

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOHNNY EARL BAGGETT, JR., A/K/A
JOHNNY BAGGETT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 77888-COA

FILED

APR 23 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Johnny Earl Baggett, Jr. appeals from a judgment of conviction, pursuant to a jury verdict, of two counts of first-degree murder with the use of a deadly weapon; burglary; robbery with the use of a deadly weapon; two counts of assault with a deadly weapon; three counts of discharging a firearm at or into an occupied structure, vehicle, aircraft, or watercraft; three counts of discharging weapon where a person might be endangered; and carrying a concealed firearm or other deadly weapon. Eighth Judicial District Court, Clark County; Carolyn Ellsworth, Judge.

On September 6, 2016, two men were shot multiple times and murdered in a car parked at an apartment complex in Las Vegas.¹ Evidence showed that both men had been shot from inside the car with bullet trajectories suggesting the shooters were in the back seat. The evidence also suggested the shooters used two different guns; the police found five 9 millimeter bullet casings and two .40 caliber casings in the car. The police found a wallet on the back seat of the car with Baggett's driver's license and credit card in it. Two witnesses saw two black men leaving the apartment complex where the shooting took place.

¹We do not recite the facts except as necessary for our disposition.

On September 18, 2016, Tyrin Johnson and Charles Barrett were at the Miracle Mile Shops on the Strip. Barrett fired a .40 caliber handgun inside one of the shops, abandoned the gun, and was later arrested for that shooting.² The weapon was recovered by police and it matched one of the weapons used in the September 6 murders.

On the evening of September 24, 2016, Johnson and Baggett were at a house party in Las Vegas. Baggett and another guest began to fight at the party, outside the house. Baggett pulled out a gun and fired one shot into the air and two towards the house. A few hours later, in the early morning of September 25, Baggett and Johnson went to Caesars Palace and got into a confrontation with other men. Video surveillance showed that while in the parking garage, Baggett fired a gun at the men who were on the other side of the garage. Baggett gave the gun to Johnson, who went to the car they arrived in and put the gun in the glovebox. Police arrived and arrested Baggett and Johnson. On Baggett's person, police found a bank card belonging to the host of the house party. When police searched the car, they found a 9 millimeter pistol and property stolen from the house party. Ballistic tests revealed that the 9 millimeter pistol was used to kill one of the victims in the September 6 murders.

Baggett was initially charged for the crimes committed at the house party and Caesars Palace. A few months later, he was charged with the September 6 murders. The district court granted the State's request to join the cases for trial. At trial, there was a concern raised by the court about a translation by an interpreter. A witness testified in Spanish that one of the men he saw after the shootings on September 6 was wearing a green

²While Baggett was not at this shooting, his attorney did not object to this evidence for strategic reasons. However, those reasons were not revealed on the record.

shirt. The interpreter failed to translate the statement about the green shirt. The district court held a bench conference and mentioned to both attorneys that the green shirt detail had not been translated. After the bench conference, the State asked the witness if one of the men he saw was wearing a green shirt. Baggett did not object but did express concern that other details may have been mistranslated. No other evidence in the trial connected Baggett to a green shirt. The jury convicted Baggett of all 13 charges.

At sentencing, Baggett submitted medical reports that he had been diagnosed with bipolar disorder in 2011. The district court noted that the medical reports also showed that he had been taken off his bipolar medication a few months earlier because the medication was not necessary. After hearing the victim impact statements, the district court sentenced Baggett to consecutive life terms without the possibility of parole along with other concurrent and consecutive terms of imprisonment.

On appeal, Baggett argues that (1) the district court abused its discretion when it joined the cases; (2) plain error occurred when the district court admitted police body cam videos, autopsy photos, and evidence of the Miracle Mile, house party, and Caesars Palace shootings; (3) Baggett's confrontation rights were violated when the interpreter mistranslated the witness' testimony; (4) the district court was biased against him during sentencing leading to an abuse of discretion; and (5) cumulative error requires the reversal of his conviction.

The district court did not abuse its discretion by joining the cases

Baggett argues that the district court abused its discretion when it joined the two cases because the offenses were not based on the same act or transaction and were not part of a common scheme or plan. The State

argues that the acts were connected together and thus joinder was proper. We agree with the State.

Appellate courts review a district court's joinder decision for an abuse of discretion. *Farmer v. State*, 133 Nev. 693, 701, 405 P.3d 114, 122 (2017). A district court may authorize joinder when the offenses are “[(1) [b]ased on the same act or transaction; or . . . [(2) [b]ased on two or more acts or transactions connected together or [(3) constituting parts of a common scheme or plan.” NRS 173.115(1)(a)-(b).³ If the district court found a proper basis for joinder, joinder would still be improper if it created manifest prejudice against the defendant. *Rimer v. State*, 131 Nev. 307, 323-24, 351 P.3d 697, 709 (2015) (noting that severance is only proper if “[t]he simultaneous trial of the offenses [would] render the trial fundamentally unfair” (internal quotation marks omitted)). If joinder is not manifestly prejudicial, but amounts to prejudice nonetheless, joinder is still acceptable and the remedy for the prejudice, if any, is left to the district court's discretion. *Id.* at 323, 351 P.3d at 709.

The charges are connected together

Charges are connected together under NRS 173.115(1)(a) if “evidence of either crime would be admissible in a separate trial regarding the other crime.”⁴ *Id.* at 321, 351 P.3d at 708. To determine whether evidence is admissible in the joinder context, the district court must only

³NRS 173.115(1)(a)-(b) only has two enumerated categories that authorize joinder. However, Nevada caselaw recognizes that there are three distinct categories in the statute that may support joinder. *See Farmer*, 133 Nev. at 697, 405 P.3d at 119. We note that NRS 173.115(2) was renumbered as NRS 173.115(1)(b) in 2017. 2017 Nev. Stat., ch. 235, § 1, at 1242.

⁴*Baggett* only discusses two of the joinder methods under NRS 173.115(1). The State addresses the third.

ensure that the evidence is used “for a relevant, nonpropensity purpose.” *Id.* at 322, 351 P.3d at 708-09. “Evidence of prior criminal behavior may only be admitted to prove identity . . . when that prior behavior demonstrates characteristics of conduct which are unique and common to both the defendant and the perpetrator whose identity is in question.” *Coty v. State*, 97 Nev. 243, 244, 627 P.2d 407, 408 (1981).

Evidence of the September 25 Caesars Palace shooting could be admitted to help show the identity of the September 6 murderer. Baggett was arrested at Caesars Palace. Surveillance video showed that he used a handgun during that shooting and it was recovered in a car connected to him. Ballistic tests indicated that weapon was one of the weapons used in the September 6 murders.⁵ Thus, the evidence was highly relevant and was not admitted to show a propensity to commit crimes, but was instead used to help show the identity of one of the September 6 murderers. If the charges had been tried separately, evidence of the Caesars Palace shooting could have been admitted in a trial for the September 6 murder. Thus, the crimes are sufficiently connected to allow joinder and the district court did not abuse its discretion.⁶ However, once a proper basis for joinder is found, joinder may still be inappropriate if it causes manifest prejudice.

⁵Additionally, to help prove Baggett’s identity as the Caesars Palace shooter, Baggett’s wallet was found at the scene of the September 6 shooting, and the same gun Baggett used in the Caesars Palace shooting was used in the September 6 shooting.

⁶The evidence tying Baggett to the crimes at the house party and to the Caesars Palace shooting is clear. The Caesars Palace crimes occurred within a few hours of the house party. Also, Baggett was wearing the same jacket at Caesars Palace that witnesses at the house party described. Finally, when Baggett was arrested, he was in possession of items stolen from the house party. Therefore, the crimes from these two events were charged in the same

Baggett has not shown manifest prejudice

“[T]he defendant must demonstrate that a joint trial would be manifestly prejudicial. The simultaneous trial of the offenses must render the trial fundamentally unfair, and hence, result in a violation of due process.” *Rimer*, 131 Nev. at 323-24, 351 P.3d at 709 (internal quotation marks omitted); *see also Floyd v. State*, 118 Nev. 156, 164, 42 P.3d 249, 255 (2002), *abrogated on other grounds by Grey v. State*, 124 Nev. 110, 178 P.3d 154 (2008).

Here, Baggett argues that the State requested joinder in order to improperly compile evidence of Baggett’s other bad, violent, irrelevant, and inadmissible conduct in general terms.⁷ However, as stated above, although the evidence suggested that Baggett had violent tendencies, the State used this evidence to help prove identity, which was relevant and admissible. Further, joinder promoted judicial economy. *See Rimer*, 131 Nev. at 322, 351 P.3d at 708. Thus, Baggett has failed to show that joinder was manifestly prejudicial such that it violated his right to due process.

Baggett has not shown plain error occurred when the district court admitted evidence of police body cam video footage, autopsy photographs and other evidence regarding the Miracle Mile, house party, and Caesars Palace shootings

Baggett argues that plain error occurred when the district court admitted police body cam video footage of the murder crime scene, autopsy

information. We also note that Baggett did not file a motion to sever the house party crimes from the Caesars Palace crimes.

⁷Baggett argues that the evidence of the Miracle Mile shooting was prejudicial in the joinder context. However, Baggett was never charged with any crime stemming from that incident because he was not present. Thus, there could be no joinder of charges from this incident, and the argument is without merit. Furthermore, he did not object at trial to the admission of this evidence for strategic reasons following a bench conference.

photographs of the two victims, and evidence regarding the Miracle Mile, house party, and Caesars Palace shootings, even though Baggett did not object at trial. We disagree.

“We [typically] review a district court’s decision to admit or exclude evidence for an abuse of discretion,’ but ‘failure to object precludes appellate review of the matter unless it rises to the level of plain error.” *Franks v. State*, 135 Nev. 1, 3, 432 P.3d 752, 754-55 (2019) (alteration in original) (quoting *McLellan v. State*, 124 Nev. 263, 267, 182 P.3d 106, 109 (2008) (internal quotation marks omitted)). Under plain error review, the “appellant must demonstrate that: (1) there was an error; (2) the error is plain, meaning that it is clear under current law from a casual inspection of the record; and (3) the error affected the defendant’s substantial rights.” *Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48 (internal quotation marks omitted), *cert. denied*, ___ U.S. ___, 139 S. Ct. 415 (2018).

Here, Baggett did not submit copies of the photographs or the body camera footage. Thus, we are unable to review it to determine whether the district court committed plain error by admitting it. Due to Baggett’s failure to submit the photographs and body camera footage, we presume that the missing portion of the record supports the conclusion that admitting the evidence was not error. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) (stating that it is the appellant’s responsibility to make an adequate appellate record and, “[w]hen an appellant fails to include necessary documentation in the record, we necessarily presume that the missing portion supports the district court’s decision”).

Baggett also does not point to any specific evidence regarding the house party and Caesars Palace shootings that would show plain error. Baggett argues that admitting the evidence from those events, as a whole,

was error. However, Baggett was charged with crimes related to those events, and thus the State needed to offer evidence to prove its case regarding those charges. Thus, we conclude that there was no plain error.⁸

Baggett's confrontation rights were not violated when the interpreter incorrectly translated the testimony

Baggett argues that his right to a fair trial was violated because he could not fully confront a witness whose testimony was not completely translated by the interpreter. We disagree.

The Nevada Supreme Court has created a procedure for correcting interpreter errors:

If there is a challenge to the interpreter's translation of the trial testimony, the challenging party should either move for a new trial under NRS 176.515 if the translation inaccuracies are discovered within the applicable time frame or, in the alternative, move to modify or correct the trial record on appeal pursuant to NRAP 10(c).

Ouanbengboune v. State, 125 Nev. 763, 769, 220 P.3d 1122, 1126 (2009). The defendant must show "that the discrepancies fundamentally altered the substance of [the] testimony." *Id.* at 773, 220 P.3d at 1129. Even if the defendant has shown the testimony was fundamentally altered by the interpreter, if there is still overwhelming evidence of his or her guilt, the prejudice caused by the interpreter may not require a new trial. *Id.* at 772-73, 220 P.3d at 1128-29; *see also United States v. Long*, 301 F.3d 1095, 1105 (9th Cir. 2002) (stating that "interpreter problems [are viewed] within the

⁸The only questionable evidence admitted was related to the Miracle Mile shooting because Baggett was not at this shooting. However, at trial, Baggett's counsel indicated that he was fine with evidence of this shooting being admitted for strategic reasons. Furthermore, when witnesses testified about this shooting, the district court clarified for the jury that Baggett was not present. Thus, we conclude that this was not plain error.

context of an entire trial,” and if there is other evidence to support the government’s case, there is likely no error). Furthermore, a federal court denied a Confrontation Clause challenge due to an interpreter’s occasional failures to provide a word-for-word translation because such failures do “not necessarily contravene a defendant’s constitutional rights.” *Long*, 301 F.3d at 1105.

Here, the only error Baggett points to—that the interpreter incompletely translated the witness testimony by omitting that one of the men leaving the scene of the murders was wearing a green shirt—was corrected without objection in front of the jury. Furthermore, Baggett failed to follow the procedure outlined in *Ouanbengboune* because he has not identified any other errors in the interpreter’s translation nor has he moved to correct the record. Additionally, the important details from the witness were corroborated by another witness. Finally, the one mistake was inconsequential because no other evidence linked a green shirt to Baggett. Therefore, there was no violation of Baggett’s confrontation rights.


The district court was not biased during sentencing and thus did not abuse its discretion


Baggett next argues that the district court was biased when it disregarded evidence of Baggett’s mental condition. We disagree.

A trial court’s sentencing decisions are reviewed for an abuse of discretion. *Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987). “[A] judge is presumed to be impartial.” *Ybarra v. State*, 127 Nev. 47, 51, 247 P.3d 269, 272 (2011). Furthermore, “remarks of a judge made in the context of a court proceeding are not considered indicative of improper bias or prejudice unless they show that the judge has closed his or her mind to the presentation of all the evidence.” *Cameron v. State*, 114 Nev. 1281, 1283, 968 P.2d 1169, 1171 (1998).

Here, Baggett presented evidence that he had been diagnosed with bipolar disorder. However, the district court noted that Baggett had been taken off his bipolar medication because it was unnecessary. The district court focused on Baggett's other diagnosis—oppositional defiance disorder. The district court demonstrated that it considered all of the information Baggett presented and decided to sentence Baggett to life in prison without parole because of the severity of the crimes. *See Parrish v. State*, 116 Nev. 982, 988, 12 P.3d 953, 957 (2000) (“[T]he district court is afforded wide discretion when sentencing a defendant.”). We conclude that Baggett has failed to demonstrate that the district court abused its discretion at sentencing by exhibiting bias.⁹ Accordingly, we

ORDER the judgment of conviction AFFIRMED


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Carolyn Ellsworth, District Judge
Robert L. Langford & Associates
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

⁹Baggett also argues that cumulative error requires the reversal of his conviction. Because Baggett has not shown any error, this argument is without merit.