

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JAMES A. MCKNIGHT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 76311-COA

FILED

JUL 24 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

James A. McKnight appeals from a judgment of conviction, pursuant to a jury verdict, of conspiracy to commit kidnapping, first-degree kidnapping with use of a deadly weapon, conspiracy to commit robbery, robbery with use of a deadly weapon, battery with use of a deadly weapon resulting in substantial bodily harm, coercion, and assault with a deadly weapon. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Charles Geraci was attacked and beaten by McKnight and three other assailants. After beating and subduing Geraci, the assailants took his backpack, which contained his laptop computer and his dentures, as well as his wallet and cellphone. McKnight and the others bound Geraci's hands and shoved him into a closet, where he remained for approximately three hours. Subsequently, the assailants removed Geraci from the closet, placed a pillowcase over his head, tied a rope around his neck, and put him in the trunk of McKnight's car.

After driving for a while, the vehicle stopped on Las Vegas Boulevard, near Sloan. At gunpoint, Geraci was removed from the trunk and stripped of all his clothes, except his socks and underwear. McKnight and the others ordered Geraci to start running. As he was running, Geraci heard gunshots, which he assumed were directed at him. After running approximately a quarter mile through the desert, Geraci stopped, turned

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around, and saw McKnight's car driving away. Nevada Highway Patrol arrived at the scene shortly thereafter.

The State charged McKnight with conspiracy to commit kidnapping, first-degree kidnapping with use of a deadly weapon resulting in substantial bodily harm,¹ conspiracy to commit robbery, robbery with use of a deadly weapon, battery with use of a deadly weapon resulting in substantial bodily harm, coercion, assault with a deadly weapon, and preventing or dissuading a witness or victim from reporting a crime or commencing prosecution. After a five-day trial, the jury found McKnight guilty on all counts, except preventing or dissuading a witness or victim from reporting a crime or commencing prosecution. The district court sentenced McKnight to 10 to 28 years in prison.

On appeal, McKnight argues that (1) the district court erred by overruling his objection and permitting a flight instruction to be submitted to the jury; and (2) the State committed prosecutorial misconduct by implying that the jury had a duty to convict, and the district court erred by overruling his objection.

First, McKnight argues that the district court erred in submitting the flight instruction to the jury over his objection. Although it is undisputed that McKnight fled from police, he asserts that his flight was too remote to be probative because it occurred months after the crimes were committed. We disagree.

A district court's decision to give a jury instruction is reviewed "for an abuse of discretion or judicial error." *Jackson v. State*, 117 Nev. 116, 120, 17 P.3d 998, 1000 (2001). "[A] district court may properly give a flight

¹The State removed substantial bodily harm from this count before the case was submitted to the jury for deliberation.

instruction if the State presents evidence of flight and the record supports the conclusion that the defendant fled with consciousness of guilt and to evade arrest.” *Rosky v. State*, 121 Nev. 184, 199, 111 P.3d 690, 699-700 (2005). “Flight instructions are valid only if there is evidence sufficient to support a chain of unbroken inferences from the defendant’s behavior to the defendant’s guilt of the crime charged.” *Jackson*, 117 Nev. at 121, 17 P.3d at 1001. Because flight instructions are potentially prejudicial, “this court carefully scrutinizes the record to determine if the evidence actually warranted the instruction.” *Weber v. State*, 121 Nev. 554, 582, 119 P.3d 107, 126 (2005), *overruled on other grounds by Farmer v. State*, 133 Nev. 693, 405 P.3d 114 (2017).

Here, the record reveals that McKnight fled from law enforcement agents in a deliberate attempt to evade apprehension. Specifically, McKnight led arresting officers on a foot pursuit across a major thoroughfare, into an apartment complex, and over multiple walls before he was finally restrained. Furthermore, McKnight was aware that law enforcement considered him a primary suspect in the instant matter, and only a few months had passed since the crimes were committed. Thus, “the record supports the conclusion that [McKnight] fled with consciousness of guilt and to evade arrest.” *Rosky*, 121 Nev. at 199, 111 P.3d at 699-700. Accordingly, we conclude that the district court correctly permitted the flight instruction.²

²Even if the district court erred by submitting the flight instruction to the jury, the error was harmless, as the instruction was self-curing. Moreover, given the strength of the State’s evidence, there is no indication that the instruction had a “substantial and injurious effect or influence [on] the jury’s verdict.” *Tavares v. State*, 117 Nev. 725, 732, 30 P.3d 1128, 1132 (2001).

Next, McKnight argues that the State committed prosecutorial misconduct during rebuttal closing argument by implying that the jury had a duty to convict, and that the district court erred in overruling his objection to the prosecutor's comment.

In reviewing claims of prosecutorial misconduct, we consider "whether the prosecutor's conduct was improper" and, if so, whether the "conduct warrants reversal." *Valdez v. State*, 124 Nev. 1172, 1188, 196 P.3d 465, 476 (2008). Nevertheless, a prosecutor's "statements should be considered in context, and a criminal conviction is not to be lightly overturned on the basis of a prosecutor's comments standing alone." *Hernandez v. State*, 118 Nev. 513, 525, 50 P.3d 1100, 1108 (2002) (internal quotations omitted).


Here, defense counsel averred during closing argument that the lead detective in this case was incompetent. In rebuttal, the prosecutor responded by highlighting the strength of the State's evidence, including DNA evidence and eyewitness testimony, and briefly addressed the detective's alleged inadequacies. The prosecutor then asked: "Are you going to walk these guys out the door because of that?" While such a statement is not ideal, we cannot say that it constitutes prosecutorial misconduct in this context. After reviewing the record, we are convinced that the prosecutor's statement was permissible, as he was commenting on the quality of the State's evidence (despite the detective's alleged flaws) and was not suggesting to the jury that it had a duty to convict. Therefore, we


conclude that the district court did not err in overruling McKnight's objection.³

Based on the foregoing, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Michelle Leavitt, District Judge
Sanft Law, P.C.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

³Assuming arguendo that the comment was improper, McKnight has failed to establish that "the error substantially affect[ed] the jury's verdict." *Valdez v. State*, 124 Nev. 1172, 1189, 196 P.3d 465, 476 (2008). Therefore, the error, if any, was harmless.