

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MATTHEW DWAYNE MYERS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 79685-COA

FILED

NOV 25 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Matthew Dwayne Myers appeals from a judgment of conviction, entered pursuant to a jury verdict, of multiple counts of theft and exploitation of an older/vulnerable person. Eighth Judicial District Court, Clark County; William D. Kephart, Judge.¹

Friederike Willard and her husband, James Willard, owned several Las Vegas area properties, including an apartment complex in Henderson known as the Oceanside Apartments ("Oceanside").² James had a physical therapist named Doug Lancaster. Doug introduced the Willards to his wife, Rita Lancaster, a CPA. In 2003, Rita began handling the Willards' tax preparation.

Myers lived at Oceanside and formed a relationship with the Willards. In 2005, the Willards hired Myers to help manage Oceanside. In exchange, the Willards allowed Myers to live at Oceanside rent-free, and they occasionally paid for his groceries and medical expenses. James died in 2009. Friederike was 83 years old at the time. Sometime after James

¹Senior Judge James Bixler issued the pretrial ruling that is at issue on appeal. Judge William Kephart presided over the trial and confirmed the ruling.

²We recount the facts only as necessary for our disposition.

died, Doug became a caretaker for Friederike. In March 2014, Friederike added Doug, and Doug and Rita's children, as beneficiaries in her will. Friederike did not, however, include Rita as a beneficiary.³

Beginning in 2011, Myers began assisting Friederike by managing the bills and collecting the rents for Oceanside. Myers also helped Friederike manage her personal expenses. Friederike authorized a credit card connected to the Oceanside accounts for Myers to use for Oceanside expenses. Myers and Friederike were the only people with access to these accounts. From 2011 to 2013, Myers provided Rita with the information necessary to complete Friederike's taxes. In March 2014, Friederike executed a power of attorney to Myers and added him as a beneficiary in her will.

In October 2014, Rita prepared Friederike's 2013 tax return. For 2013, Friederike had a tax liability of approximately \$130,000 because she sold properties, including Oceanside. When Rita contacted Friederike's financial advisor to settle the tax liability, Rita expected Friederike to have over \$1,000,000 in her account from the property sales. However, Rita learned that Friederike's account balance was only around \$350,000.

Rita, with Friederike's authorization, froze all of Friederike's accounts and obtained statements dating back to 2011. Rita then analyzed all the transactions between 2011 and 2014 and reconciled every bank and credit card statement. During this process, Rita discovered several suspicious transactions. Rita spoke to Friederike to determine whether she authorized the transactions. Friederike told Rita that many of the transactions were not authorized. In total, Rita calculated that between

³James and Friederike did not have any children.

2011 and 2014, approximately \$813,000 of Friederike's money had been used in unauthorized transfers or transactions. Rita believed that Myers stole the funds.

When Rita alerted Friederike of this, Friederike removed Myers from her will and revoked his power of attorney. Rita submitted Friederike's financial records and her analysis to the Las Vegas Metropolitan Police Department (LVMPD). A forensic legal auditor reviewed and confirmed Rita's calculations and compared them to bank statements for Myers and his daughter. The auditor confirmed that various bank transfers were made from Friederike's account to Myers and his daughter. The auditor agreed that approximately \$813,000 of Friederike's funds had been used in numerous unauthorized transfers and transactions.

As a result, the State charged Myers with 36 counts of theft and 36 counts of exploitation of an older/vulnerable person. During discovery, Myers learned that Doug inherited property from a different elderly physical therapy client. The State thereafter discovered that Myers intended to cross-examine Rita about this inheritance to show bias. Specifically, Myers wished to show that because Doug was also a beneficiary under Friederike's will, his wife, Rita, was biased because she would indirectly benefit from the probable inheritance. The State moved to preclude this line of cross-examination, arguing that Doug's inheritance from the third party involved facts extrinsic and collateral to the proceedings, and therefore, would be an improper method to impeach Rita because it would confuse the jurors about whose guilt was at issue.⁴ Myers

⁴The State based its motion on NRS 50.085(3), which provides: "Specific instances of the conduct of a witness, for the purpose of attacking

opposed, arguing that the issue went to Rita's credibility and was therefore relevant. The district court found that questions about Doug's inheritance from the third party were not relevant to the issue of Myers's guilt and had the potential to mislead the jury and confuse the issues. The district court did not say, at the hearing or in its order, that it found the proposed cross-examination questions would be collateral and extrinsic.

On the first day of the jury trial, before jury selection, Myers argued that he should be allowed to ask Doug about the inheritance from the third party because it showed Doug's bias and motive. The district court disagreed, again concluding that the evidence was not relevant. As a result, during trial, Myers did not ask Rita or Doug about Doug's other inheritance, but did question them as to Doug's status as a beneficiary in Friederike's will. After a five-day trial, the jury convicted Myers of 33 counts of theft under NRS 205.0832 and NRS 205.0835 and 33 counts of exploitation of an older/vulnerable person under NRS 200.5092 and NRS 200.5099. This appeal followed.

Myers argues that his conviction must be reversed because the district court should have permitted him to cross-examine Rita about Doug's inheritance from a third party, which Myers asserts was clearly relevant.⁵

or supporting the witness's credibility, other than conviction of crime, may not be proved by extrinsic evidence."

⁵Myers also summarily argues that the district court violated his Due Process rights under the Confrontation Clause by not allowing cross-examination about Doug's inheritance from a third party. However, "trial judges retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on . . . 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." *Farmer v. State*, 133 Nev. 693, 702-03, 405 P.3d 114, 123 (2017)

We conclude that the district court acted within its discretion in finding that the proposed cross-examination was not relevant and could confuse the issues or mislead the jury.⁶

“A district court’s ruling on a motion in limine is reviewed for an abuse of discretion.” *Whisler v. State*, 121 Nev. 401, 406, 116 P.3d 59, 63 (2005). The district court has broad discretion to limit the scope of cross-examination. *See Farmer*, 133 Nev. at 702-03, 405 P.3d at 123. We will not reverse a decision to exclude evidence “unless it is manifestly wrong.”

(alteration in original) (quoting *Delaware v. Van Arsdall*, 475 U.S. 673, 679 (1983)). We conclude that the district court was within its wide latitude of discretion to reasonably limit cross-examination given its finding that Doug’s other inheritance was not relevant and would tend to confuse and mislead the jury.

⁶Myers summarily argues that the proposed testimony was clearly relevant. The State asserts that it was not relevant because it was inadmissible collateral and extrinsic evidence that could not be used to impeach a witness. Myers never addressed whether the proposed evidence was collateral or extrinsic. Collateral facts are those “outside the controversy, or are not directly connected with the principal matter or issue in dispute.” *Lobato v. State*, 120 Nev. 512, 518, 96 P.3d 765, 779 (2004). “NRS 50.085(3) limits the admissibility of extrinsic evidence based upon specific instances of conduct attributable to the witness.” *Id.* at 519, 96 P.3d at 770. But extrinsic evidence relevant to a witness’s bias is never collateral. *Id.* The State correctly argues that the proposed cross-examination questions were collateral. However, the State does not explain how *testimony* is extrinsic to the proceedings. *See id.* (concluding that cross-examination of a witness as to whether the witness authored letters was proper, but introduction of the letters, expert opinions, and testimony from others would have been inadmissible extrinsic evidence). Eliciting testimony is not extrinsic. *See Efrain M. v. State*, 107 Nev. 947, 949, 823 P.2d 264, 265 (1991). Because the issue on appeal is whether Myers should have been permitted to *question* Rita about Doug’s inheritance from a third party, NRS 50.085(3) does not apply.

Archanian v. State, 122 Nev. 1019, 1029, 145 P.3d 1008, 1016 (2006). Evidence must be relevant to be admissible. *See Burton v. State*, 84 Nev. 191, 194, 437 P.2d 861, 863 (1968); *see also* NRS 48.025. Evidence is relevant if it has “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.” NRS 48.015.

Myers contends that evidence of Doug’s other inheritance is clearly relevant, but Myers does not develop his argument or cite to any authority regarding relevance. *See Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (explaining that this court need not consider an appellant’s argument that is not cogently presented or lacks the support of relevant authority). In any event, the district court reasonably concluded that Doug’s property inheritance from an unrelated party was irrelevant. Myers argues that because Doug was a beneficiary in *Friederike’s* will, Rita was biased because she and Doug stood to gain a larger share of *Friederike’s* estate if Myers was removed from the will.⁷ But there is little, if any, connection between Doug’s other inheritance and Rita’s potential bias against Myers when Rita’s role was to examine financial records and trace transactions. Doug’s other inheritance has no nexus to *Friederike*, let alone Myers or his guilt. Therefore, the district court was not manifestly wrong

⁷Myers did ask both Rita and Doug about Doug’s beneficiary status in *Friederike’s* will, which could reveal a bias, and allow him to argue his theory of the case that Rita was biased and stood to benefit by getting Myers out of *Friederike’s* will, and therefore, her analysis and conclusions about the unauthorized transactions was wrong. However, the trial testimony revealed that after Myers was removed from the will, Doug’s share in *Friederike’s* estate did not increase.

when it did not permit questioning about Doug's other inheritance because it was of little relevance to the proceedings.

Even if evidence of Doug's other inheritance were relevant, the district court did not abuse its discretion in determining that it should nevertheless be excluded. While the standard for relevance is broad, it is subject to reasonable restrictions. *See Jackson v. State*, 116 Nev. 334, 335, 997 P.2d 121, 121 (2000). For example, 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." NRS 48.035(1). And while evidence of bias is generally admissible, it may be limited if it is irrelevant. *See Lobato*, 120 Nev. at 519-20, 96 P.3d at 770-71.

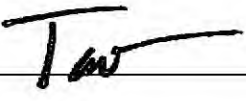
Here, the district court, at the motion in limine hearing, specifically noted that Doug's other inheritance is "completely and totally irrelevant and doesn't do anything except set up the potential for confusing the jury, for prejudicing the jury, and to make it appear that there's some kind of a connection when there isn't any connection." In other words, the district court found that any probative value of this evidence was outweighed by the potential to confuse and mislead the jury. We discern no abuse of discretion in this finding.

Further, this court will not reverse a judgment of conviction unless the appellant suffered prejudice because of the error. *See* NRS 178.598 ("Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded."). Even if evidence of Doug's other inheritance were relevant to show Rita's alleged bias, Myers was not prejudiced because he was permitted to introduce evidence of bias by inquiring into Doug's status as a beneficiary to Friederike's will.

Additionally, Rita's testimony was corroborated by a police forensic auditor, thereby significantly weakening Myers's theory that Rita's testimony was motivated by bias. Indeed, Myers has not argued that the outcome of the trial would have been different had the additional evidence been allowed. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. William D. Kephart, District Judge
Hon. James Bixler, Senior Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk