

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDWARD MICHAEL ADAMS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 55494

FILED

JUL 26 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *R. Malone*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of first-degree kidnapping, battery with the intent to commit sexual assault, open or gross lewdness, and seven counts of sexual assault. Eighth Judicial District Court, Clark County; David B. Barker, Judge.

First, appellant Edward Michael Adams contends that his conviction on the seven counts of sexual assault violates double jeopardy and redundancy/multiplicity principles. Additionally, Adams contends that the open or gross lewdness conviction was impermissibly redundant because it was “merely incidental” to the sexual assault and that the battery conviction should be vacated “because it is based on precisely the same acts alleged in the First Degree Kidnapping charge.” We disagree.

Adams’ convictions do not violate the Double Jeopardy Clause because the counts were based upon separate and distinct acts. See U.S. Const. amend. V; Blockburger v. United States, 284 U.S. 299, 304 (1932) (“The applicable rule is that, where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each

provision requires proof of a fact which the other does not.”). Adams’ convictions were not redundant because “the material or significant part of each charge” was not the same. Salazar v. State, 119 Nev. 224, 227-28, 70 P.3d 749, 751 (2003) (internal quotation marks omitted); see also Crowley v. State, 120 Nev. 30, 33, 83 P.3d 282, 285 (2004) (“[T]he facts of a case may support convictions on separate charges ‘even though the acts were the result of a single encounter and all occurred within a relatively short time.’” (quoting Wright v. State, 106 Nev. 647, 650, 799 P.2d 548, 549-50 (1990))). Therefore, we conclude that Adams’ contention is without merit.


Second, Adams contends that the prosecutor committed misconduct during closing arguments by shifting the burden of proof, misstating the evidence, commenting about his failure to produce evidence, and “inject[ing] his personal feelings about the defendant and his defense.” The district court sustained Adams’ objections and admonished the prosecutor not to shift the burden of proof and/or comment on the defense. Even assuming that the prosecutor’s statements were improper, we conclude that Adams was not prejudiced and therefore no relief is warranted. See Browning v. State, 124 Nev. 517, 533, 188 P.3d 60, 72 (2008) (“[P]rejudice from prosecutorial misconduct results when a prosecutor’s statements so infect the proceedings with unfairness as to make the results a denial of due process.” (alteration omitted) (internal quotation marks omitted)); Valdez v. State, 124 Nev. 1172, 1193-94, 196 P.3d 465, 479 (2008) (no prejudice resulting from prosecutorial misconduct where objection sustained); King v. State, 116 Nev. 349, 356, 998 P.2d

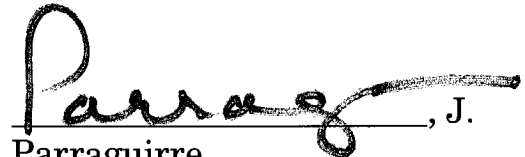
1172, 1176 (2000) (“[W]here evidence of guilt is overwhelming, even aggravated prosecutorial misconduct may constitute harmless error.”).

Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

cc: Hon. David B. Barker, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk