, 103 Nev. 552, 556, 746 P.2d 637, 640 (1987).

Third, Viox contends that the district court erred by prohibiting him from impeaching the victim with a prior conviction because it was less than 10 years old on the date of the incident. Because Viox cites no authority for the proposition that the remoteness determination in NRS 50.095 is bounded by the date of the incident, see contra Trindle v. Sonat Marine Inc., 697 F. Supp. 879 (E.D. Pa. 1988) (collecting cases), and the victim's prior conviction was more than ten years old well before trial, we conclude that this claim lacks merit, see Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) ("It is appellant's responsibility to present relevant authority and cogent argument[.]").

Having considered Viox's contentions and concluded that he is not entitled to relief, we

ORDER the judgment of conviction AFFIRMED.

Saitta, J.
Saitta

Pickering, J.
Pickering

Hardesty, J.
Hardesty

cc: Fourth Judicial District Court Dept. 2, District Judge
David D. Loreman
Attorney General/Carson City
Elko County District Attorney
Elko County Clerk