

IN THE SUPREME COURT OF THE STATE OF NEVADA

MAGALI ACEVEDO-BONILLA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 53346

**FILED**

FEB 03 2010

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of conspiracy to violate the controlled substance act, three counts of transporting a controlled substance, and four counts of trafficking in a controlled substance. Eighth Judicial District Court, Clark County; Kenneth C. Cory, Judge.

First, appellant Magali Acevedo-Bonilla claims that the district court erred by denying her request to give an instruction and verdict form on the crime of possession with intent to sell a controlled substance as a lesser-included offense to trafficking in a controlled substance. We review the district court's jury instruction decisions for an abuse of discretion or judicial error. Crawford v. State, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005). Acevedo-Bonilla was not entitled to the lesser-included offense instruction because possession with the intent to sell is not a lesser-included offense of trafficking in a controlled substance—possession with the intent to sell requires an “intent to sell,” an element that is not “necessarily included” in the offense of trafficking in a controlled substance. Compare NRS 453.3337(1) with NRS 453.3385(1); see Rosas v. State, 122 Nev. 1258, 1264, 147 P.3d 1101, 1106 (2006);

Barton v. State, 117 Nev. 686, 694-95, 30 P.3d 1103, 1108-09 (2001) (a necessarily included offense is one that must occur in order for the crime charged to occur), overruled on other grounds by Rosas, 122 Nev. 1258, 147 P.3d 1101. Therefore, we conclude that the district court did not abuse its discretion by rejecting the requested instruction and verdict form.<sup>1</sup>

Second, Acevedo-Bonilla claims that the district court improperly dismissed a juror for cause over her objection. We review the district court's decision on whether to dismiss a juror for cause for an abuse of discretion. Walker v. State, 113 Nev. 853, 867, 944 P.2d 762, 771 (1997). Because the dismissed juror's statements about whether he could be fair and objective were equivocal, we conclude that the district court did not abuse its discretion in dismissing the juror for cause. See Weber v. State, 121 Nev. 554, 19 P.3d 107 (2005); McKenna v. State, 96 Nev. 811, 813, 618 P.2d 348, 349 (1980).

Third, Acevedo-Bonilla claims that the prosecutor committed misconduct by injecting personal belief into his argument and by ridiculing or mocking the defense. Because Acevedo-Bonilla failed to object to the challenged comments, we review this claim for plain error. See Valdez v. State, 124 Nev. \_\_\_, \_\_\_, 196 P.3d 465, 477 (2008). We conclude that no plain error occurred and therefore no relief is warranted because the comments to which Acevedo-Bonilla assigns error were a

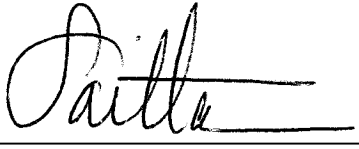
---

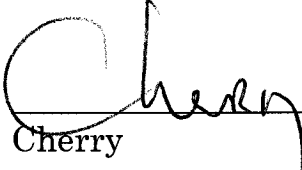
<sup>1</sup>Acevedo-Bonilla also claims that the district court erred by refusing to give the lesser-included offense instruction on the basis that she failed to concede guilt. See Rosas, 122 Nev. at 1269, 147 P.3d at 1109. Because Acevedo-Bonilla was not entitled to the lesser-included offense instruction, we decline to address this issue.

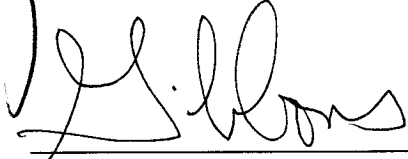
permissible means to demonstrate a lack of credibility in her duress defense theory and to point out that the red eyes in a picture shown to the jury resulted from the use of a flash. See Ross v. State, 106 Nev. 924, 927, 803 P.2d 1104, 1106 (1990).

Having considered Acevedo-Bonilla's contentions and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Saitta

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Kenneth C. Cory, District Judge  
Legal Resource Group  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk