

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN RODRIGUEZ MEDINA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 65502

FILED

OCT 14 2016

ELIZABETH A. BROWN  
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 child abuse, neglect or endangerment; battery constituting domestic violence (strangulation); assault with a deadly weapon; invasion of the home; burglary; and possession of a firearm by felon. Eighth Judicial District Court, Clark County; James M. Bixler, Judge.

Appellant Brian Rodriguez Medina first contends that the district court erred in admitting hearsay testimony from Officer Beaumont Hopson and from the victim Elizabeth. We review Medina's unpreserved claim for plain error affecting his substantial rights. *Carroll v. State*, 132 Nev., Adv. Op. 23, 371 P.3d 1023, 1028 (2016). Officer Hopson's testimony that Elizabeth's roommate corroborated her account was admissible non-hearsay because it was not offered for the truth of the matter asserted, see NRS 51.035, but to explain why he did not investigate the incident further, see *Crawford v. Washington*, 541 U.S. 36, 60 n.9 (2004); *Wallach v. State*, 106 Nev. 470, 473, 796 P.2d 224, 227 (1990). Elizabeth's statement that her neighbor told the police that he saw Medina steal her laptop was hearsay, see NRS 51.035, but we conclude that the error did not substantially affect Medina's rights when the hearsay statement was a single sentence that was not developed further, the neighbor testified and

was subject to cross-examination, and Medina was not charged with stealing the laptop. Accordingly, this claim fails.

Second, Medina argues that the district court erred in admitting evidence of prior bad acts in Elizabeth's testimony about his uncharged conduct at a Budget Suites. As this testimony was elicited on cross-examination by defense counsel and developed further by defense counsel on recross-examination and at closing, we conclude that defense counsel introduced this evidence as a trial tactic and has waived the right to challenge this testimony. *See Dias v. State*, 95 Nev. 710, 714, 601 P.2d 706, 709 (1979).

Third, Medina argues that the district court violated his constitutional and statutory rights to a speedy trial when it granted a continuance on his counsel's request over his objection and he did not proceed to trial within 60 days. We conclude that Medina's constitutional right to a speedy trial was not violated—even though he timely asserted his right—because the delay here was less than three months, defense counsel requested the delay, and Medina has failed to show prejudice that he suffered due to the delay.<sup>1</sup> *See Barker v. Wingo*, 407 U.S. 514, 530 (1972) (discussing speedy trial factors); *Byford v. State*, 116 Nev. 215, 230, 994 P.2d 700, 711 (2000) (holding no speedy trial violation where delay was one year, defense was not responsible for delay, and no prejudice shown, though appellant timely asserted right). We conclude that Medina's statutory right to a speedy trial was not violated because there was good cause for the delay when defense counsel was not ready to

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<sup>1</sup>We reject Medina's claim of prejudice regarding his bail as belied by the record.

proceed to trial. See NRS 178.556(2); *New York v. Hill*, 528 U.S. 110, 115 (2000) (concluding that counsel may waive a client's statutory right to a speedy trial, as counsel generally controls scheduling matters); *Meegan v. State*, 114 Nev. 1150, 1154, 968 P.2d 292, 294 (1998), *abrogated on other grounds by Vanisi v. State*, 117 Nev. 330, 22 P.3d 1164 (2001). Accordingly, these claims fail.

Fourth, Medina argues that the evidence presented at trial was insufficient to support the jury's finding of guilt for assault with a deadly weapon as to the child victim. Our review of the record on appeal, however, reveals sufficient evidence 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); *Origel-Candido v. State*, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998). Elizabeth testified that Medina pointed a gun at the child victim and at her and threatened to kill both of them. Elizabeth testified that the child victim was crying and scared. The child victim testified that Medina punched him and pointed a gun at Elizabeth. The Child Protective Services (CPS) investigator testified that the child victim told her at the hospital that Medina threatened to kill them both and pointed a gun at Elizabeth. The jury could reasonably infer from this evidence that Medina intentionally placed the child victim in reasonable apprehension of immediate bodily harm and used a deadly weapon when he threatened to kill him while pointing a gun at his mother after battering them both. See NRS 200.471(1)(a)(2). Medina's claim that this conviction cannot stand when the child victim stated that Medina did not point the gun at him fails, because 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).

Fifth, Medina argues that the district court erred when it did not sua sponte sever counts arising from two different incidents, even though defense counsel consented to consolidating the counts. Evidence of the May incident—i.e., child abuse, domestic battery (strangulation), and assault with a deadly weapon—would be admissible in a trial for the July home invasion and burglary as evidence of other bad acts relevant to show Medina’s motive and intent in breaking into Elizabeth’s home after she moved to a new apartment. *See* NRS 48.045(2). Accordingly, the crimes appear to be sufficiently “connected together” that joinder was not improper. NRS 173.115(2); *Weber v. State*, 121 Nev. 554, 573, 119 P.3d 107, 120 (2005). We further conclude that manifest prejudice compelling severance was not present when charges from each incident were individually strong, consolidating did not bolster any weaker charge, and defense counsel agreed to consolidate. *See Rimer v. State*, 131 Nev., Adv. Op. 36, 351 P.3d 697, 709-710 (2015). Accordingly, this claim fails.

Sixth, Medina argues that he was deprived of his right to a fair trial because the jury heard testimony regarding his custodial status. We conclude that two instances when Elizabeth referenced events that occurred after Medina was “locked up” and another when a witness made a comment that implied that Medina was incarcerated were improper. *See Haywood v. State*, 107 Nev. 285, 288, 809 P.2d 1272, 1273 (1991). Nevertheless, we conclude that Medina has failed to show that this unreserved error affected his substantial rights, *see Rimer*, 131 Nev., Adv. Op. 36, 351 P.3d at 715-16 (conducting plain error review for unreserved claim of improper reference to custodial status), because

substantial evidence supported Medina's guilt where (1) Elizabeth, the child victim, and the CPS investigator testified that Medina beat Elizabeth and the child victim and pointed a firearm at Elizabeth's head and (2) Elizabeth, Elizabeth's neighbor, and Officer Hopson testified regarding evidence showing that Medina broke through Elizabeth's outer gate and front door, searched the apartment while yelling for Elizabeth as she hid, and left with property that he was not holding when he entered. Accordingly, this claim fails.

Seventh, Medina argues that he was not appropriately advised of his right to testify in the second guilt stage for the felon-in-possession-of-a-firearm count. The record shows that the district court canvassed Medina on his right to testify several times during the preliminary hearing and the first guilt stage, as well as after the jury commenced deliberations in the second guilt stage. Medina assented that he understood his rights and did not wish to testify. Accordingly, we conclude that Medina's right to testify on his own behalf was not violated. See *Phillips v. State*, 105 Nev. 631, 633, 782 P.2d 381, 382 (1989).

Eighth, Medina argues that the district court erred in failing to properly instruct the jury on self-defense. We review the district court's broad discretion in settling jury instructions for an abuse of discretion or clear error. *Crawford v. State*, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005). "Failure to object or to request an instruction precludes appellate review, unless the error is patently prejudicial and requires the court to act sua sponte to protect a defendant's right to a fair trial." *Flanagan v. State*, 112 Nev. 1409, 1423, 930 P.2d 691, 700 (1996). As Medina did not object to the instruction the district court gave on self-defense or request an additional instruction and his right to a fair trial was not impaired, we

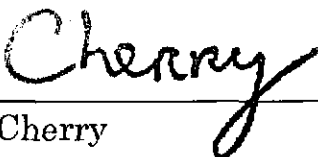
conclude that the district court did not abuse its discretion and that this claim fails.

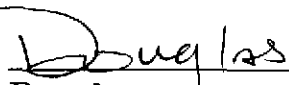
Ninth, Medina argues that the district court erred when it failed to record bench conferences. Medina has failed to identify any specific issue that we were precluded from meaningfully reviewing, *see Preciado v. State*, 130 Nev., Adv. Op. 6, 318 P.3d 176, 178 (2014), and we conclude that Medina has failed to show an entitlement to relief.


Tenth, Medina argues that cumulative error warrants reversal. As Medina's guilt was not close and the hearsay statement, improper references to his custodial status, and unrecorded bench conferences were not egregious errors and received no contemporaneous objection, we conclude that this claim fails. *See Mulder v. State*, 116 Nev. 1, 17, 992 P.2d 845, 854-55 (2000).

Having considered Medina's contentions and concluded that they do not warrant relief, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Gibbons

cc: Eighth Judicial District Court, Dept. 24  
Christopher R. Oram  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk