

IN THE SUPREME COURT OF THE STATE OF NEVADA

BILLY CEPERO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 57045

FILED

SEP 14 2011

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of invasion of the home. Eighth Judicial District Court, Clark County; Michael Villani, Judge. Appellant Billy Cepero raises three contentions on appeal.

First, Cepero argues that the district court erred in overruling his objection to the flight instruction because evidence demonstrated that the instant crime was committed during his flight and was not the cause of his flight. We discern no abuse of discretion. See Crawford v. State, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005) (reviewing objections to jury instructions for abuse of discretion). Here, the evidence supported a conclusion that Cepero fled due to a consciousness of guilt and a desire to avoid apprehension and prosecution. See Rosky v. State, 121 Nev. 184, 199, 111 P.3d 690, 700 (2005). While the record indicates that Cepero's flight began immediately prior to the instant crime, Cepero's flight continued after the instant crime and thus the record does not exclude the likelihood that his consciousness of guilt resulting from the instant crime further motivated his flight thereafter.

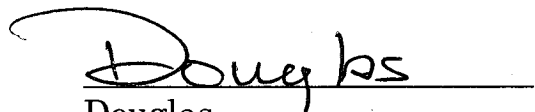
Second, Cepero argues that the State committed prosecutorial misconduct by incompletely stating the law concerning the flight instruction, eliciting testimony that Cepero had a sexual relationship with a 15-year-old and had been convicted of statutory sexual seduction, and questioning Cepero about a prior attempt to elude the police wherein he had been driving 90 miles per hour. We discern no plain error for the following reasons. See Valdez v. State, 124 Nev. 1172, 1190, 196 P.3d 465, 477 (2008) (challenges to unobjected-to prosecutorial misconduct are reviewed for plain error). First, the State's flight instruction argument accurately reflected part of the relevant law and the jury was correctly instructed on the entire law. Second, evidence that Cepero had engaged in a dating and sexual relationship with a defense witness, regardless of her age at the time, was relevant to her motivation to lie. See Baltazar-Monterrosa v. State, 112 Nev. 606, 619, 137 P.3d 1137, 1145-46 (2006) (“[T]he trial court's discretion is more narrow where bias is the object to be shown, and an examiner must be permitted to elicit any facts which might color a witness's testimony.” (quoting Bushnell v. State, 95 Nev. 570, 572, 599 P.2d 1038, 1040 (1979))). Third, the State was entitled to cross-examine Cepero about his previous attempt to elude the police to impeach his claim that he did not believe it was the police attempting to apprehend him at the apartment as well his claim that he did not have a relationship with a defense witness. See NRS 50.085(3).

Third, Cepero contends that the district court erred in denying his motion for mistrial based on the introduction of evidence of his flight. We disagree. The evidence of Cepero's flight from the scene of the instant crime was relevant to demonstrate consciousness of guilt. See Rosky, 121 Nev. at 199, 111 P.3d at 700. Therefore, the district court did not abuse

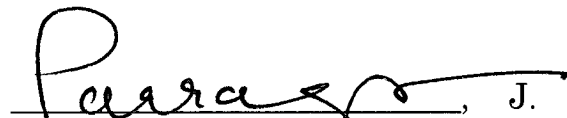
its discretion in denying the motion for mistrial. Rose v. State, 123 Nev. 194, 206-07, 163 P.3d 408, 417 (2007).

Having considered Cepero's contentions and concluding that they lack merit, we

ORDER the judgment of conviction AFFIRMED.

 J.
Douglas

 J.
Hardesty

 J.
Parraguirre

cc: Hon. Michael Villani, District Judge
Thomas Michaelides
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk