

IN THE SUPREME COURT OF THE STATE OF NEVADA

LUIS A. GONZALES A/K/A LUIS
GONZALAS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51243

FILED

FEB 25 2010

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 first-degree murder with the use of a deadly weapon. Eighth Judicial District Court, Clark County; David B. Barker, Judge.

Appellant Luis A. "Loco" Gonzales was charged with one count of conspiracy to commit murder and one count of murder with the use of a deadly weapon. These charges stemmed from an incident in which the victim, Tayde "Toker" Alejandro-Trejo, was shot and killed at Maria Enriguez's apartment. Prior to the shooting, Gonzales and Trejo were involved in a verbal and physical altercation.

A jury convicted Gonzales of murder with the use of a deadly weapon, but acquitted Gonzales on the charge of conspiracy to commit murder. The district court sentenced Gonzales to a term of life in prison with the possibility of parole, plus an equal and consecutive life term with the possibility of parole for the deadly weapon enhancement.¹

On appeal, Gonzales raises the following twelve issues: (1) the district court abrogated his constitutional and statutory rights by

¹The parties are familiar with the facts, and we do not recount them here except as necessary to our disposition.

excluding the testimony of a critical defense witness, (2) the admission of Maria Mojico's and Gonzales's taped statements violated his federal, state, and statutory rights, (3) the district court violated his constitutional and statutory rights by admitting bad act evidence, (4) the district court erred by failing to proffer jury instructions limiting the jury's consideration of prejudicial evidence, (5) the district court erred by admitting evidence of Gonzales's nickname, (6) the district court erred by admitting autopsy photographs that were cumulative and highly prejudicial, (7) the district court erred by admitting testimony of a witness not noticed by the State, (8) the district court erred by refusing to instruct the jury on the applicability of voluntary intoxication to the specific intent elements of first-degree murder, (9) the district court erred by instructing the jury that a defendant who uses greater force than necessary to repel an attack is not entitled to a self-defense verdict, (10) the district court's refusal to sentence Gonzales pursuant to newly enacted amendments to the deadly weapon enhancement sentencing scheme violated Gonzales's constitutional and statutory rights, (11) the State failed to present sufficient evidence to sustain Gonzales's conviction, and (12) cumulative error warrants reversal of his conviction.

We conclude that all of Gonzales's arguments are without merit. Therefore, we affirm Gonzales's conviction on all of the issues presented in this appeal.

Witness testimony

Standard of review

"[We] review[] a district court's decision whether to allow an unendorsed witness to testify for abuse of discretion." Mitchell v. State, 124 Nev. ___, ___, 192 P.3d 721, 729 (2008) (citing Mulder v. State, 116

Nev. 1, 12-13, 992 P.2d 845, 852 (2000); Dalby v. State, 81 Nev. 517, 519, 406 P.2d 916, 917 (1965)).

“When addressing discovery violations, the district court must be cognizant that defendants have the constitutional right to discredit their accuser, and this right ‘can be but limitedly circumscribed.’” Sampson v. State, 121 Nev. 820, 827, 122 P.3d 1255, 1260 (2005) (quoting Reese v. State, 458 A.2d 492, 496 (Md. Ct. Spec. App. 1983)). “Therefore, to protect this constitutional right, there is a strong presumption to allow the testimony of even late-disclosed witnesses, and evidence should be admitted when it goes to the heart of the case.” Id. Further,

[i]t may well be true that alternative sanctions are adequate and appropriate in most cases, but it is equally clear that they would be less effective than the preclusion sanction and that there are instances in which they would perpetuate rather than limit the prejudice to the State and the harm to the adversary process.

Taylor v. Illinois, 484 U.S. 400, 413 (1988).

In Jones v. State, we held that “Nevada case law establishes that failure to endorse a witness constitutes reversible error only where the defendant has been prejudiced by the omission.” 113 Nev. 454, 473, 937 P.2d 55, 67 (1997) (citing Redmen v. State, 108 Nev. 227, 234, 828 P.2d 395, 400 (1992), overruled on other grounds by Alford v. State, 111 Nev. 1409, 906 P.2d 714 (1995)). Further, this court presumes that if a prosecutor calls an unendorsed witness to testify, the prosecutor was not previously aware of the witness. Id. at 472, 937 P.2d at 67.

Exclusion of Brandon Contreras’s testimony

Gonzales argues that the exclusion of Brandon Contreras’s testimony violated Nevada law as well as his state and federal constitutional rights. Although Gonzales admits that he was late noticing

Contreras, he argues that the district court's exclusion of his key witness was an extreme discovery sanction. Gonzales contends that had the jury heard Contreras confirm Gonzales's fears about Trejo, the verdict may have been different. We disagree.

We conclude that the district court did not abuse its discretion by denying Gonzales's request to introduce Contreras as a witness rather than granting a continuance. The State did not anticipate Contreras as a witness and, although the testimony Gonzales sought to admit may have been helpful to his defense, it would have resulted in an unfair surprise to the State. See Sampson v. State, 121 Nev. 820, 828, 122 P.3d 1255, 1260 (2005) (holding that unfair surprise would have resulted from the district court allowing a witness to testify who was noticed late to the State because of an error in the spelling of the witness's name). Fairness during trial is not one-sided and applies to both Gonzales and the State. The fault here lies not with the district court, but instead with Gonzales's counsel, who inexplicably failed to timely pursue testimony from Contreras. Thus, we conclude that the district court did not abuse its discretion in excluding Contreras's testimony.

Testimony of Lidia Trejo

Gonzales contends that the district court abused its discretion in admitting the emotional testimony of Lidia Trejo, the victim's mother. Gonzales argues that he was blindsided because the State failed to notice her as a witness and he could do little, if anything, to thwart, or at least mitigate this tactic of igniting the jurors' passions. We disagree.

We conclude that the district court did not abuse its discretion in admitting Lidia's testimony rather than granting a continuance or prohibiting the State from introducing evidence. Although Gonzales did not anticipate that Lidia would be a witness for the State, it did not result

in an unfair surprise to Gonzales because it is not unusual for a family member to identify the victim from a photograph during trial. Moreover, Lidia only testified to the identity of the victim. Furthermore, Gonzales had the opportunity to cross-examine Lidia on the issues asked of her by the State on direct-examination, but he chose not to. As such, it was within the district court's discretion to allow Lidia to testify.

Admission of taped police interrogations

Gonzales argues that the district court committed plain error in admitting his and his co-defendant's, Maria Mojica's, taped statements to the police.² Gonzales contends that: (1) both his and Mojica's videotaped interrogations involved inadmissible hearsay, (2) the videotaped interrogations included inadmissible opinions by Detective Wallace, and (3) the erroneous admission of the videotaped interrogations warrants reversal. We disagree.

"District courts are vested with considerable discretion in determining the relevance and admissibility of evidence." Castillo v. State, 114 Nev. 271, 277, 956 P.2d 103, 107-08 (1998). This court will not disturb a district court's ruling on this issue without a showing of a clear abuse of discretion. Atkins v. State, 112 Nev. 1122, 1127, 923 P.2d 1119, 1123 (1996) (overruled on other grounds by Bejarano v. State, 122 Nev. 1066, 146 P.3d 265 (2006)).

Moreover, when an appellant fails to object to a decision of a district court, "this court may review plain error or issues of constitutional

²While Gonzales failed to object to the admission of his taped interview with Detective Wallace, he did object to the admission of Mojica's taped interview with Detective Wallace.

dimension sua sponte despite a party's failure to raise an issue below." Murray v. State, 113 Nev. 11, 17, 930 P.2d 121, 124 (1997). In conducting a plain error analysis, this court considers whether error exists, whether it was plain or clear, and whether the error affected the defendant's substantial rights. Archanian v. State, 122 Nev. 1019, 1031, 145 P.3d 1008, 1017 (2006). The burden rests with the defendant to demonstrate actual prejudice. Id. (citing Anderson v. State, 121 Nev. 511, 516, 118 P.3d 184, 187 (2005)).

We conclude that Gonzales's argument is without merit. NRS 51.035(2) states that a statement is not hearsay, and thus properly admissible, if "[t]he declarant testifies at the trial . . . and is subject to cross-examination concerning the statement, and the statement is . . . (a) inconsistent with his testimony." Mojica's taped interrogation was admitted to address inconsistencies between her trial testimony and interrogation statements and, as such, was not hearsay under NRS 51.035(2)(a). The statements made by Detective Wallace during both Gonzales's and Mojica's taped interview regarding the events at issue during trial was also not hearsay as they were not offered as truth of the matter asserted. See NRS 51.035.

Additionally, while "it is generally inappropriate for either a prosecution or defense expert to directly characterize a putative victim's testimony as being truthful or false," Gonzales has failed to show that Detective Wallace's statements were inappropriate characterizations of Gonzales's trial testimony or that they concerned the truthfulness of his trial testimony. Townsend v. State, 103 Nev. 113, 119, 734 P.2d 705, 709 (1987). Thus, we conclude that the district court did not commit plain

error in admitting into evidence the videotaped interrogations of Gonzales and Mojica.

Evidence of Gonzales's prior bad acts

Gonzales argues that the district court abused its discretion in allowing the prosecution to present evidence of his alleged association with at least two gangs, admitting evidence regarding his arrest for graffiti, and admitting evidence that he ingested methamphetamine around the time of the shooting.

Standard of review

“District courts are vested with considerable discretion in determining the relevance and admissibility of evidence.” Castillo v. State, 114 Nev. 271, 277, 956 P.2d 103, 107-8 (1998). This court will not disturb a district court's ruling on this issue without a showing of a clear abuse of discretion. Atkins, 112 Nev. at 1127, 923 P.2d at 1123.

When an appellant fails to object to a decision of a district court, “this court may review plain error or issues of constitutional dimension sua sponte despite a party's failure to raise an issue below.” Murray, 113 Nev. at 17, 930 P.2d at 124. In conducting a plain error analysis, this court considers whether error exists, whether it was plain or clear, and whether the error affected the defendant's substantial rights. Archanian v. State, 122 Nev. 1019, 1031, 145 P.3d 1008, 1017 (2006). The burden rests with the defendant to demonstrate actual prejudice. Id. (citing Anderson v. State, 121 Nev. 511, 516, 118 P.3d 184, 187 (2005)).

Evidence of prior gang affiliation

Gonzales contends that the district court abused its discretion in admitting evidence of his gang affiliation because the prosecution never made a connection between the gang affiliation and the crime charged. We disagree.

Evidence that is obviously prejudicial to a defendant is not admissible unless it is brought into issue by the defendant and the issue raised by the defendant is one to which the prejudicial evidence is relevant. Roever v. State, 114 Nev. 867, 871, 963 P.2d 503, 505 (1998). As a general rule, “[i]t is error to allow the [prosecution] to impeach a defendant’s credibility with extrinsic evidence relating to a collateral matter.” Jeidik v. State, 121 Nev. 129, 136-37, 110 P.3d 1058, 1063 (2005) (quoting McKee v. State, 112 Nev. 642, 646, 917 P.2d 940, 943 (1996)).

However, we have recognized an exception to the collateral-fact rule when a defendant introduces evidence that gives the jury a false impression of the defendant’s good character through a denial of misconduct. Id. at 139, 110 P.3d at 1065. This limited exception allows the prosecution to introduce extrinsic evidence specifically rebutting only the defendant’s misleading testimony that may have given the jury a false impression of the defendant’s good character. Id. at 139, 110 P.3d at 1065.

We conclude that the district court did not abuse its discretion in admitting evidence of Gonzales’s alleged gang affiliation because Gonzales opened the door to this line of questioning based on his statements of character in his opening statement. NRS 48.045(1)(a). During his opening statement, Gonzales remarked, that he was known as a lover not a fighter, a decent guy, not a trouble maker, and that people liked him and he likes people. These statements were misleading in the sense that it may have given the jury a false impression of his character. Therefore, the limited exception to the collateral-fact rule applies, and the district court did not abuse its discretion in allowing the prosecution to specifically rebut Gonzales’s statement with evidence of his gang

affiliation. Thus, we conclude that the district court did not abuse its discretion in admitting evidence of Gonzales's alleged gang affiliation.

Evidence of prior arrest and drug use

Gonzales argues that the district court abused its discretion in admitting evidence of his prior arrest for graffiti because that evidence was irrelevant, prejudicial, and the prosecution failed to prove the incident by clear and convincing evidence. Gonzales further argues that the district court abused its discretion in admitting evidence that he ingested methamphetamine around the time of the shooting because the prosecution failed to demonstrate by clear and convincing evidence that Gonzales had in fact ingested the narcotic and the use of the drug bore no relation to the case. However, Gonzales did not object to the admission of this evidence at trial, so our review is under a plain error standard, and under that standard, we disagree.

NRS 50.085(3), which governs the impeachment of witnesses by specific instances of conduct, states

Specific instances of the conduct of a witness, for the purpose of attacking or supporting his credibility, other than conviction of crime, may not be proved by extrinsic evidence. They may, however, if relevant to truthfulness, be inquired into on cross-examination of the witness himself or on cross-examination of a witness who testifies to an opinion of his character for truthfulness or untruthfulness, subject to the general limitations upon relevant evidence and the limitations upon interrogation and subject to the provisions of NRS 50.090.

We conclude that the district court did not commit plain error in allowing the prosecution to cross-examine Gonzales about his prior arrest and use of methamphetamine because the prosecution was using

this evidence to impeach Gonzales's character for truthfulness based on his testimony on direct examination. Gonzales testified that he was concerned about Trejo after the shooting. The State used Gonzales's drug use, which occurred shortly after he shot Trejo, to show that Gonzales may have been less than truthful in his statement that he was concerned for Trejo's life after the shooting.

Further, Gonzales has failed to show, as he makes no argument concerning plain error, that the admission of this evidence had a prejudicial impact on the jury's verdict. As such, we must conclude that the district court did not commit plain error in admitting this evidence of prior bad acts.

Evidence of Gonzales's nickname

Gonzales contends that the district court erred in allowing repeated use of his nickname, "Loco," at trial. We disagree.

"It is within the district court's sound discretion to admit or exclude evidence,' and this court reviews that decision for an abuse of discretion or manifest error.'" Thomas v. State, 122 Nev. 1361, 1370, 148 P.3d 727, 734 (quoting Means v. State, 120 Nev. 1001, 1008, 103 P.3d 25, 29 (2004)).

Gonzales relies on Hardison v. State where we held that reference to a defendant's nickname is "inappropriate and perhaps suggestive of a criminal background." 104 Nev. 530, 532, 763 P.2d 52, 54 (1988). In Hardison the defendant filed a motion for mistrial based on a police officer's statement that he knew that Hardison's street nickname was "Noochie." Id. Hardison argued that the officer's statement was an improper reference to Hardison's criminal record. Id. We held that "[a]lthough the officer's testimony concerning Hardison's street name was inappropriate and perhaps suggestive of a criminal background, the trial

judge correctly denied the motion for mistrial because any error in admitting the testimony was manifestly harmless in the face of overwhelming evidence of Hardison's guilt." Id. We have held that evidence that is obviously prejudicial to a defendant is admissible when it is brought into issue by the defendant and the issue raised by the defendant is one to which the prejudicial evidence is relevant. Roever, 114 Nev. at 871, 963 P.2d at 505.

We conclude that Gonzales's argument is without merit because we conclude that this case is distinguishable from Hardison in two ways. First, Gonzales was the first to reference his nickname. Second, Gonzales's nickname did not infer a criminal record based on his explanation of its youthful origins. Therefore, we conclude that the district court did not abuse its discretion when it admitted evidence of Gonzales's nickname because Gonzales brought his nickname into issue.

Limiting instruction regarding prior bad acts evidence

Gonzales contends that the district court erred by failing to provide limiting instructions to the jury regarding evidence of his gang affiliation, graffiti arrest, and methamphetamine use, either upon receipt of this evidence or in the final jury instructions.

We review cases in which a district court failed to give a limiting instruction on the use of prior bad act evidence for error under NRS 178.598. Tavares v. State, 117 Nev. 725, 731-32, 30 P.3d 1128, 1132 (2001). NRS 178.598 provides that "[a]ny error, defect, irregularity or variance which does not affect substantial rights shall be disregard[ed]." Id. at 732, 30 P.3d at 1132. Further, we will not disturb a decision of a district court not to give a limiting instruction in such cases unless the error is shown to have "had substantial and injurious effect or influence in determining the jury's verdict." Id. (quoting Kotteakos v. United States,

328 U.S. 750, 776 (1946)). Therefore, unless we are “convinced that the accused suffered no prejudice as determined by the Kotteakos test, the conviction must be reversed.” Id. at 732, 30 P.3d at 1132.

When evidence of prior bad acts is admitted into evidence at trial, the prosecution has a duty to request a jury instruction that limits the use of that evidence. McLellan v. State, 124 Nev. ___, ___, 182 P.3d 106, 110-11 (2008). When the State fails to request such a limiting instruction, the district court is charged with the duty of raising the issue sua sponte. Id. at ___, 182 P.3d at 111. Further, a trial court must give limiting instructions to the jury concerning the use of uncharged prior bad acts evidence immediately before the admission of that evidence and then again at the end of the trial. Id. at ___, 182 P.3d at 112. The district court’s failure to issue such jury instructions on the limited use of prior bad acts evidence will be seen as “harmless if the error did not have a substantial and injurious effect or influence on the jury’s verdict.” Rhymes v. State, 121 Nev. 17, 24, 107 P.3d 1278, 1282 (2005). As such, unless this court is “convinced that the accused suffered no prejudice . . . the conviction must be reversed.” McLellan, 124 Nev. at ___, 182 P.3d at 111.

We conclude that the district court erred in failing to instruct the jury on the limited use of prior bad acts evidence, but that the district court’s error was harmless. Gonzales put the prior bad acts evidence into issue and the State’s use of this evidence was to rebut the character evidence presented by Gonzales. Gonzales has failed to show that he was prejudiced by the district court’s failure to give a limiting instruction concerning the use of prior bad acts evidence or that this failure had a substantial and injurious effect on the jury’s verdict. Further, there was

substantial evidence presented at trial of Gonzales's guilt to allow us to conclude that the district court's failure to give a limiting instruction concerning the prior bad acts evidence did not have a substantial and injurious influence on the jury's verdict and that Gonzales was not prejudiced. As such, we must conclude that the district court's failure to give a limiting instruction concerning the use of prior bad acts evidence was harmless.

Admission of autopsy photographs

Gonzales contends that the district court abused its discretion by admitting approximately 66 autopsy photographs over defense objection.

We conclude that Gonzales's contention that the district court abused its discretion by admitting autopsy photographs is without merit. The admission of photographs of victims is within the sound discretion of the district court and will be disturbed only if that discretion is abused.

Archanian v. State, 122 Nev. 1019, 1031, 145 P.3d 1008, 1017-18 (2006).

"This court has repeatedly upheld the admission of autopsy photographs, even grisly ones, when they are used to demonstrate the cause of death and reflect the severity of wounds and the manner in which they were inflicted." Id. Thus, "photographs that aid in the ascertainment of truth may be received in evidence, even though they may be gruesome." Scott v. State, 92 Nev. 552, 556, 554 P.2d 735, 738 (1976).

Here, the autopsy photographs assisted the jury in assessing Gonzales's self-defense claim and aided the coroner's office in explaining the findings in the autopsy. As such, the autopsy photographs were used to aid in the ascertainment of fact at trial. We thus conclude that the district court did not abuse its discretion in admitting the autopsy photographs.

Gonzales's proffered jury instructions

Standard of review

“The district court has broad discretion to settle jury instructions, and [we] review[] the district court's decision for an abuse of that discretion or judicial error.” Crawford v. State, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005) (citing Jackson v. State, 117 Nev. 116, 120, 17 P.3d 998, 1000 (2001)). If the district court's decision is arbitrary or capricious or if it exceeds the bounds of law or reason, then the district court abused its discretion. Id.

However, when an appellant fails to object to a decision of a district court, “this court may review plain error or issues of constitutional dimension sua sponte despite a party's failure to raise an issue below.” Murray v. State, 113 Nev. at 17, 930 P.2d at 124. In conducting a plain error analysis, this court considers whether error exists, whether it was plain or clear, and whether the error affected the defendant's substantial rights. Archanian v. State, 122 Nev. 1019, 1031, 145 P.3d 1008, 1017 (2006). The burden rests with the defendant to demonstrate actual prejudice. Id. (citing Anderson v. State, 121 Nev. 511, 516, 118 P.3d 184, 187 (2005)).

Voluntary intoxication jury instruction

Gonzales argues that while the district court's voluntary intoxication instruction informed the jury that intoxication could be considered with respect to motive, purpose, or intent, it failed to specify that these principles also applied to the adjudication of the specific intent requirements of first-degree murder, such as premeditation and deliberation. We disagree.

NRS 193.220, which deals with when the defense of voluntary intoxication may be considered by a jury, states in pertinent part

No act committed by a person while in a state of voluntary intoxication shall be deemed less criminal by reason of his condition, but whenever the actual existence of any particular purpose, motive or intent is a necessary element to constitute a particular species or degree of crime, the fact of his intoxication may be taken into consideration in determining the purpose, motive or intent.

In State v. Bourdlais, this court stated that jury instructions concerning voluntary intoxication “[do] not require that [intoxication] by the defendant must be considered by the jury in the determination of a particular intent necessary to constitute a particular crime.” 70 Nev. 233, 245, 265 P.2d 761, 767 (1954). However, this court recognized that the intoxication of a person may be considered by the jury. Id.

We conclude that Gonzales’s arguments concerning the instruction to the jury on voluntary intoxication as codified in NRS 193.220 are without merit. The plain language of the jury instructions was an accurate statement of the statute. Further, the use of the exact language of the statute in the district court’s instruction was not arbitrary, capricious, or ambiguous, nor does it exceed the bounds of law or reason. The district court was not required to inform the jury that the principles of voluntary intoxication specifically applied to the adjudication of the specific intent requirements of first-degree murder, such as premeditation and deliberation. Thus, we conclude that the district court did not abuse its discretion in refusing to use Gonzales’s proffered jury instruction on voluntary intoxication.

Self-defense jury instruction

Gonzales contends that the district court erred when it instructed the jury on self-defense by holding him to a confusing, if not

impossible, standard of conduct. Gonzales did not object to this jury instruction at trial and, as such, our review is for plain error.

We conclude that Gonzales's arguments concerning the instruction to the jury on self-defense are without merit. "Because not all aspects of the self-defense statute will be applicable in each case, [this court] direct[ed] the district courts to cease merely quoting the applicable statutes when instructing a jury on self-defense." Runion v. State, 116 Nev. 1041, 1050-51, 13 P.3d 52, 58 (2000). "The district courts should tailor instructions to the facts and circumstances of a case, rather than simply relying on 'stock' instructions." Id. at 1051, 13 P.3d at 59. The district court's instruction to the jury may not have been the exact words articulated in Runion, however, as Runion makes clear—district courts are not required to use the exact jury instructions proffered in Runion. Further, Gonzales has failed to make any argument that the district court's given jury instruction on self-defense had a prejudicial effect on the jury's verdict. Thus, Gonzales has failed to make a showing of plain error by the district court. We thus conclude that the district court did not commit plain error in instructing the jury on self-defense.

Sentencing under NRS 193.163

Gonzales contends that the district court abused its discretion in failing to sentence him pursuant to newly enacted amendments set forth in NRS 193.165, effective at the time of his sentencing. We disagree.

We have long held that a sentencing judge is afforded wide discretion in imposing a sentence. Randell v. State, 109 Nev. 5, 8, 846 P.2d 278, 280 (1993) (citing Deveroux v. State, 96 Nev. 388, 390, 610 P.2d 722, 723 (1980)). Therefore, absent a showing of abuse of discretion, we will not disturb the district court's determination of sentence on appeal.

Id.

We conclude that Gonzales's constitutional rights to due process, equal protection, and a fair sentencing hearing were not violated because he was sentenced under the law in force at the time the crime was committed. Specifically, we have held "that crimes are punishable in accord with the law in force at the time a crime is committed unless the Legislature clearly expresses its intent to the contrary." State v. Dist. Ct. (Pullin), 124 Nev. at ___, ___, 188 P.3d 1079, 1084 (2008). The Legislature did not clearly express its intent to apply the amended provisions of NRS 193.163 retroactively. We thus conclude that the district court did not abuse its discretion by sentencing Gonzales under NRS 193.163 as it existed when the crime was committed in 2006.

Sufficient evidence to sustain Gonzales's conviction

Gonzales contends that the prosecution failed to present sufficient evidence to sustain his first-degree murder conviction. We disagree.

We will not reverse a jury's verdict on appeal if that verdict is supported by substantial evidence. Moore v. State, 122 Nev. 27, 35, 126 P.3d 508, 513 (2006). The Due Process Clause of the Fourteenth Amendment requires that in order to convict a defendant of a crime, all elements of that crime must be proved beyond a reasonable doubt. In re Winship, 397 U.S. 358, 364 (1970). "There is sufficient evidence if the evidence, viewed in the light most favorable to the prosecution, would allow any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt." Leonard v. State, 114 Nev. 1196, 1209-10, 969 P.2d 288, 297 (1998).

We conclude that Gonzales's argument is without merit. The State presented evidence that Gonzales killed Trejo, that Gonzales admitted that he intended to shoot Trejo, and that Gonzales admitted that

when he shot Trejo he did not see a gun in Trejo's hand. As such, a rational trier of fact could have reasoned from the evidence presented that all the elements of first-degree murder were proved beyond a reasonable doubt. We thus conclude that there was sufficient evidence presented to the jury to support Gonzales's conviction of first-degree murder.


Cumulative error

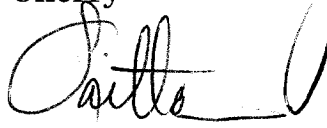
Gonzales argues that his conviction should be reversed based on the doctrine of cumulative error.


As we conclude that the district court's only error was harmless, the cumulative error doctrine is inapplicable. Cumulative error results when an individual error, standing alone, is not enough to reverse, but the cumulative effect prevents the defendant from receiving a fair trial. Big Pond v. State, 101 Nev. 1, 3, 692 P.2d 1288, 1289 (1985). As such, we conclude that Gonzales's conviction should not be reversed based on the doctrine of cumulative error.

In light of the foregoing discussion, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. David B. Barker, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk