IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES A. FORD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 58907

FILED

SEP 13 2012

TRACIE K. LINDEMAN
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ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of pandering, living from the earnings of a prostitute, and three counts of sexual assault. Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

Appellant Charles A. Ford challenges the judgment of conviction on five grounds, none of which warrant relief. And because none of his claims, save his cumulative error claim, are preserved for review, we review his challenges for plain error affecting his substantial rights. See Valdez v. State, 124 Nev. 1172, 1190, 196 P.3d 465, 477 (2008); Green v. State, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003).

First, Ford argues that the prosecutor improperly elicited testimony from a police detective that, during the course of her investigation, she learned that the two motel rooms where the offenses occurred were rented by the victim and another person involved in the crimes and that another detective had applied for a search warrant to search one of the motel rooms. He contends that this "course-of-investigation" questioning constitutes inadmissible hearsay and is irrelevant. We disagree for two reasons. First, the challenged testimony

is not hearsay, see NRS 51.035 (defining hearsay as "a statement offered in evidence to prove the truth of the matter asserted unless" certain enumerated exceptions apply), and the evidence is relevant to proving the charged offenses. Second, even assuming error, other evidence established that the victim and Ford had each rented a motel room.

Second, Ford argues that the prosecutor's comment, made while describing one of the sexual assaults, that Ford was "such a romantic" was inflammatory and unsupported by the evidence. Considering the comment in context, see Rose v. State, 123 Nev. 194, 208, 163 P.3d 408, 418 (2007), we conclude that the prosecutor was stressing the callous nature of the sexual assault and therefore was not improper. And even if the comment was considered inflammatory, no prejudice resulted considering the brevity of the challenged comment and the substantial evidence of guilt. See Miller v. State, 121 Nev. 92, 99, 110 P.3d 53, 58 (2005) (observing that conviction will not be overturned based on prosecutor's improper comments alone unless misconduct is substantial and prejudicial).

Third, Ford contends that an erroneous pandering instruction requires reversal of his conviction for pandering. In Ford v. State, we concluded that the offense of pandering required a showing of specific intent. 127 Nev. ___, ___, 262 P.3d 1123, 1126-27 (2011). Here, the jury was not instructed on the specific intent element but rather was instructed in accordance with NRS 201.300(1)(a), which does not identify the intent required and defines pandering as "[a] person who: [i]nduces, persuades, encourages, inveigles, entices or compels a person to become a prostitute or to continue to engage in prostitution." Although Ford has demonstrated error, he must also show that the error affected his

substantial rights by causing "actual prejudice or a miscarriage of justice." Green, 119 Nev. at 545, 80 P.3d at 95. Ford has not made such a showing. The evidence reveals that upon meeting the victim and over the course of about three days, Ford sent the victim to various places around Las Vegas to engage in prostitution, required her to call him every hour, told her that she had "better make him some money," compelled the victim to relinquish all profits from prostitution, and threatened her if she attempted to escape or contact the police. That evidence shows that Ford specifically intended to induce the victim to become or remain a prostitute and we are confident that the jury would have convicted him had a proper instruction been given. See id. at 548, 80 P.3d at 97 (concluding that instructional error did not affect defendant's substantial rights where result of trial would have been the same if jury had been properly instructed).

Fourth, Ford argues that the district court erred by submitting a charging document (instruction 3) to the jury that was inconsistent and inaccurate concerning the alleged dates of the offenses and resulted in juror confusion and prejudice, as evidenced by a juror question related to the date of one of the offenses. Because any alleged discrepancies were immaterial and the juror's question did not suggest confusion concerning the material elements of any of the offenses, we conclude that Ford failed to show that any error in the charging document read to the jury affected his substantial rights.

Fifth, Ford complains that cumulative error rendered his trial fundamentally unfair. We conclude that any errors, considered cumulatively, do not compel a reversal of his convictions. See Mulder v. State, 116 Nev. 1, 17, 992 P.2d 845, 854-55 (2000) (stating that in reviewing cumulative-error claim, this court considers "(1) whether the

issue of guilt is close, (2) the quantity and character of the error, and (3) the gravity of the crime charged").

Having considered Ford's arguments and concluded that no relief is warranted, we

ORDER the judgment of conviction AFFIRMED.

_____, J.
Douglas

_____, J.
Gibbons

_____, J.
Parraguirre

cc: Hon. Valerie Adair, District Judge
Justice Law Center
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk