IN THE SUPREME COURT OF THE STATE OF NEVADA

JORGE VAZQUEZ A/K/A JORGE VICTORINOVAZQUEZ,
Appellants,
vs.
THE STATE OF NEVADA,
Respondent.

No. 62269

ORDER AFFIRMING IN PART, REVERSING IN PART, AND REMANDING

This is an appeal from a judgment of conviction entered pursuant to jury verdict of three counts of burglary, attempted murder, and child neglect or endangerment. Eighth Judicial District Court, Clark County; Carolyn Ellsworth, Judge.

Sufficiency of the evidence

Appellant Jorge Vazquez contends that insufficient evidence supports his convictions. He specifically argues that he was entrapped into committing the burglaries, the State failed to prove the overt act necessary to support the attempted murder conviction, and the State failed to prove that he had the requisite state of mind to endanger his child. 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." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) (emphasis omitted); *Mitchell v. State*, 124 Nev. 807, 816, 192 P.3d 721, 727 (2008).

The State presented evidence that Vazquez called Jose Camacho-Nieto and asked him for help finding someone to kill his wife.

13-36245

Camacho-Nieto called the police, said that he had knowledge of a possible murder for hire, and agreed to meet with two detectives. The detectives persuaded Camacho-Nieto to call Vazquez, say that he had found someone who may be willing to kill Vazquez's wife, and suggest a meeting at the Triple Play Bar and Grill.

Camacho-Nieto met Vazquez at the bar and introduced him to UC53, an undercover detective who was posing as a hit man. Vazquez told UC53 that he wanted his wife killed, described how he wanted it done, and discussed his family's schedule and layout of his house. UC53 asked Vazquez if he could get a gun, stated that he needed a photograph of the wife and a diagram of the house's interior, and negotiated the price for committing the murder. UC53 and Vazquez agreed that they would meet the following day and that Vazquez would bring a photograph of his wife, a diagram of his house, and an initial payment of $1,000.

The second meeting took place in a parking lot. Vazquez pulled into the parking space directly next to UC53's car, exited his car, and entered UC53's car. He then provided UC53 with the photograph, diagram, and initial payment. During this meeting, Vazquez described the layout of his house using the diagram and agreed that the plan was for UC53 to shoot his wife. He also considered the possibility of UC53 conducting a drive-by shooting and discussed the disposition of the body. UC53 and Vazquez agreed to meet the following day.

The third meeting took place in the same parking lot, but this time Vazquez had brought his three-year-old daughter with him and parked his car ten feet away from UC53's car. Vazquez left his daughter in the car with the window cracked, and she stayed in the front passenger seat, with her fingers curled over the window, watching the men as they

talked. Vazquez entered UC53's car, made the final payment of $1,000, and reiterated that he wanted the murder to occur in the house. The meeting ended with Vazquez's arrest. Vazquez subsequently admitted that he paid UC53 $2,000 to stage a burglary of his house, shoot his wife, and beat him so that he would appear to be a victim.

We conclude that insufficient evidence supports the two burglary convictions (counts 2 and 3) based on the two meetings in UC53's car, attempted-murder conviction, and child-neglect-or-endangerment conviction for the following reasons: First, because the evidence shows that Vazquez solicited his wife's murder when he met with UC53 in the bar and does not show that he solicited additional murders when he entered UC53's car, the evidence does not support separate burglary charges based on the meetings in the car. *See* NRS 205.060(1) (defining burglary). Second, while the evidence shows that Vazquez intended to murder his wife, it does not show that he made an overt act toward committing her murder. The crime of attempted murder requires both the intent to commit murder and the performance of an overt act toward committing the murder, mere preparation is not enough. *See Johnson v. Sheriff*, 91 Nev. 161, 163, 532 P.2d 1037, 1038 (1975). Vazquez's acts of discussing the intended victim's identity, daily habits, and residence; providing photographs and diagrams; and making payments to the feigned hit man for the murder were mere preparation and not overt acts for purposes of attempted murder. *See id.* ("[D]evising or arranging the means and measures necessary for the commission of the offense is merely preparation."); *cf.* NRS 199.500(2) ("A person who counsels, hires, commands or otherwise solicits another to commit murder, if no criminal act is committed as a result of the solicitation, is guilty of a category B

felony."). We reject the State suggestion that *Johnson* is no longer good law because it relied upon *People v. Adami*, 111 Cal. Rpter. 544 (Ct. App. 1973), which has since been disapproved of by *People v. Superior Court (Decker)*, 157 P.3d 1017 (Cal. 2007). *Johnson* relied upon Nevada law to distinguish between preparation and attempt and merely compared its conclusion with the conclusion that *Adami* reached when considering a similar set of facts. *Johnson*, 91 Nev. at 163, 532 P.2d at 1038. Moreover, *Decker*'s disapproval of *Adami* is largely based upon *Adami*'s failure to consider the slight-acts rule, which has long been the rule for attempt crimes in California but is not the rule in Nevada. *See Decker*, 157 P.3d at 1023. Third, there is absolutely no evidence that Vazquez knew or should have known that he placed his daughter in harm's way by bringing her to the meeting—the detective's knowledge that police officers were going to arrest Vazquez immediately after the meeting cannot be imputed to Vazquez. *See Smith v. State*, 112 Nev. 1269, 1276-77, 927 P.2d 14, 18 (1996) (discussing the state of mind that must exist to prove an offense under NRS 200.508), *abrogated in part on other grounds by City of Las Vegas v. Eighth Judicial Dist. Court*, 118 Nev. 859, 59 P.3d 477 (2002). However, we further conclude that sufficient evidence supports the conviction for the burglary based on the solicitation at the bar. [1]

---

[1]The jury also found Vazquez guilty of solicitation to commit murder. However, the district court determined that the counts of solicitation to commit murder and attempted murder were redundant and did not adjudicate Vazquez on the solicitation count. We conclude that sufficient evidence supports the conviction for solicitation to commit murder. Because the attempted murder conviction must be reversed based on insufficient evidence, Vazquez should be adjudicated and sentenced on the solicitation count.

Evidentiary decisions

Vazquez contends that the district court erred by admitting evidence of his prior threats to kill his wife. The record reveals that the State sought to admit Vazquez's wife's divorce complaint and her testimony to prove that Vazquez was predisposed to kill her and to rebut Vazquez's entrapment defense. The district court conducted a hearing on the matter, during which the parties stipulated to the admission of a redacted version of the complaint and agreed upon the leading questions the State would be permitted to ask the witness. Furthermore, before the witness was called to testify, the district court admonished her to listen to the State's questions, limit her testimony to answering those questions, and to not volunteer anything. Based on this record, we conclude that the district court did not abuse its discretion. *See Mclellan v. State*, 124 Nev. 263, 267, 182 P.3d 106, 109 (2008); *see also United States v. Molina*, 596 F.3d 1166, 1169 (9th Cir. 2010) (stipulations knowingly and voluntarily entered into during criminal trials will be enforced).

Vazquez also contends that the district court erred by admitting evidence that the police officers were concerned for his daughter's safety, suggested he resided illegally in the United States, and referenced prior allegations of domestic violence. However, Vazquez did not object to the admission of this evidence, and we conclude he has not demonstrated plain error. *Mclellan*, 124 Nev. at 267, 182 P.3d at 109 (discussing plain-error review).

Cumulative error

Vazquez contends that cumulative trial error deprived him of a fair trial. However, because Vazquez has failed to demonstrate any trial

error, we conclude that he was not deprived of a fair trial due to cumulative error.

Having concluded that Vazquez's convictions for two counts of burglary (counts 2 and 3) and the counts of attempted murder and child neglect or endangerment must be reversed, we

ORDER the judgment of conviction AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for adjudication and sentencing on the solicitation-to-commit-murder count.[2]

_____, J.
Hardesty

_____, J.
Parraguirre

_____, J.
Cherry

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

---

[2]The fast track response does not comply with the formatting requirements of NRAP 3C(h)(1) and NRAP 32(a)(4), (5)(A) because the text is not double-spaced and the typeface is smaller than 14-point. We caution counsel for the State that future failure to comply with the applicable rules when filing briefs in this court may result in the imposition of sanctions. *See* NRAP 3C(n).