

IN THE SUPREME COURT OF THE STATE OF NEVADA

ELAINE MARIE CLERMONT,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 55710

**FILED**

DEC 10 2010

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY: *[Signature]*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction entered pursuant to a jury verdict of conspiracy to commit kidnapping and false imprisonment. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.<sup>1</sup>

Sufficiency of the evidence

Appellant first contends that there was insufficient evidence to prove that she had the specific intent or entered into an agreement to commit kidnapping. 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. See

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<sup>1</sup>We note that the judgment of conviction contains a clerical error. It incorrectly states that appellant was convicted pursuant to a guilty plea when she was actually convicted pursuant to a jury verdict. Following this court's issuance of its remittitur, the district court shall enter a corrected judgment of conviction. See NRS 176.565 (providing that clerical errors in judgments may be corrected at any time); Buffington v. State, 110 Nev. 124, 126, 868 P.2d 643, 644 (1994) (explaining that the district court does not regain jurisdiction following an appeal until the supreme court issues its remittitur).

Jackson v. Virginia, 443 U.S. 307, 319 (1979); McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

Evidence presented at trial demonstrated that appellant and her accomplice held the child victim at appellant's residence for more than an hour before transporting the victim to the trustee building. Appellant telephoned the victim's school and informed the school that the victim would not be returned to the school. Further, appellant alerted the media that she and her codefendant had the victim and would be transporting him to the trustee building. Based on this evidence, a rational juror could find that appellant had entered an agreement with her accomplice to detain the victim with the intent to "confine [him] from his . . . parents, guardians, or any other person having lawful custody of the minor." NRS 200.310(1); see Thomas v. State, 114 Nev. 1127, 1143, 967 P.2d 1111, 1122 (1998) (defining conspiracy). 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).<sup>2</sup>

#### Exclusion of evidence of accomplice's acquittal

Appellant argues that the district court erred by refusing to admit evidence that her accomplice was acquitted at an earlier trial. "District courts are vested with considerable discretion in determining the relevance and admissibility of evidence" and this court will not reverse the

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<sup>2</sup>To the extent that appellant also argues that the acquittal of her accomplice indicates that there was insufficient evidence of an agreement to commit kidnapping, this claim lacks merit because the lack of evidence against appellant's accomplice was immaterial to determining appellant's guilt or innocence. See Hilt v. State, 91 Nev. 654, 662, 541 P.2d 645, 650-51 (1975).

district court's decision on appeal absent manifest error. Archanian v. State, 122 Nev. 1019, 1029, 145 P.3d 1008, 1016 (2006). The district court did not abuse its discretion by excluding evidence of the accomplice's acquittal because this evidence was not relevant to a determination of appellant's guilt or innocence. See Hilt, 91 Nev. at 662, 541 P.2d at 650-51.

Mistrial

Appellant argues that the district court erred by failing to grant a mistrial after a witness violated the district court's pretrial ruling to exclude evidence by stating that appellant had trespassed at the elementary school. The denial of a motion for mistrial will not be disturbed on appeal absent a clear showing of abuse of discretion. Parker v. State, 109 Nev. 383, 388-89, 849 P.2d 1062, 1066 (1993). The record reveals that the prosecutor did not illicit the statement, and we conclude that the district court's immediate admonishment to the jury that the statement was legally and factually incorrect and should be disregarded was sufficient to cure any prejudice. See Rose v. State, 123 Nev. 194, 206-07, 163 P.3d 408, 417 (2007). Therefore, we conclude that the district court did not abuse its discretion in denying the motion for mistrial.

Reasonable doubt exhibit

Appellant argues that the district court erred in refusing to allow her to use a demonstrative exhibit to aid in the explanation of reasonable doubt during closing arguments. The district court concluded that the exhibit was improper because it attempted to quantify reasonable doubt. Attempts to quantify reasonable doubt are not permissible. Daniel v. State, 119 Nev. 498, 521-22, 78 P.3d 890, 905-06 (2003). Appellant fails

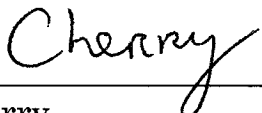
to demonstrate that the district court erred in refusing to allow appellant to use the exhibit in closing arguments.

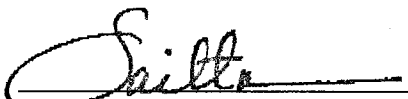
False imprisonment


Appellant argues that the district court erred by instructing the jury on false imprisonment as a lesser-included-offense of kidnapping. The district court may properly grant a State request for an instruction on a lesser-included-offense over the objection of the defense. See Rosas v. State, 122 Nev. 1258, 1268, 147 P.3d 1101, 1108 (2006). Here, the evidence supported a conviction for false imprisonment; therefore, the district court properly instructed the jury on false imprisonment as a lesser-included-offense of kidnapping. Id. at 1267, 147 P.3d at 1108; Lisby v. State, 82 Nev. 183, 188, 414 P.2d 592, 595 (1966).

Having considered appellant's contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Saitta

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Douglas W. Herndon, District Judge  
Attorney General/Carson City  
Clark County District Attorney  
Yampolsky, Ltd.  
Eighth District Court Clerk