IN THE SUPREME COURT OF THE STATE OF NEVADA

EDMUNDO OLIVERAS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 60005

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, for conspiracy to commit murder, first-degree murder with the use of a deadly weapon, and robbery with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

Sufficiency of the evidence

Oliveras contends that the State adduced insufficient evidence at trial to support his convictions. We review the evidence in the light most favorable to the prosecution and determine whether "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Mitchell v. State*, 124 Nev. 807, 816, 192 P.3d 721, 727 (2008) (emphasis and internal quotation marks omitted); *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). Here, the State presented evidence that Oliveras, Rene Zambada, and Ulises Mendez-Rodriguez left Zambada's apartment in Mendez-Rodriguez's car. At Zambada's request, Oliveras secreted a shotgun with him. They parked on the side of the road, Zambada shot Mendez-Rodriguez three times, and Zambada and Oliveras left in Mendez-Rodriguez's vehicle. Back at the apartment, Oliveras hid the shotgun in his room, showered, and gave money to his

sister. A later search of the apartment uncovered the victim's wallet and personal effects. In addition, Oliveras admitted to police that he knew they planned to kill someone that evening, but he did not know whom they planned to kill. We conclude that a rational trier of fact could reasonably infer from this evidence that Oliveras agreed to murder Mendez-Rodriguez with Zambada, aided Zambada in the murder, and took property from Mendez-Rodriguez, *see* NRS 200.030(1)(a), (b); NRS 200.380(1); NRS 199.480(1); NRS 193.165, and that substantial evidence supports the verdict. *See McNair v. State*, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

Jury instructions

Oliveras contends that the district court erred in giving several instructions to the jury. We conclude that these contentions lack merit for the reasons discussed below.

First, Oliveras contends that the district court erred in defining robbery as a general intent offense. He argues that the statute is ambiguous and therefore the common law history and rule of lenity dictate that robbery be construed as an offense requiring proof of specific intent. He further asserts that robbery must be defined as a specific intent offense if it is used to support a charge of felony murder. We disagree. The Legislature defined robbery as a general intent crime. NRS 200.380; *Litteral v. State*, 97 Nev. 503, 506-08, 634 P.2d 1226, 1228-29 (1981), *overruled on other grounds by Talancon v. State*, 102 Nev. 294, 721 P.2d 764 (1986); *see also Sheriff v. Luqman*, 101 Nev. 149, 153, 697 P.2d 107, 110 (1985) ("[T]he power to define what conduct constitutes a crime lies exclusively within the power and authority of the legislature."). Because the statute is not ambiguous, the rule of lenity does not apply. *State v. Lucero*, 127 Nev. ___, ___, 249 P.3d 1226, 1230 (2011). Oliveras articulates

no basis for this court to abandon *Litteral*. In addition, robbery does not become a specific intent crime merely because it is used as a predicate felony for the purposes of the felony murder rule. *See State v. Contreras*, 118 Nev. 332, 334, 46 P.3d 661, 662 (2002) ("The felonious intent involved in the underlying felony is deemed, by law, to supply the malicious intent necessary to characterize the killing as a murder."); *see also Nay v. State*, 123 Nev. 326, 332, 167 P.3d 430, 434 (2007) ("The purpose of the felony-murder rule is 'to deter dangerous conduct by punishing as a first degree murder a homicide resulting from dangerous conduct in the perpetration of a felony, even if the defendant did not intend to kill.'" (quoting *State v. Allen*, 875 A.2d 724, 729 (Md. 2005))).

Second, Oliveras contends that the district court erred in instructing the jury on the "slight evidence" standard for statements of co-conspirators. We discern no abuse of discretion. *See Rose v. State*, 127 Nev. ___, ___, 255 P.3d 291, 295 (2011) (reviewing district court decision settling jury instructions for abuse of discretion). The challenged instruction accurately described the standard that a district court must apply when considering whether to admit a statement into evidence under the coconspirator exception to the hearsay rule. *See* NRS 51.035(3)(e) (providing that a statement of one coconspirator admissible against another member of that conspiracy); *McDowell v. State*, 103 Nev. 527, 529, 746 P.2d 149, 150 (1987) (requiring determination that "slight evidence" of conspiracy exists at time of utterance before admitting statement of coconspirator). While it was unnecessary to instruct the jury regarding the evidentiary threshold applied by a district court in admitting coconspirator statements, we conclude that the challenged instruction did

not confuse the jury as to the burden of proof.[1] The challenged instruction clearly indicated that the slight evidence standard related solely to the use of a coconspirator's statement and not to the ultimate burden of proof. Further, the instructions indicated that "the State [has] the burden of proving beyond a reasonable doubt every material element of the crime charged and that the Defendant is the person who committed the offense." The jury instructions defined "reasonable doubt" and directed the jury, "If you have reasonable doubt as to the guilt of the Defendant, he is entitled to a verdict of not guilty." Because "we presume that the jury followed the district court's orders and instructions," *Allred v. State*, 120 Nev. 410, 415, 92 P.3d 1246, 1250 (2004), we conclude that the jury was not confused as to the State's burden of proof.

Third, Oliveras argues that the district court erred in instructing the jury on the presumption of innocence. Specifically, he contends that the instruction that "the State [had] the burden of proving beyond a reasonable doubt every material element of the crime charged" failed to specify which elements were material. We discern no abuse of discretion. This court has repeatedly upheld the language used in the instruction. *See, e.g.*, *Nunnery v. State*, 127 Nev. ___, ___, 263 P.3d 235, 259-60 (2011), *cert. denied*, ___ U.S. ___, 132 S. Ct. 2774 (2012); *Morales v. State*, 122 Nev. 966, 971, 143 P.3d 463, 466 (2006); *Crawford v. State*, 121 Nev. 744, 751, 121 P.3d 582, 586-87 (2005); *Gaxiola v. State*, 121 Nev. 638,

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[1]For this reason, we reject Oliveras' contention that this jury instruction amounted to structural error. In contrast to *Sullivan v. Louisiana*, 508 U.S. 275, 278-80 (1993), in which the Supreme Court found structural error in a burden-of-proof jury instruction, the instruction at issue here did not actually reduce the State's burden of proof.

650, 119 P.3d 1225, 1233 (2005); *Leonard v. State*, 114 Nev. 1196, 1209, 969 P.2d 288, 296 (1998). Moreover, other given instructions defined the elements of each charged offense.

Cumulative error

Lastly, Oliveras contends that cumulative error warrants reversal of his convictions. Because we have found no error there is nothing to cumulate. Accordingly, we

ORDER the judgment of conviction AFFIRMED.

Pickering, C. J.
Pickering

Hardesty, J.
Hardesty

Cherry, J.
Cherry

cc: Hon. Douglas W. Herndon, District Judge
Special Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk