IN THE SUPREME COURT OF THE STATE OF NEVADA

DANIEL CARNEL LEE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54768

FILED

JUN 22 2010

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

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of pandering of a child, pandering: furnishing transportation, first-degree kidnapping, and three counts of statutory sexual seduction. Eighth Judicial District Court, Clark County; Linda Marie Bell, Judge.

Appellant Daniel Carnel Lee recruited a fifteen-year-old female to work for him as a prostitute. He provided her with clothing and transported her to various Las Vegas hotels. Lee also had sexual intercourse with her. A jury convicted Lee, and the district court sentenced him to a maximum of 15 years in prison with eligibility for parole after 5 years.

On appeal, Lee raises three arguments. First, he asserts that his convictions for pandering of a child and pandering: furnishing transportation violate double jeopardy and are redundant convictions. Second, he argues that his convictions for pandering: furnishing transportation and first-degree kidnapping violate double jeopardy. Third, he contends that we should reverse his conviction for pandering: furnishing transportation because NRS 201.340 is void because it is unconstitutionally vague. Finally, he claims that the district court erred by denying his motion in limine to exclude a detective's expert testimony.

We agree with Lee's argument on the first-degree kidnapping charge and we reverse that conviction. His remaining arguments lack merit.

Pandering of a child and pandering: furnishing transportation

Whether a conviction violates double jeopardy is a question of law we review de novo. Davidson v. State, 124 Nev. ___, ___, 192 P.3d 1185, 1189 (2008). Double jeopardy prohibits convictions for multiple offenses arising from the same act or transaction "if the elements of one offense are entirely included within the elements of a second offense." Wilson v. State, 121 Nev. 345, 358-59, 114 P.3d 285, 294 (2005) (quotations omitted).

Additionally, "[w]e have declared convictions redundant when the facts forming the basis for two crimes overlap, when the statutory language indicates one rather than multiple criminal violations was contemplated, and when legislative history shows that an ambiguous statute was intended to assess one punishment." Id. at 355-56, 114 P.3d at 292-93. When deciding whether convictions are redundant, we look to the relevant statute(s) to determine if the Legislature intended to "separately punish multiple acts that occur close in time and make up one course of criminal conduct." Id. at 355, 114 P.3d at 292.

Here, Lee encouraged the victim to become a prostitute by showing her videos promoting the pimp/prostitution lifestyle. Over the following two days, he transported her to the Las Vegas strip to engage in prostitution. These actions constitute separate criminal acts rather than a single act or transaction. Accordingly, the dual convictions do not violate double jeopardy and are not redundant because Lee engaged in separate and distinct criminal acts.

First-degree kidnapping and pandering: furnishing transportation

"[M]ovement or restraint incidental to an underlying offense where restraint or movement is inherent, as a general matter, will not expose the defendant to dual criminal liability under either the first- or second-degree kidnapping statutes." Mendoza v. State, 122 Nev. 267, 274, 130 P.3d 176, 180 (2006). Additionally, in evaluating whether dual criminal liability is warranted, we consider whether the restraint or movement increases the risk of harm to the victim. Davis v. State, 110 Nev. 1107, 1114, 881 P.2d 657, 662 (1994).

Lee argues that we should reverse his conviction for first-degree kidnapping because his movement of the victim was inherent in and incidental to the underlying offense of pandering: furnishing transportation. The State, however, contends that this rule only applies when the underlying offense is one of the offenses enumerated in NRS 201.310(1).

The State misunderstands the rule. In Mendoza, we held that the rule applied to both the first-degree and second-degree kidnapping statutes. 122 Nev. at 274-75, 130 P.3d at 180-81. Because the second-degree kidnapping statute does not contain enumerated offenses, the State's theory that the rule only applies to enumerated offenses is incorrect.

Here, the victim's movement was included in and inherent to the underlying offense of transporting the victim for purposes of engaging in prostitution. Thus, Lee's movement of the victim did not increase the risk of harm already inherent in the underlying offense. Accordingly, the dual conviction was improper under Mendoza. We therefore reverse Lee's first-degree kidnapping conviction.

NRS 201.340 is not void as unconstitutionally vague

We review constitutional challenges to a statute de novo. Silvar v. Dist. Ct., 122 Nev. 289, 292, 129 P.3d 682, 684 (2006). Because we presume that statutes are constitutional, the party challenging the statute must bear the burden of proving that the statute is unconstitutional. Id. For statutes involving criminal penalties or constitutionally protected rights, we review a facial vagueness challenge to determine whether vagueness permeates the statute's text. Flamingo Paradise Gaming v. Att'y General, 125 Nev. ___, ___, 217 P.3d 546, 553 (2009). In applying this standard, we consider whether the statute: "(1) fails to provide notice sufficient to enable persons of ordinary intelligence to understand what conduct is prohibited and (2) lacks specific standards, thereby encouraging, authorizing, or even failing to prevent arbitrary and discriminatory enforcement." Id. at ___, 217 P.3d at 553-54 (quoting Silvar, 122 Nev. at 293, 129 P.3d at 685); see also City of Las Vegas v. Dist. Ct., 118 Nev. 859, 862, 59 P.3d 477, 480 (2002) (citing Chicago v. Morales, 527 U.S. 41, 55-56 (1999) (plurality opinion) (holding that a statute may be unconstitutionally vague for either of the two reasons discussed above)).

Under NRS 201.340(1),

> A person who knowingly transports or causes to be transported, by any means of conveyance, into, through or across this state, or who aids or assists in obtaining such transportation for a person with the intent to induce, persuade, encourage, inveigle, entice or compel that person to become a prostitute or to continue to engage in prostitution is guilty of pandering.

Although Lee raises a vagueness challenge, he fails to indicate what specifically is vague about the statute. Rather, his vagueness

argument asserts that NRS 201.340 is essentially the same crime as pandering under NRS 201.300. Therefore, according to Lee, he did not have adequate notice that pandering and pandering: furnishing transportation are two separate crimes.

Lee's argument lacks merit. We conclude that the statutory language of NRS 201.340 is sufficiently clear to allow persons of ordinary intelligence to understand that it is a crime to transport another person with the intent to encourage that person to become or remain a prostitute. Additionally, we conclude that there is nothing in the statute's language that encourages or authorizes arbitrary or discriminatory enforcement.

Expert testimony

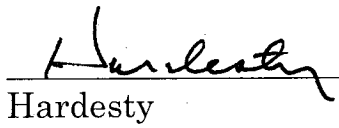
We will not overturn a district court's decision to admit or exclude evidence absent an abuse of discretion. Johnson v. State, 118 Nev. 787, 795, 59 P.3d 450, 456 (2002). Expert testimony is admissible if the testimony will assist the jury in understanding evidence or in determining a fact in issue. NRS 50.275. Employment experience can qualify an expert as a witness. Hallmark v. Eldridge, 124 Nev. 492, 499, 189 P.3d 646, 650-51 (2008).

Lee asserts that the district court erred by allowing a Las Vegas Metropolitan Police Department detective to testify as an expert about the pimp and prostitution culture. The detective testified that he had worked in the vice squad for 15 years and spent 6 years working on prostitution and pimping cases. He also received 250 hours of training for prostitution investigations. Approximately half of the training was dedicated to child prostitution cases. During the course of his employment, the detective also investigated approximately 250 child prostitution cases and conducted several interviews of pimps and

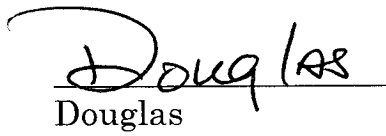
prostitutes. Additionally, the detective had previously qualified as an expert in prior child prostitution cases.

Based on the detective's employment experience, we conclude that the district court did not err by qualifying the detective as an expert. Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART and REMAND this matter to the district court for entry of an amended judgment of conviction consistent with this order.



_____, J.
Hardesty



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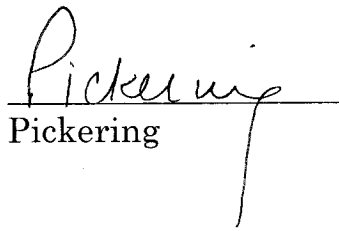

_____, J.
Pickering

cc: Hon. Linda Marie Bell, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk