

IN THE SUPREME COURT OF THE STATE OF NEVADA

ADOLFO GODOY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56458

ADOLFO GODOY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.


No. 56459

ADOLFO GODOY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56460

FILED

DEC 10 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

These are consolidated appeals from three separate judgments of conviction that were entered pursuant to a jury verdict of robbery and possession of a stolen motor vehicle and guilty pleas of possession of a stolen motor vehicle and failure to appear after release on bail. Second Judicial District Court, Washoe County; Patrick Flanagan, Judge.

Sufficiency of the evidence

Appellant Adolfo Godoy contends that insufficient evidence was adduced at trial to support his convictions for robbery and one of the possession of a stolen vehicle counts because the robbery victim's testimony was not corroborated by the surveillance video and there was no evidence that he possessed the Volkswagen after July 26, 2008. 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. McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992). The jury heard testimony that on July 26, 2008, the victim drove Godoy to a storage facility. When they arrived, Godoy grabbed and twisted the victim's hand causing her to drop the car keys. Godoy took the keys. The victim was afraid to confront Godoy and went to the storage office for help. Godoy drove away in the victim's car. On August 8, 2008, sheriff's deputies encountered and pursued the stolen car. The driver eluded the deputies long enough to park the car and run away. The car contained Godoy's wallet, credit cards and banks cards in his name, and a helmet and tool belt marked with his name. The jury was also shown a surveillance video depicting Godoy's activities at the storage facility. We conclude that a rational juror could reasonably infer from this evidence that Godoy committed the crimes of robbery and possession of a stolen motor vehicle. See NRS 200.380(1); NRS 205.273(1). It is for the jury to determine the weight and credibility to give conflicting testimony, and 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); see also Buchanan v. State, 119 Nev. 201, 217, 69 P.3d 694, 705 (2003) (circumstantial evidence alone may sustain a conviction).

Character evidence

Godoy contends that the district court improperly admitted evidence of his character by allowing the victim to testify that he impregnated her, she had an abortion, and that he lived in a halfway house, worked part-time, had not seen his daughter in years, did laundry at the victim's house, and used the victim by "worming" his way back into

her life and taking advantage of her. “We review a district court’s decision to admit or exclude evidence for an abuse of discretion. However, failure to object precludes appellate review of the matter unless it rises to the level of plain error.” Mclellan v. State, 124 Nev. 263, 267, 182 P.3d 106, 109 (2008) (internal footnote and quotation marks omitted). Godoy did not object to this evidence and we conclude that it does not rise to the level of plain error.

Jury instructions

Godoy contends that the district court improperly instructed the jury that (1) it is unnecessary to prove both violence and intimidation, (2) property is taken in the person’s presence when a person’s absence is caused by fear of the defendant, and (3) possession may be either actual or constructive. “The district court has broad discretion to settle jury instructions, and this court reviews the district court’s decision for an abuse of that discretion or judicial error.” Crawford v. State, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005). We conclude that the challenged instructions correctly stated Nevada law, some evidence supported giving the instructions, the instructions did not change the State’s theory of the case, and the district court did not abuse its discretion or err in giving the instructions. See Palmer v. State, 112 Nev. 763, 768, 920 P.2d 112, 115 (1996) (quoting Black’s Law Dictionary 1163 (6th ed. 1990)); Robertson v. Sheriff, 93 Nev. 300, 302, 565 P.2d 647, 647-48 (1977); Hayden v. State, 91 Nev. 474, 476, 538 P.2d 583, 584 (1975). To the extent that Godoy claims that the district court erred by not instructing the jury on the defenses of “consent” and “reasonable mistake,” Godoy did not request these instructions and we perceive no error. See Crawford, 121 Nev. at 754-55, 121 P.3d at 589.

Joinder

Godoy contends that the district court erred by granting the State's motion to join the charges brought in district court case numbers CR08-2413 and CR08-2417 because the joinder unconstitutionally chilled his right to testify in his own defense and allowed other bad act evidence to infect the trial. We review a district court's joinder decisions for an abuse of discretion. Zana v. State, 125 Nev. ___, ___, 216 P.3d 244, 249 (2009). Because the record supports the district court's findings that the acts leading to the charges were part of a common scheme or plan, the evidence in each charge was cross-admissible in the separate trial on the other charge, and the charges were connected by common witnesses, we conclude that the district court did not abuse its discretion by joining these charges. See NRS 173.115(2); Zana, 125 Nev. at ___, 216 P.3d at 249.

Prosecutorial misconduct

Godoy contends that the prosecutor committed misconduct during his direct examination of the victim and rebuttal argument. Godoy claims that "the prosecutor violated his duty not to inject his personal beliefs into the argument and, more appropriately, not to ridicule or belittle the defendant or the case." Godoy did not object to this alleged misconduct and we conclude that Godoy has failed to demonstrate plain error. See Valdez v. State, 124 Nev. 1172, 1190, 196 P.3d 465, 477 (2008).

Sentencing issues

Godoy contends that he was denied his statutory right to allocution at sentencing. See NRS 176.015(2)(b). The State concedes the error. However, because Godoy failed to preserve this issue for appeal and he has not shown that the error was prejudicial, we conclude that the

error is not reversible plain error. See Mendoza-Lobos v. State, 125 Nev. ___, ___, 218 P.3d 501, 507-08 (2009) (applying plain-error analysis to a sentencing error).

Godoy contends that the district court erred by relying on constitutionally infirm prior convictions to adjudicate him a habitual criminal. We review the district court's habitual criminal adjudication for an abuse of discretion. See NRS 207.010(2); O'Neill v. State, 123 Nev. 9, 12, 153 P.3d 38, 40 (2007). The record reveals that the district court relied upon certified court documents that proved the existence of three prior felony convictions, Godoy failed to prove that they were not felonies, and he failed to overcome the presumption of regularity afforded criminal convictions. See NRS 207.010(1)(b); NRS 207.016(5); Dressler v. State, 107 Nev. 686, 697-98, 819 P.2d 1288, 1295-96 (1991); see also Arajakis v. State, 108 Nev. 976, 983, 843 P.2d 800, 805 (1992) (providing that habitual criminal adjudication "makes no special allowance for non-violent crimes or for the remoteness of convictions"). Accordingly, we conclude that Godoy has failed to demonstrate that the district court abused its discretion in this regard.

Godoy also contends that the district court's sentencing scheme constitutes cruel and unusual punishment because it is "in excess of that needed for society's interests." The district court sentenced Godoy to two concurrent prison terms of 10 to 25 years, a consecutive prison term of 24 to 60 months, and a concurrent prison term of 19 to 48 months. Because Godoy has not argued that the applicable sentencing statutes are unconstitutional, the sentences are within the parameters of the applicable statutes, and we are not convinced that the sentences are so grossly disproportionate to the offenses as to shock the conscience, we

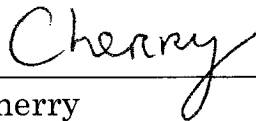
conclude the sentences do not violate the constitutional proscriptions against cruel and unusual punishment. See NRS 193.130(2)(c), (d); NRS 199.335(2)(a); NRS 205.273(3); NRS 207.010(1)(b)(3); Harmelin v. Michigan, 501 U.S. 957, 1000-01 (1991) (plurality opinion); Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996); Glegola v. State, 110 Nev. 344, 348, 871 P.2d 950, 953 (1994).

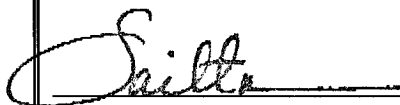
Cumulative error

Godoy contends that cumulative error deprived him of a fair trial and sentencing. To the extent that there was error, we have balanced the relevant factors and conclude that the cumulative effect of the errors did not deprive Godoy of a fair trial and sentencing and that no relief is warranted. See Valdez, 124 Nev. at 1195, 196 P.3d at 481 (identifying three factors for evaluating claims of cumulative error).

Having considered Godoy's contentions and concluded that he is not entitled to relief, we

ORDER the judgments of conviction AFFIRMED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Patrick Flanagan, District Judge
Karla K. Butko
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk