IN THE SUPREME COURT OF THE STATE OF NEVADA

REGINALD HOLLIMON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 62611

FILED

JAN 21 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY [signature]
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of robbery. Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

First, appellant Reginald Hollimon contends that insufficient evidence supports his conviction. We disagree and conclude that the evidence, when viewed in the light most favorable to the State, is sufficient to establish guilt beyond a reasonable doubt as determined by a rational trier of fact. *See Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *Mitchell v. State*, 124 Nev. 807, 816, 192 P.3d 721, 727 (2008).

At trial, several witnesses testified that a man, later identified as Hollimon, approached the victim and her daughter in a grocery store parking lot. After grabbing the victim's purse from her shopping cart, Hollimon began running, lowered his shoulder, and struck the victim's daughter with sufficient force to knock her to the ground. We conclude that the jury could reasonably infer from the evidence presented that Hollimon committed robbery. *See* NRS 200.380(1); *Grant v. State*, 117 Nev. 427, 435, 24 P.3d 761, 766 (2001) (the jury may infer intent "from conduct and circumstantial evidence"). It is for the jury to determine the

weight and credibility to give conflicting testimony, *McNair v. State*, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992), and its verdict will not be disturbed on appeal where, as here, sufficient evidence supports the verdict, *Bolden v. State*, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981).

Second, Hollimon contends that the district court abused its discretion during voir dire by dismissing juror no. 152 for cause. The district court noted that it dismissed juror no. 152 because she expressed confusion about the nature of the proceedings and stated that she would have difficultly during deliberations as a result of a disability, which required her to take special education classes throughout school. Although Hollimon indicated that he would have raised a *Batson v. Kentucky*, 476 U.S. 79 (1986), challenge had the State exercised a peremptory challenge to strike the juror, he declined to object to the district court's dismissal of juror no. 152 for cause. We therefore review Hollimon's contention for plain error, *see Leonard v. State*, 117 Nev. 53, 67, 17 P.3d 397, 406 (2001) (due to the fact-intensive nature of for-cause challenges and the deference owed the district court, timely objections are essential), and conclude that he fails to demonstrate that the district court plainly erred, *see* NRS 175.036 (1) (the court may remove a juror "for any cause or favor which would prevent the juror from adjudicating the facts fairly").[1]

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[1]Because juror no. 152 was removed for cause, we need not consider Hollimon's claims regarding *Batson* and *Miller-El v. Dretke*, 545 U.S. 231 (2005).

Third, Hollimon contends that the State committed misconduct by asking leading questions of the witnesses during direct examination and the district court erred by not intervening despite Hollimon's failure to object. Although some of the challenged questions were leading, we conclude that Hollimon is not entitled to relief because the improper questioning did not implicate Hollimon's constitutional rights and did not constitute misconduct which rises to the level of plain error, *see Valdez v. State*, 124 Nev. 1172, 1190, 196 P.3d 465, 477 (2008) (failure to object to prosecutorial misconduct warrants plain error review), or require the district court's intervention sua sponte, *see Leonard*, 117 Nev. at 70, 17 P.3d at 408 (the improper use of leading questions is not ordinarily a ground for relief).

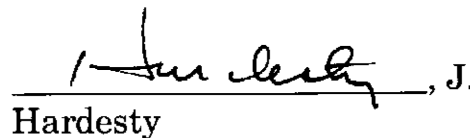
Fourth, Hollimon contends that the State committed misconduct by flagrantly disregarding the district court's admonishment not to elicit speculative testimony. Hollimon lodged several objections when the State asked witnesses whether they believed Hollimon intended to strike the victim's daughter, some of which were sustained. When the State repeated the question while questioning the victim's sister, Hollimon renewed his objection. The district court noted that it was appropriate for the witness to state her perception of the incident but not to speculate regarding Hollimon's intent and permitted the witness to answer. We conclude that the State did not commit misconduct.

Fifth, Hollimon contends that the State committed misconduct by misstating the testimony of witnesses during direct examination, closing argument, and rebuttal. We conclude that Hollimon is not entitled to relief because he did not object and fails to demonstrate plain error–specifically because the jurors were instructed to rely on their own

recollection and that the statements of counsel were not evidence. *See Leonard*, 117 Nev. at 66, 17 P.3d at 405 (presuming that jurors follow the instructions they are given).

Having considered Hollimon's contentions, and concluded that no relief is warranted we

ORDER the judgment of conviction AFFIRMED.


_______________, J.
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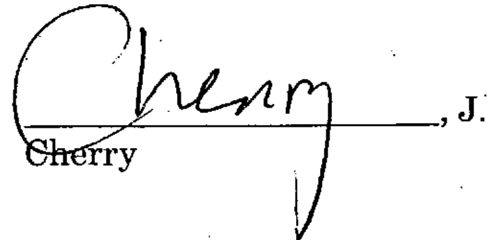
_______________, J.
Cherry

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