IN THE SUPREME COURT OF THE STATE OF NEVADA

ANDY CAPRODRIGUEZ A/K/A ANDREW RICK CAP,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 55295

FILED

JUL 31 2012

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 battery, burglary while in possession of a deadly weapon, and battery with the use of a deadly weapon. The victim, Rickey Carter, claimed that he was attacked, beaten, and robbed after having consensual sex with a woman he had met on the street. Appellant claimed that he was acting in self-defense or defense of others or trying to arrest a fleeing felon, claiming that Carter had been beating and raping a woman in an abandoned apartment when he and others came to her aid. Eighth Judicial District Court, Clark County; James M. Bixler, Judge.

The district court sentenced appellant Andy Caprodriguez to 12 to 48 months for battery with intent to commit a crime; 24 to 120 months for burglary while in possession of a deadly weapon; and 24 to 120 months for battery with a deadly weapon resulting in substantial bodily harm, with all three sentences to run concurrently.[1] Caprodriguez appeals

[1]The State also charged Caprodriguez with conspiracy to commit robbery and robbery with the use of a deadly weapon; however, the jury acquitted him of those charges.

his conviction on multiple grounds, arguing that the district court erred by (1) denying his pretrial petition for a writ of habeas corpus, (2) rejecting his Batson v. Kentucky challenge to the State's use of a peremptory challenge, (3) failing to sua sponte order a mistrial based on the introduction of prior bad acts evidence, (4) denying his motion for a new trial based on newly discovered evidence, (5) denying his motion to dismiss based on alleged Brady v. State of Maryland violations, (6) denying his motion to dismiss based on allegations of prosecutorial misconduct and subornation of perjury, and (7) rejecting his proposed self-defense instruction. We conclude that any error in this case does not warrant relief, and we affirm the judgment of conviction.

Pretrial petition for a writ of habeas corpus

Caprodriguez asserts that the district court erred in denying his pretrial petition for writ of habeas corpus because the evidence presented at the preliminary hearing failed to establish the probable cause "need[ed to] support a reasonable inference that [Caprodriguez] committed the charged offenses." Caprodriguez's argument is based on the alleged unreliability of statements made by Carter at the hearing, including that: (1) he had sex with a woman who was not a prostitute; (2) when he saw Caprodriguez with a gun, he tried to wrap his arm around him; (3) Caprodriguez robbed and beat him but left his wallet; and (4) Carter can identify Caprodriguez's voice out of those who attacked him.

"'The trial court is the most appropriate forum in which to determine factually whether or not probable cause exists.'" Sheriff v. Shade, 109 Nev. 826, 828, 858 P.2d 840, 841 (1993) (quoting Sheriff v. Provenza, 97 Nev. 346, 347, 630 P.2d 265, 265 (1981)). This court will not overturn a determination regarding a pretrial habeas writ "'[a]bsent a

showing of substantial error on the part of the district court.'" Id. (quoting Provenza, 97 Nev. at 347, 630 P.2d at 265). To commit an accused to trial, the State must present "slight, even 'marginal' evidence," id. (quoting Sheriff v. Hodes, 96 Nev. 184, 186, 606 P.2d 178, 180 (1980), "'that the accused committed the offense.'" Id. at 828-29, 858 P.2d at 841 (quoting Kinsey v. Sheriff, 87 Nev. 361, 363, 487 P.2d 340, 341 (1971)). It is not required to negate all inferences that might explain the accused's conduct. Id.

In this case, the record reflects that the State presented at least "marginal" evidence that Caprodriguez committed the crimes for which he was charged. Thus, we conclude that the district court did not err in denying Caprodriguez's pretrial habeas writ petition.

Batson challenge

Caprodriguez asserts that the district court erred in rejecting his Batson challenge because the State violated his constitutional right to a jury selected by nondiscriminatory means when it used a preemptory challenge to exclude a prospective juror, who, like Caprodriguez, is Hispanic. See Batson v. Kentucky, 476 U.S. 79, 89 (1986) (holding that "the Equal Protection Clause forbids the prosecutor to challenge potential jurors" based solely on their race). Caprodriguez asserts that the State's reasons for excluding the contested juror were discriminatory in nature and that the prosecutor's questions were confusing and technical.

"Appellate review of a Batson challenge gives deference to '[t]he trial court's decision on the ultimate question of discriminatory intent.'" Hawkins v. State, 127 Nev. ___, ___, 256 P.3d 965, 966 (2011) (alteration in original) (quoting Diomampo v. State, 124 Nev. 414, 422-23, 185 P.3d 1031, 1036-37 (2008)). We will not reverse the district court's

decision "unless clearly erroneous." Kaczmarek v. State, 120 Nev. 314, 334, 91 P.3d 16, 30 (2004).

Nothing in the record indicates that the State's reasons for striking the contested juror were motivated by racial discrimination. During voir dire, the contested juror expressed displeasure over police inaction when she reported that someone broke into her home, which caused the State some concern about her ability to be impartial. The State also articulated concern over an apparent language barrier in that the juror appeared to have trouble understanding questions from counsel. In asserting his Batson challenge, Caprodriguez merely argued that the State was striking the contested juror solely because she was Hispanic.

Because Caprodriguez has failed to demonstrate purposeful discrimination by the State, we conclude that the district court's decision was not "clearly erroneous" in this instance.

Prior bad acts evidence

Next, Caprodriguez argues that the district court erred by admitting improper bad acts evidence from two witnesses—Las Vegas Metropolitan Police Department Officer Robb Lovell and Jamie Brown.

To determine whether evidence of a bad act is admissible, the trial court must decide, outside the presence of the jury, whether: "(1) . . . the evidence is relevant to the crime charged; (2) . . . the other act is proven by clear and convincing evidence; and (3) . . . the probative value of the other act is not substantially outweighed by the danger of unfair prejudice." Qualls v. State, 114 Nev. 900, 902, 961 P.2d 765, 766 (1998). Failure to conduct a hearing pursuant to Petrocelli v. State, 101 Nev. 46, 692 P.2d 503 (1985), modified in part on other grounds by Sonner v. State, 112 Nev. 1328, 1333-34, 930 P.2d 707, 711-12 (1996), and superseded by

statute on other grounds as stated in Thomas v. State, 120 Nev. 37, 44-45, 83 P.3d 818, 823-24 (2004), is reversible error, unless "'(1) the record is sufficient for this court to determine that the evidence is admissible under the test for admissibility of bad acts evidence set forth in Tinch[v. State, 113 Nev. 1170, 1176, 946 P.2d 1061, 1064-65 (1997)]; or (2) where the result would have been the same if the trial court had not admitted the evidence.'" Rhymes v. State, 121 Nev. 17, 22, 107 P.3d 1278, 1281 (2005) (quoting Qualls, 114 Nev. at 903-04, 961 P.2d at 767). Great deference is given to the trial court's decision to admit or exclude evidence of prior bad acts, and we will not overturn its decision "absent manifest error." Braunstein v. State, 118 Nev. 68, 72, 40 P.3d 413, 416 (2002). However, this court may consider an unobjected-to claim of error "for plain error that affected the defendant's substantial rights." Mitchell v. State, 124 Nev. 807, 817, 192 P.3d 721, 727 (2008).

Officer Lovell

During defense counsel's examination of Officer Lovell, defense counsel asked several questions regarding the relationship between Caprodriguez and Lopez. Thereafter, the following exchange took place between defense counsel and Officer Lovell:

> [Defense counsel] Q: You knew there was someone named Steven Lopez in custody?
>
> [Lovell] A: Correct.
>
> Q: Okay. And, in fact, you used a ruse to try to convince Mr. Caprodriguez that Steven Lopez had given some information about him, right?
>
> A: Well, yes.
>
> Q: You told the name Steven Lopez to Mr. Caprodriguez?

A: No, he told me because he was in jail with him before is where he met him.

Although the district court did not conduct a formal Petrocelli hearing, it did hear arguments from the parties outside the presence of the jury on Caprodriguez's objections, in which he argued that Officer Lovell's answer was false and unresponsive to his question. The State contended that Officer Lovell was admonished not to mention Caprodriguez's incarceration status, but that he did so only after defense counsel kept questioning him about the relationship between Caprodriguez and Lopez. The State further contended that defense counsel knew the answer to his question because he had Officer Lovell's written police report in his hands during his questioning.

Under the doctrine of invited error, "a party will not be heard to complain on appeal of errors which he himself induced." Pearson v. Pearson, 110 Nev. 293, 297, 871 P.2d 343, 345 (1994) (internal quotations omitted). Officer Lovell's statement was made in response to repeated questioning from defense counsel. And, although the district court failed to conduct a Petrocelli hearing, we nonetheless conclude the district court did not manifestly err in admitting the evidence because the result would have been the same had the court not admitted Officer Lovell's statement. See Rhymes, 121 Nev. at 22, 107 P.3d at 1281.

Jamie Brown

On direct examination by defense counsel, Jamie Brown testified that she and Caprodriguez were "family friends," but that she had not talked to him recently. When defense counsel asked her why, Brown responded, "He has been incarcerated." Defense counsel then

proceeded to ask Brown how long Caprodriguez had been incarcerated and she responded "almost five months."

Brown's statements were in response to questions from defense counsel. Defense counsel failed to object at trial or request a limiting instruction but now requests that this court deem the statement error. We decline to do so and conclude that the doctrine of invited error precludes Caprodriguez from raising this argument on appeal. See Pearson, 110 Nev. at 297, 871 P.2d at 345.

Motion for a new trial

Caprodriguez argues that the district court erred by not granting his motion for a new trial based on newly discovered evidence, namely testimony from Melissa Ann Bozek. Bozek was located by defense counsel after the completion of trial and, at that time, she signed an affidavit accusing Carter of sexually assaulting her in an abandoned apartment immediately prior to Caprodriguez beating and robbing Carter in that same location. "The grant or denial of a new trial based on newly discovered evidence is within the discretion of the trial court and will not be reversed on appeal absent an abuse of that discretion." Mortensen v. State, 115 Nev. 273, 286-87, 986 P.2d 1105, 1114 (1999). This court has articulated that

> [t]o establish a claim for a new trial based on newly discovered evidence, the defendant must show that the evidence is
>
> > "[(1)] newly discovered; [(2)] material to the defense; [(3)] such that even with the exercise of reasonable diligence it could not have been discovered and produced for trial; [(4)] non-cumulative; [(5)] such as to render a different result probable upon retrial; [(6)] not only an attempt to contradict,

> impeach, or discredit a former witness, unless the witness is so important that a different result would be reasonably probable; and [(7)] the best evidence the case admits."

Mortensen, 115 Nev. at 286, 986 P.2d at 1114 (quoting Sanborn v. State, 107 Nev. 399, 406, 812 P.2d 1279, 1284-85 (1991)).[2]

Newly discovered and non-cumulative factors

Caprodriguez asserts that Bozek's testimony is newly discovered evidence because her identity and location were not discovered until after the trial and verdict. He further asserts that the evidence is not cumulative because the jury never heard Bozek's testimony that Carter sexually assaulted her in the abandoned apartment.

Although Bozek's testimony is newly discovered evidence, we conclude that the district court properly found that Bozek's testimony was cumulative of the evidence presented to the jury at trial. For instance, Caprodriguez elicited testimony from a witness that she saw Carter and

---

[2]We conclude that Caprodriguez has met the materiality factor in that Bozek's testimony may support Caprodriguez's "fleeing felon" defense theory under NRS 171.126. We also conclude that Caprodriguez meets the reasonable diligence factor based on defense counsel's efforts to locate Bozek prior to trial and Bozek's admission in her affidavit that she remained silent about Carter's alleged sexual assault until stating so in her affidavit. See Hennie v. State, 114 Nev. 1285, 1290, 968 P.2d 761, 764 (1998) (concluding that the defendant could not, "even with the exercise of reasonable diligence, . . . [have] discover[ed] the conspiracy and produce[d] evidence of it during trial . . . due to the secretive context within which [the two witnesses] had entered their conspiracy"). Finally, as to the best evidence factor, the parties agree that Bozek's testimony would constitute the best evidence in support of Caprodriguez's motion for a new trial.

Bozek enter the abandoned apartment. Thirty minutes later, the witness saw Bozek exit the apartment crying hysterically, and the witness overheard Bozek say she "didn't want to do that" as she ran from the apartment. In addition, Caprodriguez explained in his voluntary statement that he watched Carter and Bozek enter the abandoned apartment, and Bozek later ran out of the apartment screaming, which led him to believe that Carter had somehow hurt Bozek.

Probability and impeachment factors

Caprodriguez also argues that Bozek's testimony will repaint Carter as a sex offender rather than a victim in the wrong place at the wrong time, and establish his "fleeing felon" defense. Caprodriguez further asserts that Carter was the most important witness for the State and, thus, Bozek's testimony will impeach Carter's credibility and would likely render a different result on retrial. We disagree.

"A private person may arrest another . . . [w]hen the person arrested has committed a felony, although not in the person's presence[, or] [w]hen a felony has been in fact committed, and the private person has reasonable cause for believing the person arrested to have committed it." NRS 171.126. Thus, to assert a "fleeing felon" defense under NRS 171.126, the private person must be attempting to or actually arrest the purported felon. Here, there is no evidence in the record that Caprodriguez was attempting to arrest or detain Carter or that he acted for the purpose of aiding Bozek, who left the scene prior to the confrontation inside the apartment. In fact, in his voluntary statement, Caprodriguez failed to express any belief that Carter had committed a felony. To the contrary, Caprodriguez admitted that what he did to Carter was "wrong" and he had "no excuse." Thus, at most, Bozek's testimony

could impeach Carter's credibility. See Mortensen, 115 Nev. at 286, 986 P.2d at 1114. But, it would not have rebutted the evidence of Caprodriguez's own voluntary statements.

Accordingly, because Bozek's testimony is cumulative and Caprodriguez has failed to demonstrate that her testimony will render a different result probable on retrial, we conclude that the district court did not abuse its discretion by denying Caprodriguez's motion for a new trial.

Motion to dismiss based on alleged Brady violations

During trial, Carter testified that he was 85 percent sure that the man he punched outside the abandoned apartment was Steven Lopez. However, the State called Eduardo Sandoval as a rebuttal witness, and he testified that, at the time Carter was robbed, he was walking near the abandoned apartment with his girlfriend when an unknown African-American man approached and hit him.[3] Caprodriguez asserts that the district court erred in denying his motion to dismiss because the State failed to disclose its knowledge that Carter misidentified Lopez as the man he punched outside the abandoned apartment, and it failed to disclose information regarding two related cases involving Lopez and Hector Ramirez. Caprodriguez asserts that the State was aware of Carter's misidentification based on its knowledge that Lopez and Ramirez were also charged with offenses related to the beating and robbery of Carter[4] and its use of Sandoval as a rebuttal witness. This court applies a de novo

---

[3]Carter is African-American.

[4]Lopez pleaded guilty and Ramirez pleaded nolo contendere.

standard of review when examining alleged Brady violations. State v. Bennett, 119 Nev. 589, 599, 81 P.3d 1, 7-8 (2003).

"[T]he suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." Brady v. State of Maryland, 373 U.S. 83, 87 (1963); see also Mazzan v. Warden, 116 Nev. 48, 66, 993 P.2d 25, 36 (2000) ("Brady and its progeny require a prosecutor to disclose evidence favorable to the defense when that evidence is material either to guilt or to punishment."). There is a three-prong test to determine whether a Brady violation has occurred: "[(1) t]he evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; [(2)] that evidence must have been suppressed by the State, either willfully or inadvertently; and [(3)] prejudice must have ensued." Strickler v. Greene, 527 U.S. 263, 281-82 (1999).

As to the first prong, this court held in Mazzan that "[d]ue process does not require simply the disclosure of 'exculpatory' evidence. Evidence also must be disclosed if it provides grounds for the defense . . . to impeach the credibility of the state's witnesses." 116 Nev. at 67, 993 P.2d at 37. Notwithstanding this mandate, there is no evidence in the record that indicates that, prior to his testimony at trial, Carter identified Lopez as the man he punched outside of the abandoned apartment. Thus, there was no evidence favorable or otherwise for the State to disclose on this issue. As such, Caprodriguez has failed to prove this prong.

As to the second prong, there is no evidence in the record that the State suppressed Carter's alleged misidentification evidence, or that it

suppressed evidence pertaining to the related cases involving Lopez and Ramirez. Consistent with its open-file policy, the State repeatedly made its file available to defense counsel for inspection, and, on one occasion, it sent an e-mail to defense counsel containing information related to both Lopez and Ramirez. See Rippo v. State, 113 Nev. 1239, 1257, 946 P.2d 1017, 1028 (1997) ("Federal courts have consistently held that a Brady violation does not result if the defendant, exercising reasonable diligence, could have obtained the information."). As such, Caprodriguez has failed to prove this prong.

As to the third prong, Caprodriguez has failed to demonstrate prejudice as a result of Carter's misidentification of Lopez during trial. Caprodriguez had adequate notice of the Lopez and Ramirez evidence to prepare for trial. Moreover, defense counsel was able to effectively highlight Carter's and Sandoval's conflicting testimony during closing arguments, thereby allowing the jury to evaluate Carter's credibility as a witness. As a result, even if Caprodriguez had this information prior to trial, it is not reasonably probable that the result would have been different, especially in light of Caprodriguez's voluntary statement to police. See Mazzan, 116 Nev. at 66, 993 P.2d at 36 (stating that proof of materiality establishes prejudice, and that "evidence is material if there is a reasonable probability that the result would have been different if the evidence had been disclosed").

Accordingly, we conclude that no Brady violation occurred and the district court properly denied Caprodriguez's motion to dismiss based on alleged Brady violations.

Motion to dismiss based on allegations of prosecutorial misconduct

Caprodriguez asserts that the district court erred in denying his motion to dismiss based on his allegations of prosecutorial misconduct. Specifically, he alleges two instances of misconduct: (1) the State made misrepresentations to the district court and defense counsel; and (2) the State suborned perjury.

Claims of prosecutorial misconduct require a two-step analysis. "First, we must determine whether the prosecutor's conduct was improper. Second, if the conduct was improper, we must determine whether the improper conduct warrants reversal." Valdez v. State, 124 Nev. 1172, 1188, 196 P.3d 465, 476 (2008) (footnote omitted). Reversal of a conviction is not warranted if the prosecutorial misconduct amounts to harmless error. Id. "Generally, to preserve a claim of prosecutorial misconduct, the defendant must object to the misconduct at trial." Id. at 1190, 196 P.3d at 477. Caprodriguez timely objected during trial and has thus preserved his claims of prosecutorial misconduct for appeal.

For misconduct of a constitutional nature, this court "appl[ies] the Chapman v. California[, 386 U.S. 18, 24 (1967),] standard and will reverse unless the State demonstrates, beyond a reasonable doubt, that the error did not contribute to the verdict." Valdez, 124 Nev. at 1189, 196 P.3d at 476. When the misconduct is not of a constitutional nature, this court "will reverse only if the error substantially affects the jury's verdict." Id.

Misrepresentations

Caprodriguez argues that prior to trial, prosecutor Michael Staudaher misrepresented to him and the district court that there was no exculpatory evidence in the record regarding a misidentification by Carter.

According to Caprodriguez, the trial testimony of District Attorney Investigator Patrick Malone further confirms the prosecutor's misrepresentation. Caprodriguez asserts that, according to Malone's testimony, Sandoval informed Malone that Carter had hit him. Therefore, Caprodriguez argues that the State knew about Carter's misidentification of Lopez as the individual he punched outside of the abandoned apartment. However, as we have already determined, there is no evidence in the record that Carter misidentified anyone prior to trial. Our review of Malone's testimony reveals that he was actually recounting his interview of another witness, not Sandoval, in which that witness asserted that it was Carter who punched Sandoval. Besides, Sandoval clearly testified that he had no idea who hit him that day.

Caprodriguez also asserts that Staudaher lied to defense counsel because defense counsel went to trial on Staudaher's assurances that "'no one else was arrested in connection with this case,'"[5] even though Staudaher had noticed Lopez as a witness. This argument is also belied by the record, which demonstrates that Caprodriguez had notice of the Lopez and Ramirez cases as early as the preliminary hearing and that the State e-mailed the Lopez and Ramirez evidence to Caprodriguez prior to trial. Although Caprodriguez objected when the State introduced photographs of Lopez and Ramirez for purposes of identifying them as being involved in the offenses against Carter, arguing that the State failed

---

[5]Although Caprodriguez attributes this quote to Staudaher, the record reflects that it actually comes from an e-mail defense counsel wrote to Staudaher.

to disclose that information prior to trial, he later "backtrack[ed]" and acknowledged that he did receive the information prior to trial.

Subornation of perjury

Caprodriguez argues that the State suborned perjury by allowing Carter to testify when it knew that Carter would lie on the stand at trial. Caprodriguez asserts that Carter perjured himself on the stand based on Bozek's testimony because he likely sexually assaulted Bozek immediately prior to being attacked by Caprodriguez. However, he fails to point to any purportedly false statement made by Carter at trial.

NRS 199.120 states that "[a] person, having taken a lawful oath or made affirmation in a judicial proceeding or in any other matter where, by law, an oath or affirmation is required and no other penalty is prescribed, who . . . [s]uborns any other person to make . . . an unqualified statement or to swear or affirm in such a manner . . . is guilty of perjury or subornation of perjury." In Jimenez v. State, this court held that a prosecutor is forbidden from using perjured testimony to secure a conviction based on principles of fairness, and the conviction must be set aside if the false testimony affected the jury's verdict. 112 Nev. 610, 622, 918 P.2d 687, 694 (1996). Likewise, a prosecutor cannot allow a discovered false statement "to go uncorrected when it appears." Giglio v. United States, 405 U.S. 150, 153 (1972) (internal quotations omitted).

Here, we conclude that the prosecutor's conduct was not improper because, even assuming Carter lied on the stand based on Bozek's testimony, Caprodriguez fails to demonstrate that the State either had knowledge that Carter would lie prior to his testimony or that it attempted to conceal Carter's purported lie after the fact. To the contrary, even after Carter identified Lopez as the man he punched outside of the

abandoned apartment, the State called Sandoval in rebuttal, who testified that an unknown African-American man hit him in the face around the same time and in the same general location as Carter claims to have struck Lopez.

Because we perceive no improper conduct on the part of the prosecutor, we conclude that the district court properly denied Caprodriguez's motion to dismiss based on his allegations that the State engaged in prosecutorial misconduct.

Caprodriguez's proposed self-defense instruction

Caprodriguez asserts that the district court erred in rejecting his proposed self-defense instruction, arguing that "there was evidence to support a 'defense of others' or a 'self-defense' theory." Caprodriguez also asserts that the district court's rejection of his proposed instruction improperly shifted the burden of proof on the issue of self-defense to him. The State contends that the district court did not err in rejecting Caprodriguez's proposed instruction because, to the contrary, the court did instruct the jury on self-defense and Caprodriguez's proposed instruction was inaccurate based on the facts in evidence.

"This court reviews a district court's decision settling jury instructions for an abuse of discretion or judicial error; however, whether the instruction was an accurate statement of the law is a legal question that is reviewed de novo." Funderburk v. State, 125 Nev. 260, 263, 212 P.3d 337, 339 (2009) (citation omitted). "'An abuse of discretion occurs if the district court's decision is arbitrary or capricious or if it exceeds the bounds of law or reason.'" Crawford v. State, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005) (quoting Jackson v. State, 117 Nev. 116, 120, 17 P.3d 998, 1000 (2001)). "This court has consistently held that 'the defense has the

right to have the jury instructed on its theory of the case as disclosed by the evidence, no matter how weak or incredible that evidence may be.'" Id. at 751, 121 P.3d at 586 (quoting Vallery v. State, 118 Nev. 357, 372, 46 P.3d 66, 76-77 (2002)).

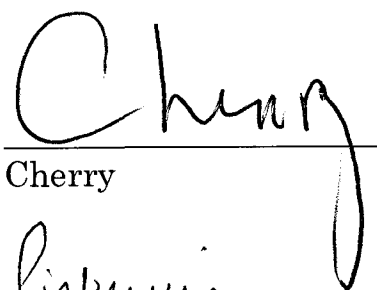
In this case, Caprodriguez argued in the district court that his proposed jury instruction reflected his apparent-danger theory of self-defense. The proposed instruction stated, in pertinent part, that "[a]ctual danger is not necessary to justify a physical act of violence in self-defense. A person has a right to defend from apparent danger to the same extent as he would from actual danger." Caprodriguez argued that the evidence supported this instruction because the facts show that Bozek ran from the apartment screaming and crying. The district court rejected Caprodriguez's argument, stating that, "under anybody's version of the facts, [Caprodriguez's proposed instruction was] not necessary." The court later clarified that Caprodriguez was not entitled to his proposed jury instruction because "when the victim of the sexual assault is no longer even present, has run off down the road somewhere, there is no . . . presence of danger." The court instead provided the jury with two self-defense instructions based on Nevada caselaw and on Brown's testimony that Carter may have initiated the fight with Caprodriguez. See Runion v. State, 116 Nev. 1041, 1047, 13 P.3d 52, 56 (2000) (recognizing that self-defense is justifiable in instances of actual danger or apparent danger).

We agree with the district court's reasoning that the facts of the case, as proved by the evidence presented, justified instructing the jury on self-defense based on actual danger, and the legal elements of that theory were adequately covered in the two instructions given to the jury.

Thus, we conclude that the district court did not abuse its discretion by rejecting Caprodriguez's proposed jury instruction. See Rose v. State, 123 Nev. 194, 205, 163 P.3d 408, 415 (2007) (concluding that the district court is justified in "'refus[ing] an instruction when the law in that instruction is adequately covered by another instruction given to the jury.'" (quoting Doleman v. State, 107 Nev. 409, 416, 812 P.2d 1287, 1292 (1991))).

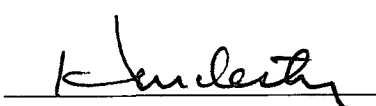
Having considered Caprodriguez's contentions and concluded that they do not warrant reversal, we

ORDER the judgment of the district court AFFIRMED.



_____, C.J.
Cherry

_____, J.
Pickering



_____, J.
Hardesty

cc: Hon. James M. Bixler, District Judge
The Kice Law Group, LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk