IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GARY LAMAR CHAMBERS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 73446-COA

FILED

JUL 24 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

Gary Lamar Chambers appeals from a judgment of conviction, pursuant to a jury verdict, of second-degree murder with the use of a deadly weapon, attempted murder with the use of a deadly weapon, battery with the use of a deadly weapon, and ownership or possession of a firearm by a prohibited person. Eighth Judicial District Court, Clark County; Richard Scotti, Judge.

On July 9, 2013, Chambers arrived at the home of Lisa Papoutsis and Gary Bly. Chambers contends that he arrived at the home to purchase methamphetamine, while the State argues based upon the testimony of Papoutsis that it was robbery. At some point during the visit, an altercation ensued followed by a physical struggle, resulting in Chambers shooting both Bly and Papoutsis at close range with a handgun. Chambers fled the scene. Both Papoutsis and Bly were transported to University Medical Center where Bly was pronounced dead on arrival. Papoutsis, who was shot in the hand, survived.

The State charged Chambers via information with six felony counts. Chambers, who had been released on parole for 2003 felony convictions at the time of the instant crimes, filed a motion in limine to prohibit the State from using the 2003 felonies at trial. The district court denied the motion, deciding that the 2003 felonies would be admissible for impeachment purposes should Chambers decide to testify. On the first day

of trial (but before trial began), the State filed its notice of intent to seek punishment of Chambers as a habitual offender. After a seven-day trial, the jury returned guilty verdicts as to count two (second degree murder with use of a deadly weapon), count four (attempt murder with use of a deadly weapon), and count five (battery with use of a deadly weapon). Additionally, Chambers pleaded guilty to count six (prohibited person in possession of a firearm).

After reviewing both the State's and Chambers' sentencing memoranda, the district court sentenced Chambers as a habitual felon under NRS 207.012 as to counts two and four, and as a habitual criminal under NRS 207.010 as to counts five and six. The district court ordered Chambers to serve concurrent prison terms of life without the possibility of parole. The judgment of conviction was filed shortly thereafter. This appeal followed.

On appeal, Chambers argues that the district court erred when it (1) denied his motion in limine to preclude the State's use of his prior convictions for impeachment purposes, (2) allowed a witness to testify via two-way audiovisual technology, (3) admitted preliminary hearing testimony from an unavailable witness, (4) denied his motion for mistrial due to prosecutorial misconduct, and (5) sentenced him as a habitual offender. Chambers further argues that cumulative error warrants reversal. We address each issue in turn.

The district court did not abuse its discretion in denying Chambers' motion in limine

Chambers argues that the district court erred by denying his motion in limine and failing to suppress his 2003 convictions if he chose to testify, contending that the convictions were too remote in time to be admissible under NRS 50.095, and that they were more prejudicial than

probative. Chambers further contends that because of this, he could not testify and therefore was denied the opportunity to present a meaningful defense. We disagree.

This court "review[s] a district court's decision to admit or exclude evidence for an abuse of discretion." *Mclellan v. State*, 124 Nev. 263, 267, 182 P.3d 106, 109 (2008). It is well established in Nevada law that evidence of prior felony convictions may be used to impeach criminal defendants who choose to testify. NRS 50.095; *Anderson v. State*, 92 Nev. 21, 23, 544 P.2d 1200, 1201 (1976). However, district courts must exclude evidence of a prior conviction if the "probative value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues or of misleading the jury." NRS 48.035(1); *see also Wesley v. State*, 112 Nev. 503, 510, 916 P.2d 793, 798-99 (1996) (explaining that the legislature intended district courts to balance the probative value versus the prejudicial effect before admitting evidence of criminal convictions).

Here, Chambers' 2003 convictions were not too remote in time. NRS 50.095 permits evidence of felony convictions where (1) the crime for which the defendant was convicted was punishable by death or imprisonment for more than one year, and (2) no more than ten years has elapsed since the defendant's release from confinement or since the expiration of his or her parole or probation, *whichever is later*. Chambers had only recently been paroled for his 2003 convictions when he committed the crimes related to this case in 2013. Thus the 2003 convictions were admissible to impeach Chambers' credibility because not "more than 10 years ha[d] elapsed since . . . [t]he expiration of the period of [his] parole." NRS 50.095(2)(b).

Chambers next argument—that the district court failed to properly weigh the probative versus prejudicial effect in admitting his prior convictions—is unpersuasive. The record supports that the court considered the probative value of the convictions versus their prejudicial effect. *See United States v. Wallace*, 848 F.2d 1464, 1473 (9th Cir. 1988) (articulating factors for courts to consider when weighing the probative value of prior convictions versus their prejudicial effect). Although this case is not binding on Nevada courts, the district court explicitly stated that it considered the *Wallace* factors when ruling on Chambers' motion in limine. Ultimately, the district court determined that the convictions were relevant to credibility, were not unfairly prejudicial, and that any potential prejudice could be cured via a cautionary instruction and voir dire if Chambers testified. Therefore, we conclude that the district court did not abuse its discretion when weighing the probative versus prejudicial effect of Chambers' prior convictions.[1]

Additionally, we note that although Chambers' prior convictions were similar to charges for which he was on trial, e.g., attempted robbery, Nevada law has never prohibited the admission of such evidence. *See, e.g., Yates v. State*, 95 Nev. 446, 450, 596 P.2d 239, 242 (1979) (explaining that under Nevada law evidence of similar crimes is admissible to attack a defendant witness' credibility). Therefore, we conclude that the

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[1]Chambers also argues that his prior convictions did not have significant impeachment value as they did not involve crimes of dishonesty. As dishonesty is not a factor under NRS 50.095, we find this argument unpersuasive.

district court did not abuse its discretion when it denied Chambers' motion in limine.[2]

The district court did not err in allowing a witness to testify via audiovisual means

Chambers contends that the district court violated his right to confrontation by granting the State's motion to allow Cynthia Lacey to testify via audiovisual technology. Specifically, Chambers argues that (1) the State did not adequately establish that Lacey was too ill to travel; (2) Lacey's testimony via audiovisual technology violated his rights under the Confrontation Clause; and (3) he was prejudiced because Lacey responded "I don't remember" to all of the State's inquiries, which allowed the State to impeach her with prior inconsistent statements.

Whether a defendant's Confrontation Clause rights were violated is a question of law we review de novo. *Chavez v. State*, 125 Nev. 328, 339, 213 P.3d 476, 484 (2009). "In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him . . . ." U.S. Const. amend. VI. Although "the Confrontation Clause reflects a preference for face-to-face confrontation at trial," that preference "must occasionally give way to considerations of public policy and the

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[2]We acknowledge Chambers' argument that the district court's denial of his motion in limine prevented him from testifying, but find it equally unpersuasive. In *Yates*, the Supreme Court of Nevada addressed this exact issue and concluded that "appellant's anticipation of the state's use of his prior felony convictions may have been a strong factor affecting his decision not to testify . . . . [T]here are a number of compelling reasons . . . that affect an accused's decision to forego testifying." 95 Nev. at 450, 596 P.2d at 242. Moreover, the *Yates* court explained that a rule prohibiting the use of "such conviction evidence would enable an accused to appear as a person whose character entitled him to complete credence, when the facts of his life are to the contrary." *Id.* at 451, 596 P.2d at 242 (quoting *United States v. Simpson*, 445 F.2d 735, 737 (D.C. Cir. 1970)).

necessities of the case." *Maryland v. Craig*, 497 U.S. 836, 849 (1990) (emphasis and internal quotation marks omitted).

While *Craig* involved the use of one-way video technology, the Supreme Court of Nevada recently adopted the test articulated in *Craig* and applied it to two-way audiovisual technology. *Lipsitz v. State*, 135 Nev., Adv. Op. 17, 442 P.3d 138, 140 (2019). Adopting the *Craig* test, the supreme court articulated the audiovisual test for Nevada, namely that audiovisual testimony must (1) "further[ ] the important public policy of protecting the victim's well-being," and (2) provide the indicia of reliability necessary to satisfy the elements of confrontation articulated in *Craig*—i.e., the witness was under oath, the defendant was able to cross-examine the witness, and the court and jury could observe the witness' credibility. *Id.* at 144.

In this case, the district court properly concluded that Lacey's sworn testimony was sufficient to satisfy the first prong of the test in *Lipsitz*, i.e., that her "health would be unduly jeopardized if forced to travel." *See id.* (discussing the important public interest of protecting a witness' well-being); *see also United States v. Benson*, 79 F. App'x 813, 821 (6th Cir. 2003) (affirming that the witness' testimony was sufficient to establish that she was too ill to travel). Thus, the district court correctly made a finding of necessity under the first prong of the *Lipsitz* test.

The record also demonstrates that the two-way audiovisual technology used in court satisfied the second prong of the *Lipsitz* test. Lacey was under oath, visible to the judge and the jury, and Chambers had an opportunity to cross-examine her at trial (which he declined to do).[3] As the

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[3]Chambers' decision not to cross-examine Lacey at trial does not mean that he was deprived of his right to confrontation. *Pantano v. State*, 122 Nev. 782, 790, 138 P.3d 477, 482 (2006) ("[T]he Confrontation Clause

district court's ruling met all of the criteria established in *Craig* and *Lipsitz*, we conclude that the district court's decision to permit Lacey to testify via audiovisual technology did not violate Chambers' rights under the Confrontation Clause.

Finally, Chambers was not prejudiced by the admission of Lacey's prior inconsistent statements. The record reveals that the State used extrinsic evidence to impeach Lacey's credibility after she responded "I don't remember" to questions regarding specific statements she had previously made to detectives during an investigative interview. The State then called Detective Raetz as a witness to testify about Lacey's prior statements. As part of its direct examination of Raetz, the State moved to publish relevant portions of the interview, which the district court allowed. Chambers did not object.

Under Nevada law, "when a trial witness fails, for whatever reason, to remember a previous statement made by that witness, the failure of recollection constitutes a denial of the prior statement that makes it a prior inconsistent statement pursuant to NRS 51.035(2)(a)." *Crowley v. State*, 120 Nev. 30, 35, 83 P.3d 282, 286 (2004). "The previous statement is not hearsay and may be admitted both substantively and for impeachment." *Id.* Generally, NRS 50.135(2) precludes the admission of "[e]xtrinsic evidence of a prior contradictory statement by a witness" unless "[t]he statement fulfills all the conditions required by subsection 3 of NRS 51.035; or . . . [t]he witness is afforded an opportunity to explain or deny the

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guarantees an opportunity for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish.") (emphasis and internal quotation marks omitted).

statement and the opposite party is afforded an opportunity to interrogate him thereon." NRS 50.135(2) (emphasis added).

Here, Lacey was asked about specific prior statements she made to detectives but failed to recall making them. Thus, pursuant to *Crowley*, Lacey's failure of recollection constituted a denial of her prior statement, making it a prior inconsistent statement under NRS 51.035(2)(a). *See also Richard v. State*, 134 Nev. Adv. Op. 64, 424 P.3d 626, 630 (2018) (explaining that a witness' "memory lapse was akin to a denial of his prior statement, and the State could properly present his prior inconsistent statement"). Moreover, the use of extrinsic evidence was proper because Lacey denied the prior statements and opposing counsel was afforded an opportunity to cross-examine her thereon. *See* NRS 50.135(2). Thus, Lacey's prior inconsistent statements were admissible pursuant to NRS 51.035(2)(a) and 50.135(2)(b), regardless of whether she testified via two-way audiovisual technology or from the witness stand inside the courtroom. In other words, the mode used to procure her testimony was irrelevant, since it had no bearing on admissibility. Because Chambers' confrontation rights were not violated, and because Lacey's prior inconsistent statements were properly admitted into evidence, we conclude that the district court did not err.

The district court did not err in admitting preliminary hearing testimony

Chambers contends that the district court erred by granting the State's motion to admit Bridgett Graham's preliminary hearing testimony. Specifically, Chambers contends that (1) the State failed to disclose Graham's prior conviction for petit larceny; (2) he was unable to impeach Graham with that undisclosed information at the preliminary hearing; and

(3) as a result of this nondisclosure, he was denied the opportunity to effectively cross-examine Graham in violation of his right to confrontation.

"[A] district court's decision to admit or exclude evidence [is reviewed] for an abuse of discretion." *Mclellan*, 124 Nev. at 267, 182 P.3d at 109. But whether a defendant's Confrontation Clause rights were violated is a question of law subject to de novo review. *Chavez*, 125 Nev. at 339, 213 P.3d at 484. The Confrontation Clause prohibits "admission of testimonial statements of a witness who did not appear at trial *unless* he was unavailable to testify, and the defendant had . . . a *prior opportunity for cross-examination*." *Crawford v. Washington*, 541 U.S. 36, 53-54 (2004) (emphases added). For testimony from a preliminary hearing to be admitted at trial, the defendant (1) must have been represented by counsel at the preliminary hearing, (2) must have had the opportunity to cross-examine the witness, and (3) the witness must be unavailable for the trial. *State v. Eighth Judicial Dist. Court (Baker)*, 134 Nev. 104, ___, 412 P.3d 18, 22 (2018). Further, "the State must make reasonable efforts to procure a witness' attendance at trial before that witness may be declared unavailable." *Hernandez v. State*, 124 Nev. 639, 645, 188 P.3d 1126, 1131 (2008), *abrogated on other grounds by Baker*, 134 Nev. at ___, 412 P.3d at 22.

We agree that this case satisfies the elements set forth in *Hernandez* and *Baker*. Chambers was represented by counsel at the preliminary hearing where Graham testified. Further, Chambers cross-examined Graham at the preliminary hearing, and effectively challenged her credibility as Graham admitted during the hearing that she "was

coming down" from methamphetamine when she witnessed the events of July 9, 2013.[4]

The record also demonstrates that the State made reasonable efforts to procure Graham's attendance at trial. The State issued a subpoena (Graham failed to comply), followed up with an email (Graham responded she was "not coming"), and finally, obtained a warrant for Graham's arrest (the attempts to locate Graham were ultimately unsuccessful). After considering the State's efforts, the district court determined that it made reasonable efforts to procure Graham and that she was unavailable pursuant to NRS 51.055(1)(b).[5] Accordingly, we conclude that the district court correctly determined that the witness was unavailable and therefore did not err in admitting her preliminary hearing testimony.

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[4]Chambers also argues that the nondisclosure of Graham's prior petit larceny conviction rendered his cross-examination ineffective because he could not use it to impeach Graham. We do not find this argument persuasive. While Chambers correctly argues that NRS 50.085(3) may allow inquiry into specific instances of conduct where such conduct is relevant to truthfulness, it does not allow proof of such conduct by extrinsic evidence. Thus, even if Chambers had known about Graham's petit larceny conviction, the most he could have done with that information was ask Graham about the conduct, leaving him with her answer. It should also be noted that Chambers did not ask Graham if she had any prior convictions during his extensive questioning of her during the preliminary hearing. As discussed above, Graham's admission that she was "coming down" from methamphetamine at the time of the incident is arguably more damaging to her credibility than a misdemeanor conviction for petit larceny. Therefore, we conclude that there was no error.

[5]NRS 51.055 states in pertinent part: "A declarant is 'unavailable as a witness' if the declarant is . . . [p]ersistent in refusing to testify despite an order of the judge to do so . . . ."

The district court did not abuse its discretion in failing to grant Chambers' motion for mistrial for alleged prosecutorial misconduct.

Chambers' contends that the State improperly commented on his right to remain silent during closing argument, and therefore, a mistrial should have been granted. Specifically, the State, when discussing Chambers' post-crime conduct during closing argument, said, "He didn't stay and talk to the police . . . . He didn't tell his story, right?" Below, Chambers objected and moved for a mistrial. The district court denied Chambers' motion for a mistrial, and instead admonished the jury to disregard the remark made by the prosecutor.

"Denial of a motion for mistrial is within the district court's sound discretion, and [the reviewing] court will not overturn a denial absent a clear showing of abuse." *Randolph v. State*, 117 Nev. 970, 981, 36 P.3d 424, 431 (2001). Further, when reviewing claims of prosecutorial misconduct, this court first determines 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).

After a review of the record, we conclude that the State did not comment on Chambers' silence at trial, but rather, his flight from the crime scene. During closing, the State argued in pertinent part:

> Flight instruction, that's going to be [jury instruction] number 47. It tells you that basically flight, you leave after a crime. It's the idea of deliberately going away with a consciousness of guilt[ ]. And if there's evidence, if you believe there's evidence that the defendant fled from the crime, you can use that evidence for this reason.
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> . . . .
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> So, let's consider what did [Chambers] do after the crime? What did he do? What didn't he

> do? *He left, right*? He didn't stay and talk to police, anything like that. *He didn't tell his story, right*?

(Emphases added.)

We recognize "that the prosecution is forbidden at trial to comment upon an accused's election to remain silent *following his arrest and after he has been advised of his rights*." *Gaxiola v. State*, 121 Nev. 638, 655, 119 P.3d 1225, 1237 (2005) (emphasis added) (internal quotation marks omitted). There is, however, no such prohibition regarding comments related to a defendant's post-crime conduct and flight. *See, e.g., Santillanes v. State*, 104 Nev. 699, 701, 765 P.2d 1147, 1148 (1988) (holding that there is no prosecutorial misconduct where the prosecutor commented on the defendant's failure to attend a scheduled meeting with police and his subsequent flight to Mexico, as the jury could infer consciousness of guilt). Therefore, in this context, it is not improper for the prosecution to comment on a defendant's pre-arrest conduct, nor has Chambers cited to any case that stands for such a proposition. *See Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) ("It is appellant's responsibility to present relevant authority and cogent argument; issues not so presented need not be addressed by this court."). Accordingly, we conclude that there was no prosecutorial misconduct, and the district court did not abuse its discretion in denying the motion for mistrial.

The district court did not abuse its discretion in adjudicating Chambers as a habitual offender

Chambers contends that the district court erred in sentencing him as a habitual offender under NRS 207.010 and NRS 207.012. Chambers initially argues that the State failed to give proper notice under NRS 207.016 that it was seeking to have him sentenced as a habitual offender. We disagree.

As a threshold matter, we must determine whether the 2007 or 2013 version of the notice provision in NRS 207.016(2) applies. This court reviews questions of statutory interpretation de novo. *Mendoza-Lobos v. State*, 125 Nev. 634, 642, 218 P.3d 501, 506 (2009). In Nevada, "changes in statutes are presumed to operate prospectively absent clear legislative intent to apply a statute retroactively." *Castillo v. State*, 110 Nev. 535, 540, 874 P.2d 1252, 1256 (1994), *disapproved of on other grounds by Wood v. State*, 111 Nev. 428, 892 P.2d 944 (1995); *see also State v. Second Judicial Dist. Court (Pullin)*, 124 Nev. 564, 567, 188 P.3d 1079, 1081 (2008) ("[T]he proper penalty is the penalty in effect at the time of the commission of the offense."). This principle holds true even where the statutory change is strictly procedural. *See Castillo*, 110 Nev. at 541, 874 P.2d at 1256 (rejecting appellant's argument that procedural changes should apply retroactively).

Here, Chambers committed the instant crimes in July 2013. In October 2013, the amendments to NRS 207.016 went into effect, which was three months after the crimes were committed.[6] Consequently, the 2007 version of NRS 207.016 was effective when Chambers committed the offenses and therefore the 2007 version controls.

Having concluded that the 2007 version of NRS 207.016 applies, we next address Chambers' arguments regarding whether he received proper notice under the statute. Under the 2007 version of NRS 207.016(2),

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[6]The governor approved the 2013 amendments to NRS 207.016 (entitled AB 97) on June 1, 2013. 2013. Nev. Stat., ch. 292, at 1373. As the 2013 amendment of NRS 207.016 did not contain an effective date, it went into effect on October 1, 2013. *See* NRS 218D.350(1) ("Each law . . . passed by the Legislature becomes effective on October 1 following its passage, unless the law . . . specifically prescribes a different effective date.").

"[a] count pursuant to NRS 207.010, 207.012 or 207.014 may be separately filed after conviction of the primary offense, but if it is so filed, sentence must not be imposed . . . until 15 days after the separate filing." 2007 Nev. Stat., ch. 327, § 56, at 1441.

Here, the State notified Chambers of its intent to seek punishment as a habitual offender on February 21, 2017. After a seven-day jury trial, Chambers was convicted on four felony counts and subsequently sentenced on May 23, 2017. Thus, the State gave Chambers three-month's notice before sentencing that it sought habitual offender adjudication. Therefore, we conclude that the district court did not err in sentencing Chambers as a habitual offender based on an alleged violation of the 2007 notice provision. Indeed, we conclude that the State provided adequate notice pursuant to the 2007 version of NRS 207.016(2).[7]

Next, Chambers argues that he was improperly adjudicated under NRS 207.010 (2009) and NRS 207.012 (2013). Under NRS 207.012, defendants who have previously been convicted of two violent felonies, which are enumerated in the statute, and are again convicted of a violent felony, qualify as habitual felons and *must* be sentenced as such. Unlike NRS 207.010, the application of NRS 207.012 is mandatory. *See* NRS 207.012(3) (2013). Under NRS 207.010, on the other hand, defendants who have been convicted of at least four felonies *may* be sentenced as a habitual criminal for a term of life without parole. NRS 207.010(1)(b)(1) (2009). Adjudication under NRS 207.010 is discretionary, but "[o]ne facing

[7]Chambers also argues that the State was required to provide him with notice in the charging document pursuant to NRS 207.012(2) and (3). We conclude that this argument lacks merit, as Chambers was given proper notice under the applicable notice provision of NRS 207.016.

adjudication as a habitual criminal . . . is at the mercy of the court and is thus subject to the broadest kind of judicial discretion." *Tanksley v. State*, 113 Nev. 997, 1004, 946 P.2d 148, 152 (1997) (emphasis and internal quotation marks omitted).

We conclude that under both NRS 207.010 and NRS 207.012, the district court properly exercised its discretion when it adjudicated Chambers as a habitual offender. We first address the mandatory sentencing provision of NRS 207.012.

In 2003, Chambers was convicted of two counts of robbery with the use of a deadly weapon (NRS 193.165; NRS 200.380(1)) and first-degree kidnapping (NRS 200.310; NRS 200.320), which are violent felonies enumerated in NRS 207.012(2). Chambers contends that the 2003 convictions should have been treated as one offense (rather than three) because they arose out of the same act and were prosecuted in the same information, and cites to *Rezin v. State*, 95 Nev. 461, 462, 596 P.2d 226, 227 (1979) (explaining "that where two or more convictions grow out of the same act, transaction or occurrence, *and* are prosecuted in the same indictment or information, those . . . convictions may be utilized only as a single 'prior conviction' for purposes of applying the habitual criminal statute" (emphasis added)). We disagree.

While it is true that the 2003 convictions were prosecuted in the same information, only two of the convictions—the kidnapping and one of the robberies—arose from the same act or transaction. The record indicates that Chambers committed the first robbery on May 29, 2002, and then subsequently committed the robbery/kidnapping on June 27, 2002. Thus, pursuant to *Rezin*, the May 29 robbery was properly treated as a discrete conviction because it arose out of a different act than the June 27

robbery/kidnapping. Therefore, the district court correctly concluded that Chambers was required to be adjudicated as a habitual felon under NRS 207.012, as the instant conviction was his third for a violent felony.[8]

Because the district court's application of NRS 207.012 was proper, we need not address whether Chambers was properly sentenced under NRS 207.010, the discretionary habitual criminal statute. Because both sentences were identical—life without the possibility of parole—and were set to run concurrently, the sentence imposed under NRS 207.010 is cumulative, and does not adversely affect Chambers' overall term of imprisonment.

Nevertheless, we take this opportunity to affirm that Chambers was properly adjudicated under NRS 207.010. On appeal, Chambers relies heavily on *Sessions v. State*, 106 Nev. 186, 789 P.2d 1242 (1990), to support the proposition that his prior convictions are stale and should not have been considered by the district court. However, *Sessions* is inapposite, as the court in *Sessions* reversed a conviction for life without the possibility of parole for three *nonviolent* crimes more than 20 years old under NRS 207.010. *Id.* Here, the determination of habitual criminality was based on six felonies, which were committed between 1990 and 2002. Specifically, Chambers was convicted of robbery, larceny from the person (two counts), robbery with the use of a deadly weapon (two counts), and first-degree kidnapping. Notably, most of the prior convictions involved violence. Moreover, measured from the date that the instant crimes were committed

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[8]In this case, Chambers was convicted of, among other things, second-degree murder with the use of a deadly weapon, and attempted murder with the use of deadly weapon. Both crimes are violent offenses that are enumerated in NRS 207.012(2).

(July 2013), Chambers' prior convictions ranged from 11 to 23 years old, not 14 to 27 years old as he contends on appeal.

Finally, because the record demonstrates that Chambers is a "career criminal[ ] who pose[s] a serious threat to public safety," the district court did not abuse its discretion in imposing life without the possibility of parole. *Id.* at 191, 789 P.2d at 1245; *see also Odoms v. State*, 102 Nev. 27, 32, 714 P.2d 568, 571 (1986) ("The purpose behind habitual criminal statutes is to increase sanctions for the recidivist."). Notably, the district court recognized that Chambers' conduct had in fact escalated over time and therefore warranted more severe punishment. For the foregoing reasons, we affirm the judgment of conviction.[9]

In light of the foregoing, we

ORDER the judgment of conviction AFFIRMED.

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

cc: Hon. Richard Scotti, District Judge
Jean J. Schwartzer
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

[9]Because we conclude that there are no errors to cumulate, we also conclude that there is no cumulative error warranting reversal. *Morgan v. State*, 134 Nev. 200, ___ n.1, 416 P.3d 212, 217 n.1 (2018).