

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT MARTINEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 59146

FILED

JUL 25 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Malone
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction entered pursuant to jury verdict of burglary while in possession of a firearm and two counts of robbery with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Doug Smith, Judge.

Sufficiency of the evidence

Appellant Robert Martinez contends that insufficient evidence supports his burglary and robbery convictions because the State failed to prove beyond a reasonable doubt that he was the perpetrator of these crimes. However, Rossen Raykov and Krassimir Teofilov both identified Martinez as the person who entered their automobile shop and told them to give him their money at gunpoint. They recognized him because he had been in the shop several times before and had purchased an automobile from them. Additionally, Troy Griffin testified that he was outside of the automobile shop when a light-colored Dodge Neon sped away from the shop and one of the shop owners ran out and said he was just robbed. And Stephanie Harris testified that she loaned her gold Dodge Neon to Martinez on the night of the robbery. We conclude that a rational juror could reasonably infer from this evidence that Martinez was the one who burglarized the shop and robbed the victims. See NRS 200.380(1); NRS

205.060(1); Jackson v. Virginia, 443 U.S. 307, 319 (1979). 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. See Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981).

Evidentiary rulings

Martinez contends that the district court made four erroneous evidentiary rulings. “We review a district court’s decision to admit or exclude evidence for an abuse of discretion.” McLellan v. State, 124 Nev. 263, 267, 182 P.3d 106, 109 (2008).

First, Martinez contends that the district court erred by refusing to permit “questions that could show the unreliability of eyewitness testimony” and thereby violated his right to due process. The State objected when Martinez asked Detective Justin Beveridge if he was familiar with double-blind lineups. The district court ruled that Martinez could ask the detective if a double-blind lineup was conducted, but, if the detective answered no, any further testimony about double-blind lineups would be irrelevant and not permitted. See NRS 48.015 (defining relevance). Martinez did not make a threshold showing that the witnesses’ “identification was infected by improper police influence” and we conclude that the district court’s ruling did not constitute an abuse of discretion and did not violate Martinez’s due process rights. Perry v. New Hampshire, ___ U.S. ___, ___, 132 S. Ct. 716, 720 (2012) (discussing when the admission of eyewitness identification evidence implicates due process).

Second, Martinez contends that the district court erred by allowing the State to elicit Detective Beveridge’s hearsay testimony as to

what Stephanie Harris told Police Sergeant Eric Kerns and what she told him. The record reveals that Harris testified and was subject to cross-examination, the State argued that Harris's prior statements were admissible as prior inconsistent statements because Harris testified that she could not remember what she told the police, and the district court overruled Martinez's objections without giving reasons for its rulings. We conclude that the district court did not abuse its discretion by overruling Martinez's hearsay objections because Harris's statements constituted admissible non-hearsay. See NRS 51.035(2)(a); Crowley v. State, 120 Nev. 30, 35, 83 P.3d 282, 286 (2004).

Third, Martinez contends that the district court erred by allowing the State to elicit Teofilov's hearsay testimony that Raykov told him on the night of the robbery that he thought Martinez was the perpetrator. The record reveals that Raykov was cross-examined regarding when he first recognized Martinez as the perpetrator, the State argued that Raykov's prior consistent statement was admissible to rebut a claim of recent fabrication or that Raykov was not telling the truth, and the district court overruled Martinez's objection without giving a reason for its ruling. We conclude that the district court did not abuse its discretion by overruling Martinez's hearsay objection because Raykov's statement constituted admissible non-hearsay. See NRS 51.035(2)(b); Runion v. State, 116 Nev. 1041, 1052, 13 P.3d 52, 59-60 (2000).

Fourth, Martinez contends that the district court erred by not allowing him to play the recording of the 911 call during his cross-examination of Teofilov. The record reveals that the recording had been played multiple times for the jury during Raykov's testimony. The State objected because it did not want the recording to be played for each

witness and argued that it was played for the effect of hearing Raykov tell the 911 operator that the perpetrator was “a black guy.” The district court ruled that Martinez had played the recording enough times for the jury and could cross-examine Teofilov regarding the call. We conclude that the district court did not abuse its discretion by sustaining the State’s objection to the “needless presentation of cumulative evidence.” NRS 48.035(2).

Jury instructions

Martinez contends that the district court made three jury instruction errors. “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).

First, Martinez contends that the district court erred by instructing the jury on flight because he had not been identified as the person who fled. The record reveals that the district court specifically found that the State presented sufficient evidence to support a flight instruction. See Rosky v. State, 121 Nev. 184, 199, 111 P.3d 690, 699-700 (2005). We have reviewed the evidence and conclude that Martinez has not demonstrated that the district court abused its discretion by giving this instruction to the jury.

Second, Martinez contends that the district court erred by giving an instruction used in sexual assault cases. The district court instructed the jury that “[t]here is no requirement that the testimony of a victim of a crime be corroborated, and his or her testimony standing alone, if believed beyond a reasonable doubt, is sufficient to sustain a verdict of guilty.” We conclude that this instruction accurately reflects Nevada law,

see Zgombic v. State, 106 Nev. 571, 578, 798 P.2d 548, 552 (1990) (the uncorroborated testimony of a victim can support a conviction), and Martinez has not demonstrated that the district court abused its discretion by giving it to the jury.

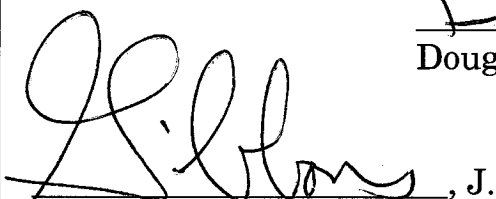
Third, Martinez contends that the district court erred by refusing to give his proposed instructions relating to reasonable doubt. “A defendant in a criminal case is entitled, upon request, to a jury instruction on his theory of the case so long as there is some evidence, no matter how weak or incredible, to support it.” Harris v. State, 106 Nev. 667, 670, 799 P.2d 1104, 1105-06 (1990) (internal quotation marks and alteration omitted). However, a defendant is not entitled to instructions that are “misleading, inaccurate or duplicitous.” Carter v. State, 121 Nev. 759, 765, 121 P.3d 592, 596 (2005). Here, the district court determined that the proposed instructions were merely negatively-worded general instructions, they did not address Martinez’s theory of the case, they were inaccurate, and their substance was provided to the jury in other instructions. We agree and conclude that the district court did not abuse its discretion by rejecting Martinez’s proposed instructions. See Crawford, 121 Nev. at 754-55, 121 P.3d at 589.

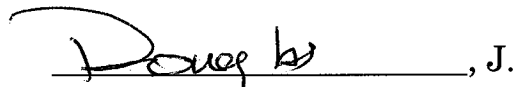
Cumulative error

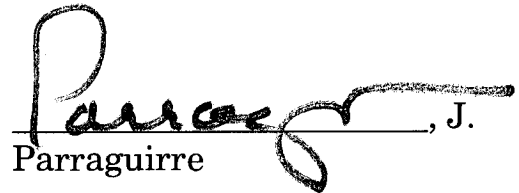
Martinez contends that cumulative error deprived him of a fair trial. However, because Martinez has failed to demonstrate any error, he was not deprived of a fair trial due to cumulative error. See Pascua v. State, 122 Nev. 1001, 1008 n.16, 145 P.3d 1031, 1035 n.16 (2006).

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

ORDER the judgment of conviction AFFIRMED.


Gibbons, J.


Douglas, J.


Parraguirre, J.

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