

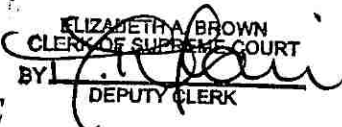
IN THE SUPREME COURT OF THE STATE OF NEVADA

LUIS LOYA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 84425

FILED

JUN 16 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of conspiracy to commit murder and murder with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Tierra Danielle Jones, Judge. Appellant Luis Loya raises four issues on appeal.¹

Sufficiency of the evidence

Loya contends that there was insufficient evidence to sustain his convictions for both conspiracy to commit murder and murder with use of a deadly weapon. Specifically, he argues that witnesses Mauricio Mejia and Richard Romero lacked credibility and no other evidence linked him to the shooting. In addition, he asserts that the State failed to provide evidence of an explicit agreement necessary to prove conspiracy.

When reviewing a challenge to the sufficiency of evidence, we review the evidence in the light most favorable to the prosecution and determine whether any rational trier of fact could have found the elements of the offense beyond a reasonable doubt. *Rose v. State*, 123 Nev. 194, 202, 163 P.3d 408, 414 (2007); *see also Jackson v. Virginia*, 443 U.S. 307, 319

¹Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal.

(1979). “This court will not reweigh the evidence or evaluate the credibility of witnesses because that is the responsibility of the trier of fact.” *Mitchell v. State*, 124 Nev. 807, 816, 192 P.3d 721, 727 (2008).

The State presented evidence that Loya was a member of a “tagging crew,” a group that claims territory by placing graffiti in public spaces in competition with other crews, and that Loya’s tagging crew, BTA, was engaged in a rivalry with a crew known as BCW. Approximately one month before the shooting, a BTA member was stabbed, leading to escalating tensions. This stabbing prompted Mejia, whose crew was allied with Loya’s, to buy a gun. Mejia testified that he showed Loya his gun, at which time they discussed going to look for “haters,” members of enemy crews. Mejia and Loya came upon Romero and Angel Campos, who were both BCW members. They all announced their tagging crew affiliations, and then Mejia took the gun out of his backpack. Mejia testified that when he hesitated, Loya told him to shoot, then took the gun and shot Campos in the head himself. While Romero gave conflicting testimony about the shooting, his testimony about the sequence of events leading up to the shooting was generally consistent with Mejia’s account, including hearing Loya say “kill him” to Mejia. Further, Romero’s previous identification of Loya in a photographic lineup was admitted and tended to corroborate Mejia’s testimony that Loya was the shooter. A rational trier of fact could reasonably conclude from this evidence that Loya shot Campos in the head with a deadly weapon, killing him, and that the killing was willful, deliberate, and premeditated. See NRS 193.165(6) (defining deadly weapon); NRS 200.010 (defining murder); NRS 200.030(1) (providing elements of first-degree murder). In addition, a rational trier of fact could reasonably infer that Loya and Mejia made an unlawful agreement to

commit murder and Loya killed Campos in furtherance of that agreement. See NRS 199.480; *Nunnery v. Eighth Judicial Dist. Court*, 124 Nev. 477, 480, 186 P.3d 886, 888 (2008) (defining conspiracy as “an agreement between two or more persons for an unlawful purpose” (internal quotations omitted)); *Sheriff v. Lang*, 104 Nev. 539, 543, 763 P.2d 56, 59 (1988) (“Direct evidence is not required to establish a conspiracy, but circumstantial evidence may be relied upon.” (internal quotations omitted)). While some of the State’s witnesses had possible motivations to lie and appeared to provide testimony that was at times contradictory or confusing, this court will not substitute its judgment regarding witness credibility for that of the jury. See *Mitchell*, 124 Nev. at 816, 192 P.3d at 727. Thus, we conclude that the evidence, when viewed in the light most favorable to the prosecution, was sufficient to support Loya’s convictions.

Tagging crew evidence

Loya next challenges the admission of other act evidence about his membership in a tagging crew, including contextual evidence about various tagging crews’ activities and rivalries. Loya asserts that this evidence was not relevant for any nonpropensity purpose and that the danger of unfair prejudice substantially outweighed any probative value.

Evidence of other crimes, wrongs, or acts is inadmissible to prove propensity, but may be admissible for other purposes, including “as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.” NRS 48.045(2). Such evidence may be admitted after a *Petrocelli*² hearing in which the State shows: (1) relevance for a nonpropensity purpose; (2) proof by clear and convincing evidence; and

²*Petrocelli v. State*, 101 Nev. 46, 692 P.2d 503 (1985).

(3) that the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice. *Bigpond v. State*, 128 Nev. 108, 116-17, 270 P.3d 1244, 1249-50 (2012). We review the district court's decision for an abuse of discretion "and will not reverse except on a showing that the decision is manifestly incorrect." *Flowers v. State*, 136 Nev. 1, 5, 456 P.3d 1037, 1043 (2020). This court has repeatedly held that gang-affiliation evidence may be relevant and probative when admitted to prove motive.³ *See Butler v. State*, 120 Nev. 879, 889, 102 P.3d 71, 78 (2004).

Here, multiple witnesses testified about tagging crew rivalries, including animosity between Loya's and Campos' tagging crews. As part of tagging crew culture, members were expected to "beef" and "put in work" by fighting members of opposing crews. The State presented evidence about the stabbing of a BTA member approximately one month before the shooting, and that Loya and Mejia discussed seeking out "haters" to retaliate for that stabbing. When Loya and Mejia encountered Romero and Campos, each announced his respective tagging crew affiliation, an action that was understood as an invitation to fight. This was consistent with the writings found in the book in Loya's jail cell, which indicated Campos' death was a means of showing disrespect toward BCW. Thus, tagging crew evidence was relevant to demonstrate Loya's motive, as it tended to explain why he would have reason to shoot Campos, a person he had never met before. Witnesses also repeatedly identified Loya and others using only

³We acknowledge the distinction drawn by the district court between tagging crews and criminal gangs, particularly in the absence of a charged criminal gang enhancement. However, to the extent both are groups with identifying names, symbols, social customs, and conduct, *see* NRS 193.168(8), we find our holdings on gang-affiliation evidence to be instructive.

their tagging crew monikers rather than formal names. As such, we conclude this evidence was also relevant for the purpose of identification. Further, the trial court limited the scope of this evidence by prohibiting inquiry into general criminal activity by tagging crews and gave an appropriate cautionary instruction on the use of other act evidence. See *McLellan v. State*, 124 Nev. 263, 269, 182 P.3d 106, 110-11 (2008) (requiring a limiting instruction for prior bad act evidence). Therefore, the significant probative value of the evidence was not outweighed by the danger of unfair prejudice.⁴ Accordingly, we conclude that the district court did not abuse its discretion in admitting evidence of Loya's affiliation with a tagging crew under NRS 48.045(2).

Prosecutorial misconduct

Third, Loya argues that the prosecutor engaged in misconduct by soliciting testimony about gangs in violation of the district court's pretrial order and by vouching for one of the State's witnesses. When considering claims of prosecutorial misconduct, we first determine whether the prosecutor's conduct was improper. *Valdez v. State*, 124 Nev. 1172, 1188, 196 P.3d 465, 476 (2008). If the conduct was improper, we next determine whether it warrants reversal. *Id.* Reversal is not warranted if the misconduct is harmless. *Id.* at 1189, 196 P.3d at 476-77.

Loya argues that the State disobeyed a pretrial order that cautioned the parties not to invite testimony referencing criminal gangs,

⁴Loya also challenges the admission of testimony that members of tagging crews are known to get together and use marijuana. Even assuming *arguendo* that this non-specific marijuana use amounts to a prior bad act by Loya, he did not demonstrate that the passing reference resulted in prejudice given the decriminalization of recreational marijuana use in this State, the evidence of his guilt, and the district court's bad acts instruction.

including by questioning witnesses in a manner that foreseeably called for use of the word "gang." Flagrantly disobeying a court's order may constitute prosecutorial misconduct. *McGuire v. State*, 100 Nev. 153, 156, 677 P.2d 1060, 1063 (1984). In the first instance cited by Loya, the State asked a corrections officer about the detention facility's general policy regarding screening of outside books given to inmates. While the witness did mention gang writings as one aspect of the screening, this was a single passing example rather than the focus of the answer, and the State's question did not appear intended to solicit testimony about gangs and was not improper. The remaining testimony Loya cites arose during questioning about a detective's duties and experience. The detective did not heed the instruction the State indicates it gave all witnesses regarding the court's prohibition on the word gang, using the word to describe his assignments multiple times. However, nothing about the content of the prosecutor's questions points to any intent to solicit these answers, and the prosecutor explicitly clarified in a follow-up question that a tagging crew was not a criminal gang. Even assuming the State failed to adequately instruct the detective about the court's ruling and that this was improper, the error was harmless. *See Valdez*, 124 Nev. at 1188-89, 196 P.3d at 476 (reversing non-constitutional error only if the error substantially affects the jury's verdict). The witness did not state Loya was a gang member, the district court instructed the jury regarding the permissible scope of the tagging crew evidence, and there was substantial evidence of Loya's guilt.

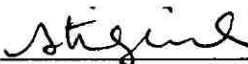
Loya's second contention of prosecutorial misconduct involved the State questioning Mejia about whether his interrogation by police about the shooting was the first time he'd been in trouble. It is improper for the prosecution to vouch for a witness by providing personal assurances as to

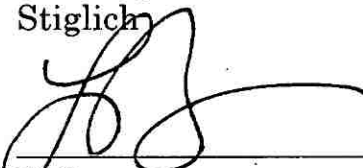
the witness' veracity. *Browning v. State*, 120 Nev. 347, 359, 91 P.3d 39, 48 (2004); *Anderson v. State*, 121 Nev. 511, 516, 118 P.3d 184, 187 (2005) (prosecutor may not vouch for the credibility of a witness). However, the State's question merely sought to clarify Mejia's previous statement that he "just kind of got scared because [he] had never been in that situation"; it did not convey any opinion about Mejia's honesty or the truthfulness of his trial testimony. Further, the district court immediately sustained Loya's objection, clarified that Mejia never said he hadn't previously been in trouble, and instructed the jury to disregard the question. Accordingly, the prosecutor's question was harmless and does not warrant reversal.

Cumulative error

Lastly, Loya argues that cumulative error warrants relief. *See Valdez*, 124 Nev. at 1195, 196 P.3d at 481 (providing relevant factors to consider for a claim of cumulative error). We disagree. Although Loya's crimes are serious, the State presented significant evidence of his guilt and any prosecutorial misconduct, even considered cumulatively, does not warrant reversal. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Stiglich


_____, J.
Bell


_____, J.
Lee

cc: Hon. Tierra Danielle Jones, District Judge
Marchese Law Office
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk