

IN THE SUPREME COURT OF THE STATE OF NEVADA

CEDRIC RAMON PHILLIP,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50157

FILED

MAY 20 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of robbery. Eighth Judicial District Court, Clark County; Valorie Vega, Judge. The district court sentenced appellant Cedric Ramon Phillip to serve a prison term of 30-75 months.

Phillip contends that his right to due process and a fair trial was violated when the district court refused his proffered jury instruction on petit larceny in support of his theory of the defense. We disagree.¹

“The district court has broad discretion to settle jury instructions, and this court reviews the district court’s decision for an abuse of that discretion or judicial error.”² “[T]he defense has the right to

¹Phillip also contended below that he was entitled to a jury instruction on petit larceny as either a lesser-included or lesser-related offense of robbery. Phillip, however, has abandoned this argument on appeal.

²Crawford v. State, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005); see also Jackson v. State, 117 Nev. 116, 120, 17 P.3d 998, 1000 (2001) (holding *continued on next page . . .*

have the jury instructed on its theory of the case as disclosed by the evidence, no matter how weak or incredible that evidence may be.”³

We conclude that the district court did not abuse its discretion in rejecting Phillip’s proposed instruction. The State charged Phillip with robbery with the use of a deadly weapon, and his theory of the defense was that he was innocent of the charge but guilty of the uncharged crime of petit larceny.⁴ Phillip was not entitled to an instruction on petit larceny because “[t]o allow a conviction on a crime that the State has not even attempted to prove is not a reliable result.”⁵ Additionally, even assuming, without deciding, that Phillip was entitled to an instruction on petit larceny as a theory of the defense, in light of the overwhelming evidence of his guilt, including the trial testimony of the victim and an eyewitness, we conclude that any error was harmless beyond a reasonable doubt.⁶

... continued

that “[a]n abuse of discretion occurs if the district court’s decision is arbitrary or capricious or if it exceeds the bounds of law or reason”).

³Vallery v. State, 118 Nev. 357, 372, 46 P.3d 66, 76-77 (2002) (internal quotation marks omitted); see also Rosas v. State, 122 Nev. 1258, 1265, 147 P.3d 1101, 1107 (2006).

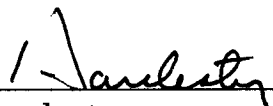
⁴The jury found Phillip not guilty of using a deadly weapon.


⁵Peck v. State, 116 Nev. 840, 845, 7 P.3d 470, 473 (2000), overruled in part on other grounds by Rosas, 122 Nev. 1258, 147 P.3d 1101; see generally Brooks v. State, 124 Nev. ___, ___ P.3d ___ (Adv. Op. No. 19, April 3, 2008, at 14 n.35).

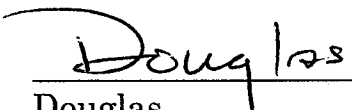
⁶See Crawford, 121 Nev. at 756, 121 P.3d at 590.

Therefore, having considered Phillip's contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Valorie Vega, 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