

IN THE SUPREME COURT OF THE STATE OF NEVADA

DOMINGO GUERRERO-CORTEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 58974

FILED

MAR 07 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY A. Ingrao
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of second-degree kidnapping. Sixth Judicial District Court, Humboldt County; Michael Montero, Judge. Appellant Domingo Guerrero-Cortez raises three¹ errors on appeal.

First, Guerrero-Cortez contends that the district court erred by denying his for-cause challenge to a prospective juror who was a senior judge. Because Guerrero-Cortez does not reference any of the prospective juror's views that would prevent or substantially impair the performance of his duties as a juror we conclude that the district court did not err. See Weber v. State, 121 Nev. 554, 580, 119 P.3d 107, 125 (2005) (explaining the test for evaluating whether a juror should have been removed for cause).

¹To the extent that Guerrero-Cortez argues that counsel was ineffective for failing to seek a jury instruction on necessity, "this court has consistently concluded that it will not entertain claims of ineffective assistance of counsel on direct appeal." Corbin v. State, 111 Nev. 378, 381, 892 P.2d 580, 582 (1995).


Second, Guerrero-Cortez contends that insufficient evidence supports his conviction. 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). Here, the victim testified that Guerrero-Cortez threw her on the bed and tried to have intercourse with her. She refused and pleaded with him to let her go. When she finally escaped and ran to her car, he pulled her out of the driver's seat by force and carried her back into the bedroom where he told her to put her clothes back on. Furthermore, Guerrero-Cortez himself testified that after the victim ran to the car he carried her back into the house and would not let her leave until she put her clothes on because the police would be coming. We conclude that a rational juror could infer from these circumstances that Guerrero-Cortez committed second-degree kidnapping. See NRS 200.310(2); see generally Jensen v. Sheriff, 89 Nev. 123, 125-26, 508 P.2d 4, 5-6 (1973). The jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports a conviction. Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981); see also McNair, 108 Nev. at 56, 825 P.2d at 573 (“[I]t is the jury's function, not that of the court, to assess the weight of the evidence and determine the credibility of witnesses.”).

Third, Guerrero-Cortez contends that the district court abused its discretion by declining to give his proposed jury instruction on accident or misfortune. See NRS 194.010(6). “A defendant in a criminal case is entitled, upon request, to a jury instruction on his or her theory of the case, so long as there is some evidence, no matter how weak or incredible, to support it.” Williams v. State, 99 Nev. 530, 531, 665 P.2d 260, 261


(1983). Here, however, Guerrero-Cortez has not cited to any evidence that is consistent with a theory of misfortune or accident. Therefore, we conclude that the district court did not abuse its discretion. See Nelson v. State, 123 Nev. 534, 548, 170 P.3d 517, 527 (2007).

Having considered Guerrero-Cortez's arguments and concluded that they lack merit, we

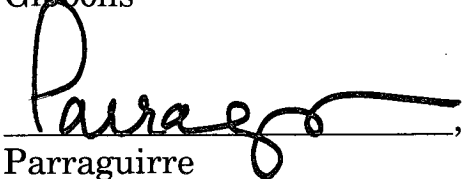
ORDER the judgment of conviction AFFIRMED.


_____, J.

Douglas


_____, J.

Gibbons


_____, J.

Parraguirre

cc: Hon. Michael Montero, District Judge
Humboldt County Public Defender
Attorney General/Carson City
Humboldt County District Attorney
Humboldt County Clerk