IN THE SUPREME COURT OF THE STATE OF NEVADA

SERGIO PRADO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56750

FILED

JAN 12 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
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DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of robbery with the use of a deadly weapon, and two counts of first-degree kidnapping with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge. Appellant Sergio Prado raises three arguments on appeal.

First, Prado argues that his kidnapping convictions should be reversed because (1) the kidnapping of the two victims (a woman and her three-year-old daughter) was incidental to his conviction for robbery; and (2) there was insufficient evidence that he willfully and intentionally kidnapped the victims. We disagree.

At trial, Zodelba Moreno testified that she had just parked her vehicle in front of a grocery store when Prado approached her, pressed a gun against her ribs, and took her car keys. She told him that her daughter was in the backseat, and when Prado did not respond, Moreno quickly jumped into the backseat to rescue her daughter. While she was taking her daughter out of the car seat, Prado started the vehicle and the doors automatically locked. Moreno pleaded with Prado to let them go,

but Prado demanded that she and her child move to the front seat, and he told Moreno not to panic or he would shoot her. Prado drove into a nearby neighborhood, took Moreno's money and cell phone from her purse, and ordered Moreno and her child to leave the vehicle.

From this evidence, a rational juror could have found that moving the victims created a risk of danger substantially exceeding that of the robbery itself, or that the movement of the victims substantially exceeded that required to complete the robbery. See Mendoza v. State, 122 Nev. 267, 274-75, 130 P.3d 176, 180-81 (2006) (clarifying circumstances under which dual convictions for kidnapping and underlying offense may be sustained). Thus, we conclude that the kidnapping was not incidental to the robbery. See id.

We further conclude that the evidence was sufficient for a rational juror to find beyond a reasonable doubt that Prado willfully and intentionally kidnapped the victims. See Jackson v. Virginia, 443 U.S. 307, 319 (1979); Mason v. State, 118 Nev. 554, 559, 51 P.3d 521, 524 (2002); NRS 200.310(1). Although Prado contends that Moreno entered the vehicle voluntarily, his intent to kidnap her could be inferred from his threat to shoot her and his refusal to stop the vehicle despite her numerous pleas. See Jensen v. Sheriff, 89 Nev. 123, 126, 508 P.2d 4, 6 (1973) ("[T]he essential criminal intent is deemed included in the doing of the prohibited act . . . [and] may be inferred from the acts of the accused." (citation omitted)). Prado also contends that insufficient evidence supports his kidnapping conviction because the State failed to prove his intent to remove the child from her parents. However, this argument is based on a misreading of the kidnapping statute, NRS 200.310(1).

Contrary to Prado's assertion, the statute under which he was convicted permits the element of intent to be established in several ways, including by showing that he had the intent to perpetrate robbery upon the minor. See NRS 200.310(1)[1]; see also Jensen, 89 Nev. at 125, 508 P.2d at 5 (NRS 200.310(1) "spells out the several specific acts in the disjunctive, and any one of them is sufficient to taint the act with criminality"). Because the State was not required to show that Prado intended to keep the child from her mother, Prado's argument on appeal lacks merit.

Second, Prado contends that the district court erred in adjudicating him a habitual criminal because it relied upon invalid prior felony convictions. Specifically, he argues that the prior convictions were invalid because they resulted from guilty pleas for which he did not receive consideration, as evidenced by the fact that the information for each conviction contained the exact same crime that Prado pleaded guilty to. We discern no plain error. See Gallego v. State, 117 Nev. 348, 365, 23 P.3d 227, 239 (2001) (providing that the failure to object at trial precludes appellate review but for plain error), abrogated on other grounds by

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[1]This statute states in relevant part that

> a person who leads, takes, entices, or carries away or detains any minor with the intent to keep, imprison, or confine the minor from his or her parents, . . . or with the intent to hold the minor to unlawful service, or perpetrate upon the person of the minor any unlawful act is guilty of kidnapping in the first degree.

NRS 200.310(1) (emphasis added).

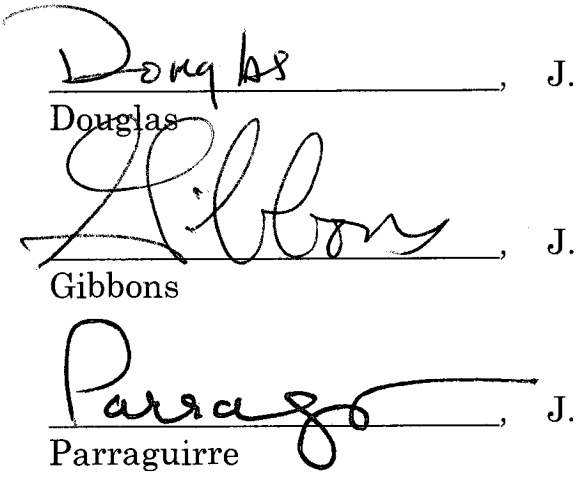
Nunnery v. State, 127 Nev. ___, 263 P.3d 235 (2011). At sentencing, the State produced copies of the three felony convictions that were used to adjudicate Prado a habitual criminal, and no constitutional infirmity appears on the face of those prior convictions. See Dressler v. State, 107 Nev. 686, 697-98, 819 P.2d 1288, 1295-96 (1991) (a valid record of a conviction is afforded a presumption of regularity "so long as the record of the conviction does not, on its face, raise a presumption of constitutional infirmity"); NRS 207.016(5). Prado did not attempt to rebut the presumption that the prior convictions were constitutionally obtained, nor has he demonstrated on appeal that the convictions are constitutionally infirm. See Dressler, 107 Nev. at 698, 819 P.2d at 1296. Accordingly, we conclude that the district court properly relied on the prior convictions to enhance Prado's sentence.

Finally, Prado argues that the district court erred by adjudicating him a habitual criminal based solely on his prior convictions, without exercising its discretion and considering other factors in making that decision. We require "a sentencing court to exercise its discretion and weigh the appropriate factors for and against the habitual criminal statute before adjudicating a person as a habitual criminal." Hughes v. State, 116 Nev. 327, 333, 996 P.2d 890, 893 (2000); see also Clark v. State, 109 Nev. 426, 428, 851 P.2d 426, 427 (1993); NRS 207.010(2). There is no requirement, however, that the district court "utter specific phrases or make 'particularized findings' that it is 'just and proper' to adjudicate a defendant as a habitual criminal." Hughes, 116 Nev. at 333, 996 P.2d at 893; see also O'Neill v. State, 123 Nev. 9, 16, 153 P.3d 38, 43 (2007). Because the record indicates that the district court properly exercised its

discretion in adjudicating Prado a habitual criminal, we conclude that this claim lacks merit. See Hughes, 116 Nev. at 333, 996 P.2d at 893-94

Having considered Prado's claims and concluded that no relief is warranted, we

ORDER the judgment of conviction AFFIRMED.



_____, J.
Douglas

_____, J.
Gibbons

_____, J.
Parraguirre

cc: Hon. Elissa F. Cadish, District Judge
Sandra L. Stewart
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk