

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SIMON CORDOVA RIOS, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 68244

FILED

DEC 18 2015

THOMAS K. LINDEMAN
CLERK OF THE COURT
BY *[Signature]*
CHIEF CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of battery with the use of a deadly weapon. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

Appellant Simon Cordova Rios, Jr., first argues the district court improperly vouched for the State's evidence. During voir dire, a juror stated she might have difficulty viewing photographs depicting violence. The district court responded that the State intended to introduce photographs depicting the knife wounds sustained by the victim and inquired if the juror would have trouble viewing those types of photographs. Rios requested a mistrial due to the district court's statements, arguing it was for the jury to determine whether the victim sustained his injuries from a knife. The district court denied the request for a mistrial. The district court then instructed the jury that the court did not intend to express any opinion as to the facts or any inference to be drawn from the evidence to be presented, but if the district court seemed to indicate an opinion regarding the evidence, the jury was to disregard it.

The Nevada Supreme Court "has cautioned district judges against 'making comments concerning the facts of any case at trial.'"


Brant v. State, 130 Nev. ___, ___, 340 P.3d 576, 582 (2014) (quoting *Shannon v. State*, 105 Nev. 782, 788, 783 P.2d 942, 946 (1989)). To establish he is entitled to relief for this claim, Rios must demonstrate he was prejudiced by the allegedly improper district court comments. *See id.*


When placed in context, the challenged comments were not improper. The comments were merely a response to concerns from a potential juror regarding the nature of the photographs. Further, the district court properly instructed the jurors they were to disregard any unintended inference the district court may have made regarding the evidence to be produced at trial. *See S. Pac. Co. v. Watkins*, 83 Nev. 471, 492, 435 P.2d 498, 512 (1967); *see also Lisle v. State*, 113 Nev. 540, 558, 937 P.2d 473, 484 (1997) (“There is a presumption that jurors follow jury instructions”). In addition, there was substantial evidence of Rios’ guilt produced at trial, and accordingly, Rios fails to demonstrate he was prejudiced by these comments. Therefore, Rios is not entitled to relief for this claim.

Second, Rios argues the district court abused its discretion in adjudicating him as a habitual criminal. Rios argues his prior convictions were stale and nonviolent and the interests of justice were not served by adjudication as a habitual criminal. We review a district court’s sentencing decision for abuse of discretion. *See Chavez v. State*, 125 Nev. 328, 348, 213 P.3d 476, 490 (2009). The district court has broad discretion to dismiss a count of habitual criminality. *See NRS 207.010(2); O’Neill v. State*, 123 Nev. 9, 12, 153 P.3d 38, 40 (2007). The record reveals the district court understood its sentencing authority and properly exercised its discretion to adjudicate Rios as a habitual criminal. *See Hughes v. State*, 116 Nev. 327, 333, 996 P.2d 890, 893-94 (2000); *see also Arajakis v.*

State, 108 Nev. 976, 983, 843 P.2d 800, 805 (1992) (“NRS 207.010 makes no special allowance for non-violent crimes or for the remoteness of convictions.”). We conclude the district court did not abuse its discretion and Rios’ argument lacks merit. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Connie J. Steinheimer, District Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk