IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES WILLIAM FARRELL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 59598

FILED

NOV 15 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an amended judgment of conviction entered pursuant to a jury verdict of battery with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Sufficiency of the evidence

Appellant Charles William Farrell contends that insufficient evidence supports his conviction because the State failed to prove that the act was intentional and that a deadly weapon was used. 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).

The jury heard testimony that the victim was driving a motorcycle in the left lane when Farrell approached him from behind at a high rate of speed. Farrell drove within inches of the motorcycle before swerving into the right lane and pulling alongside of the victim. Farrell drew a screwdriver across his neck in a threatening manner and the victim responded with an obscene gesture. Farrell continued to swerve in

and out of the victim's lane until he and the victim reached the traffic light at a road intersection.

While waiting for the light to change, Farrell rolled down the car window and threatened to beat-up the victim. The victim got off the motorcycle, opened the car door, and tried to coax Farrell out of the car. Another driver encouraged the victim to get back on his motorcycle. However, when Farrell continued to threaten the victim, the victim returned to the car, grabbed a pocketknife from Farrell's lap, and threw the knife to the ground before returning to the motorcycle.

When the traffic light turned green and Farrell started to roll forward, he punched the accelerator, struck the victim with his car, and sped through a red light. Farrell was pursued by two percipient witnesses and a police officer. Farrell fled at a high rate of speed, swerved through traffic, and ran several red lights before pulling over. The two witnesses opined that Farrell acted intentionally and the incident was not an accident.

We conclude that a rational juror could reasonably infer from this evidence that Farrell intentionally battered the victim with a car and the car was used in a manner that could cause substantial bodily harm or death. See NRS 193.200 (intent); NRS 193.165(6) (defining deadly weapon); NRS 200.481(1)(a) (defining battery); cf. Funderburk v. State, 125 Nev. 260, 265, 212 P.3d 337, 340 (2009) (NRS 193.165(6)'s definitions are instructive for determining what constitutes a deadly weapon for enhancement purposes under NRS 205.060(4)). 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).

Confrontation Clause

Farrell contends that the district court violated his Sixth Amendment right to confront his accusers by prohibiting defense counsel from questioning the victim about a civil lawsuit. Farrell asserts that evidence of the victim's civil lawsuit against him was relevant to the reliability of the victim's testimony. We review Confrontation Clause questions de novo. Chavez v. State, 125 Nev. 328, 339, 213 P.3d 476, 484 (2009). We conclude that the district court violated the Confrontation Clause by prohibiting Farrell from engaging in an appropriate cross-examination designed to expose facts from which the jury could evaluate the reliability of the victim's testimony. See Davis v. Alaska, 415 U.S. 308, 318 (1974); Jackson v. State, 104 Nev. 409, 412-13, 760 P.2d 131, 133 (1988). However, because the State's case was strong, multiple witnesses testified about the relevant events, and the victim's testimony was largely corroborated by other testimony, we conclude that the error was harmless beyond a reasonable doubt. See Delaware v. Van Arsdall, 475 U.S. 673, 684 (1986) (describing the standard for harmless error review in Confrontation Clause cases); Stamps v. State, 107 Nev. 372, 377, 812 P.2d 351, 354 (1991).

Evidentiary decisions

Farrell contends that the district court made two evidentiary errors. "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, Farrell claims that the district court erred by not admitting his medical records into evidence because they supported his testimony that he cannot see out of his right eye, can barely move his left side, and a brain injury affects his thinking process. Based on our review of the record on appeal, we conclude that Farrell has not demonstrated that the district court abused its discretion by excluding the medical records on relevance grounds. See NRS 48.015 (defining relevant evidence).

Second, Farrell claims that the district court committed plain error by allowing the State to elicit opinion testimony from two lay witnesses that he intentionally struck the victim with the car. We conclude that the witnesses' testimony did not exceed the scope allowed by NRS 50.265 and Farrell has not demonstrated plain error. See Mclellan, 124 Nev. at 267, 182 P.3d at 109 (describing plain error review).

Jury instruction

Farrell contends that the district court committed plain error by giving a theory of defense instruction that did not "include duty to acquit language." The district court instructed the jury that "[a]ll persons are liable to punishment except those persons who have committed the act through misfortune or by accident, when it appears that there was no evil design, intention or culpable negligence." Because this instruction accurately reflects Nevada law, see NRS 194.010(6); see generally McCraney v. State, 110 Nev. 250, 254, 871 P.2d 922, 925 (1994), we conclude that Farrell has not demonstrated plain error, see Mclellan, 124 Nev. at 267, 182 P.3d at 109.

Cumulative error

Farrell contends that cumulative error deprived him of a fair trial. However, we have found only one error, which was harmless. "One error is not cumulative error." U.S. v. Sager, 227 F.3d 1138, 1149 (9th Cir. 2000); see also Hoxsie v. Kerby, 108 F.3d 1239, 1245 (10th Cir. 1997) ("Cumulative-error analysis applies where there are two or more actual errors."); State v. Perry, 245 P.3d 961, 982 (Idaho 2010) ("[A] necessary predicate to the application of the doctrine [of cumulative error] is a finding of more than one error.").

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

ORDER the amended judgment of conviction AFFIRMED.

_____, J.
Douglas

_____, J.
Gibbons

_____, J.
Parraguirre

cc: Hon. Michelle Leavitt, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk