

IN THE SUPREME COURT OF THE STATE OF NEVADA

KENNETH PATTON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54364

FILED

JUL 15 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 kidnapping, battery constituting domestic violence with substantial bodily harm, assault, and robbery. Eighth Judicial District Court, Clark County; Kenneth C. Cory, Judge. Appellant Kenneth Patton raises three issues on appeal.

First, Patton claims that the State presented insufficient evidence to support the jury's verdict convicting him of both battery and kidnapping, claiming that the kidnapping was incidental to the battery. We disagree. Patton battered his girlfriend into a state close to death. He then pulled up a chair, brandished a knife, and, for the next two hours, alternately threatened to kill her and told her that she was not to move from her position on the floor. Because his restraint of her created a risk of danger substantially exceeding that of the original battery, we conclude that the kidnapping was not incidental to the battery, see Mendoza v. State, 122 Nev. 267, 275, 130 P.3d 176, 181 (2006), and that sufficient evidence supports both convictions, see Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998); Jackson v. Virginia, 443 U.S. 307, 319 (1979); NRS 200.485; NRS 200.310. Similarly, we conclude that the

district court did not abuse its discretion in refusing to issue an advisory instruction to acquit on this issue. See Milton v. State, 111 Nev. 1487, 1493, 908 P.2d 684, 688 (1995).

Second, because Patton sometimes used the victim's debit card with her permission, he claims that he cannot be convicted of robbing her of it. Robbery, however, is a crime against possession, Guy v. State, 108 Nev. 770, 775, 839 P.2d 578, 581 (1992), and Patton's contention that he had some ownership interest in the account is of no moment. Evidence adduced at trial showed that Patton used force to obtain the victim's card and death threats to facilitate his flight from the apartment. A rational juror could therefore have convicted Patton of robbery. See Origel-Candido, 114 Nev. at 381, 956 P.2d at 1380; Jackson, 443 U.S. at 319; NRS 200.380.

Third, Patton claims that the district court committed reversible error when it did not comply with the jury-questioning procedures outlined in Flores v. State, 114 Nev. 910, 965 P.2d 901 (1998), by not recording the jury-question admissibility hearing and by not permitting follow-up questions by counsel. Because Patton did not object below, we review his claim for plain error. See Valdez v. State, 124 Nev. 1172, 1190, 196 P.3d 465, 477 (2008). Although the district court did not strictly follow the Flores procedures, Patton has not shown that his substantial rights were affected, as he failed to explain any prejudice resulting from the lack of a recorded hearing or identify any follow-up question he was not permitted to ask. See Knipes v. State, 124 Nev. 927, 938, 192 P.3d 1178, 1185 (2008) (concluding that where defendant objected to a juror question, admissibility hearing should have been held on the record but that failure to do so was harmless error). We also reject

Patton's suggestion that multiple juror-question errors constitute structural error. See id. at 933-34, 192 P.3d at 1182-83 (rejecting structural-error analysis for "mishandling Flores' procedural safeguards").

Having considered Patton's contentions, and for the reasons discussed above, we

ORDER the judgment of conviction AFFIRMED.

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Pickering, J.
Pickering

cc: Hon. Kenneth C. Cory, District Judge
Law Offices of Gamage & Gamage
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk