

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSE SANCHEZ-PEREZ, A/K/A JUAN  
CARLOS GARCIA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 70140

**FILED**

JUN 29 2017

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Jose Sanchez-Perez appeals from a judgment of conviction, pursuant to a jury verdict, of conspiracy to commit kidnapping, first degree kidnapping, conspiracy to commit burglary, burglary, conspiracy to commit extortion, extortion, child abuse and neglect, coercion, conspiracy to commit arson, and third degree arson. Eighth Judicial District Court, Clark County; Kerry Louise Earley, Judge.

Jose was charged, along with his cousins Alejandro and Mariano Sanchez-Sanchez, with kidnapping and abducting the 17-year-old daughter of Jose's former employer from her home when she answered the door. The kidnappers forced the victim into a van while warning her family against notifying police. The victim, a local high school senior, overheard her kidnappers saying they intended to kill her. She recognized Jose's voice because he had worked for her father for three years and she was familiar with him. The kidnappers burned the van used in the kidnapping, but police were able to track the victim to Jose, Alejandro, and Mariano's apartment using information from cellular phone towers and the registration of the vehicle used in the kidnapping. Police released Jose after he provided them with identification in another name. Just a few days later, Jose left for California, where he immediately purchased a

new phone. Alejandro and Mariano confessed to being involved in the crime, and Mariano's confession implicated Jose. Police thereafter apprehended Jose in California. Jose, Alejandro, and Mariano were tried jointly.<sup>1</sup>

On appeal, Jose argues reversal is required on various grounds, including 1) the district court abused its discretion by denying his motion to sever and 2) prosecutorial misconduct warrants a new trial.<sup>2</sup> We disagree.

First, we review a decision regarding severance for an abuse of discretion. *Marshall v. State*, 118 Nev. 642, 646-47, 56 P.3d 376, 379 (2002). “[W]here persons have been jointly indicted they should be tried jointly, absent compelling reasons to the contrary.” *Jones v. State*, 111 Nev. 848, 853, 899 P.2d 544, 547 (1995). If a defendant is prejudiced by a joinder of codefendants, the court may order separate trials. NRS 174.165. In *Bruton v. U.S.*, the United States Supreme Court held that the

---

<sup>1</sup>We do not recount the facts except as necessary to our disposition.

<sup>2</sup>We have carefully considered Jose's additional arguments regarding a voice lineup, immunity, expert testimony, cross examination, jury instructions, and sufficient evidence and conclude they are without merit. See *Craig v. State*, 85 Nev. 130, 131, 451 P.2d 365, 365-66 (1969) (“there is no constitutional compulsion to hold a lineup”); *McCabe v. State*, 98 Nev. 604, 606, 655 P.2d 536, 537 (1982) (“the granting of immunity is discretionary with the court only upon motion of the state”); *Burnside v. State*, 131 Nev. \_\_\_, \_\_\_, 352 P.3d 627, 636-37 (2015) (admitting testimony regarding cellular phone towers); NRS 51.035(2)(b) (discussing prior consistent statements and hearsay); *Milton v. State*, 111 Nev. 1487, 1491, 908 P.2d 684, 686-87 (1995) (discussing jury instructions); *Miles v. State*, 97 Nev. 82, 85, 624 P.2d 494, 496 (1981) (finding a reasonable basis to issue a flight jury instruction); *Rose v. State*, 123 Nev. 194, 202-03, 163 P.3d 408, 414 (2007) (discussing sufficient evidence).

admission of a nontestifying codefendant's confession expressly implicating the defendant in the crime deprives the defendant of his rights under the Confrontation Clause. 391 U.S. 123, 135-36 (1968).

Our review of the record reveals that Jose was not prejudiced by the joinder of Alejandro and Mariano at trial in this case. Here, the codefendants' defenses were not antagonistic. Mariano testified that his confession was false and the product of duress, and the portion of his confession implicating Jose was not introduced until the State's cross examination of Mariano. Finally, the district court's denial of Jose's motion to sever did not impact Alejandro's right not to testify. Therefore, the district court did not abuse its discretion by denying Jose's motion to sever.

Second, Jose argues the prosecutor made several improper statements during closing that warrant a new trial. We use a two-step analysis when considering prosecutorial misconduct claims. *Valdez v. State*, 124 Nev. 1172, 1188, 196 P.3d 465, 476 (2008). First, we determine whether the prosecutor's conduct was improper. *Id.* If the prosecutor's conduct was improper, we consider whether the conduct warrants reversal. *Id.* When making this determination, we must consider "whether a prosecutor's statements so infected the proceedings with unfairness as to result in a denial of due process." *Anderson v. State*, 121 Nev. 511, 516, 118 P.3d 184, 187 (2005).

Jose challenges three comments by the prosecutor, but only one comment arguably rises to the level of prosecutorial misconduct:<sup>3</sup> the

---


<sup>3</sup>The other two challenged statements related to a credibility argument and an irrelevant issue of law. *See Rowland v. State*, 118 Nev. 31, 39, 39 P.3d 114, 119 (2002) (discussing the reasonable latitude given to  
*continued on next page...*

State's misstatement in using "exonerate" in closing arguments. The prosecutor conceded she meant to say a witness's statement "exculpated" a potential alternative suspect rather than "exonerated" the suspect. Assuming, arguendo, this misstatement constitutes misconduct, the error was harmless. See *Smith v. State*, 120 Nev. 944, 948-949, 102 P.3d 569, 572 (2004) (holding prosecutorial misconduct may be harmless where the evidence is overwhelming). Although the difference between "exonerate" and "exculpate" is legally significant, these are hypertechnical legal terms and it is unlikely any of the jurors understood the difference. The statement merely referred to a witness's impression of the potential alternative suspect, not the State's official evaluation of the suspect's innocence. Further, the evidence against Jose was overwhelming.

Under these facts, any error was harmless. And, because Jose failed to show multiple errors, cumulative error does not apply. *United States v. Sager*, 227 F.3d 1138, 1149 (9th Cir. 2000). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Silver

  
\_\_\_\_\_, J.  
Tao


---

*...continued*

parties to argue credibility); *Kelley v. State*, 76 Nev. 65, 68-69, 348 P.2d 966, 968 (1960) (holding it is proper to refuse to give instructions on irrelevant issues).

GIBBONS, J., concurring:

I concur in the result.

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

cc: Chief Judge, The Eighth Judicial District Court  
Hon. J. Charles Thompson, Senior Judge  
Terrence M. Jackson  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk