

IN THE SUPREME COURT OF THE STATE OF NEVADA

DENTON RAY WHITE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45869

FILED

MAR 27 2007

ORDER OF AFFIRMANCE

JANETTE M BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count each of resisting a public officer, discharging a firearm at or into a structure, attempted robbery with the use of a deadly weapon, first degree kidnapping with the use of a deadly weapon, assault with a deadly weapon, coercion with the use of a deadly weapon, and battery with a deadly weapon. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

The parties are familiar with the facts, and we do not recount them except as pertinent to our disposition.

Appellant Denton Ray White argues that the jury instructions relating to the charge of kidnapping with the use of a deadly weapon improperly minimized the State's burden in proving its case.¹ Further, White contends that the State erroneously told jurors during its closing argument that he had physically restrained the victim, as he asserts that there was no evidence presented to support this claim. Additionally, White argues that the State was impermissibly able to convict him of

¹White admits that these jury instructions were not objected to during trial.

kidnapping with the use of a deadly weapon solely on the basis of physical restraint, which White contends was a legally erroneous theory requiring reversal under Bolden v. State.²

We conclude that there was no plain error³ in the jury instructions relating to the charge of kidnapping with the use of a deadly weapon because these jury instructions comported to the suggested jury instructions prescribed in this court's recent decision in Mendoza v. State.⁴

As to the State's remarks about physical restraint during its closing argument, we conclude that those remarks were not legally erroneous because these remarks related to the victim's inability to move or leave White's apartment; these remarks permissibly bolstered the State's argument in closing that there was a substantial increased risk of harm for the victim.⁵

Therefore, because the State argued, among other things, that moving the victim from the kitchen to the living room substantially increased the victim's risk of harm, we conclude that the State's remarks as to physical restraint were not legally erroneous and that the State did

²121 Nev. 908, 913, 124 P.3d 191, 194-95 (2005).

³See Gallego v. State, 117 Nev. 348, 365, 23 P.3d 227, 239, (2001); Rippo v. State, 113 Nev. 1239, 1259, 946 P.2d 1017, 1030 (1997); Garner v. State, 78 Nev. 366, 372-73, 374 P.2d 525, 529 (1962).

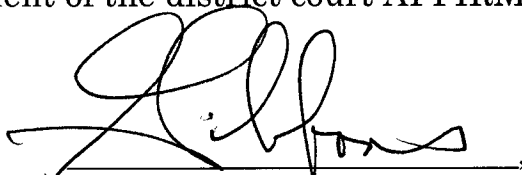
⁴122 Nev. ___, ___, 130 P.3d, 175, 181 (2006).

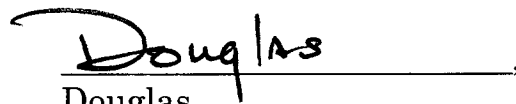
⁵The record reveals that the State argued that moving the victim from the living room and into the kitchen substantially increased the victim's risk of harm and that the victim was physically restrained of his movement by not being able to move or leave White's apartment.

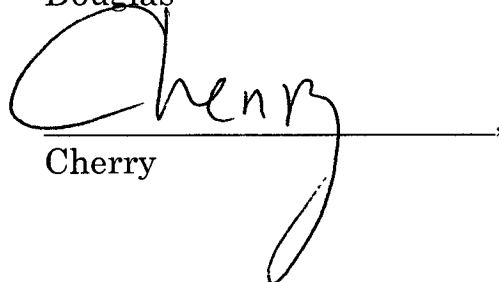
not impermissibly convict White of kidnapping with a deadly weapon solely on the basis of physical restraint.

As to White's remaining contentions relating to dismissal of his kidnapping conviction, sufficiency of the evidence, double jeopardy, improper hearsay, Brady⁶ violations, prosecutorial misconduct, and cumulative error, we conclude that they are without merit. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Cherry

cc: Hon. Donald M. Mosley, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

⁶Brady v. Maryland, 373 U.S. 83 (1963).