IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL JAMES BETTS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54356

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction entered pursuant to a jury verdict of one count of felony escape. Seventh Judicial District Court, Lincoln County; Dan L. Papez, Judge.

First, appellant Michael James Betts contends that the district court erred by admitting a statement obtained in violation of Miranda v. Arizona, 384 U.S. 436 (1966). Betts acknowledges that a statement obtained in violation of Miranda may be used to impeach a defendant's testimony, see Harris v. New York, 401 U.S. 222, 225-26 (1971), but argues that the statement was impermissibly used to impeach a statement that he made during cross-examination, there was no limiting instruction given, see Summers v. State, 122 Nev. 1326, 1334 n.23, 148 P.3d 778, 783 n.23 (2006), and one of the jury instructions indicated that a confession may be used as substantive evidence. Betts did not object to the admission of his un-Mirandized statement, request a limiting instruction, or object to the instructions regarding admissions and confessions. Therefore, we review for plain error affecting Betts' substantial rights. See Moore v. State, 122 Nev. 27, 36-37, 126 P.3d 508, 514 (2006). We conclude that the district court erred by not instructing

the jury on the limited use of the un-Mirandized statement, but the error did not affect Betts' substantial rights and he is not entitled to relief on this contention.

Second, Betts contends that there was insufficient evidence to support his conviction. We review the evidence in the light most favorable to the prosecution and determine whether any rational juror could have found the essential elements of the crime beyond a reasonable doubt. McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992). The jury heard a stipulation that Betts was in the lawful custody of the Pioche Conservation Camp and testimony that the inmate work crew was counted and loaded into a truck, the supervisor left the loaded truck for about 10 minutes to inspect the work site for the next day, and, when the inmate crew was later counted, Betts was missing. The jury also heard testimony that Betts did not try to flag-down a passing car, did not respond to the search teams looking for him, and was found concealed behind a bush. We conclude that a rational juror could reasonably infer from the evidence that Betts committed the crime of escape. See NRS 212.090(1)(b). It is for the jury to determine the weight and credibility to give conflicting testimony, and the jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict. Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981).

Third, Betts contends that the prosecutor committed misconduct by vouching for the credibility of a witness. A prosecutor vouches for a witness when he "places the prestige of the government behind the witness by providing personal assurances of the witness's veracity." Browning v. State, 120 Nev. 347, 359, 91 P.3d 39, 48 (2004) (internal quotation marks and alteration omitted). Defense counsel

objected to the prosecutor's witness vouching, but did not request a curative instruction. The district court sustained the objection. The jury had been instructed to disregard any evidence to which an objection was sustained. And we conclude that the district court adequately cured any prejudice arising from the prosecutor's improper comment.

Fourth, Betts contends that cumulative error deprived him of a fair trial. Balancing the relevant factors, we conclude that the cumulative effect of the errors did not deprive Betts of a fair trial and that no relief is warranted. See Valdez v. State, 124 Nev. ___, ___, 196 P.3d 465, 481 (when evaluating claims of cumulative error, we consider "'(1) whether the issue of guilt is close, (2) the quantity and character of the error, and (3) the gravity of the crime charged'" (quoting Mulder v. State, 116 Nev. 1, 17, 992 P.2d 845, 854-55 (2000))).

Having considered Betts' contentions and concluded that he is not entitled to relief, we

ORDER the judgment of conviction AFFIRMED.

/ Hardesty, J.
Hardesty

Douglas, J.
Douglas

Pickering, J.
Pickering

cc: Hon. Dan L. Papez, District Judge
State Public Defender/Carson City
State Public Defender/Ely
Attorney General/Ely
Lincoln County Clerk