

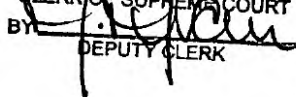
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JUAN DIEGO ACOSTA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 87420-COA

**FILED**

NOV 20 2024

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Juan Diego Acosta appeals from a judgment of conviction, pursuant to a jury verdict, of two counts of sexual assault. Eighth Judicial District Court, Clark County; Eric Johnson, Judge.

In September 2021, Acosta was charged with two counts of sexual assault for assaulting L.P. on February 28, 2020. In February, June, and November 2022, Acosta moved to continue his jury trial for various reasons. He requested a fourth continuance in January 2023 when new trial counsel substituted in on the case.

In May 2023, Acosta moved for a fifth trial continuance. The district court granted the motion but expressly warned Acosta that it was going to be the last continuance, and “[i]f you come back and say you still got witnesses to interview, I’m not going to buy this.” At the next calendar call in June 2023, Acosta requested a sixth continuance because his investigator was still interviewing witnesses. The district court asked for more specific information, but Acosta was unable to describe the investigator’s efforts or what further witnesses needed to be interviewed. The district court stated that it would not grant another continuance “without something a little more specific than that,” and Acosta did not

respond further. The case was referred to a central calendar call a week later, and both Acosta and the State announced ready for trial.

The matter proceeded to a four-day jury trial. L.P. testified that on February 28, 2020, Acosta removed her clothing and sexually assaulted her in a shed, and when L.P. attempted to put on her clothes, Acosta pushed her into the shed wall and sexually assaulted her a second time. She testified that she did not consent to Acosta's conduct and did not have any prior sexual contact with him. Shortly after the assaults, L.P. underwent a forensic sexual assault examination, and the nurse who performed the examination testified that Acosta's DNA was found in L.P.'s cervix.

Acosta also testified in his own defense. He stated that he and L.P. had previously had consensual sexual encounters either for money or in exchange for the use of Acosta's truck. Acosta denied sexually assaulting L.P., and testified that on February 28, 2020, he and L.P. had consensual sex in exchange for \$100. During closing arguments, Acosta recounted inconsistencies in L.P.'s descriptions of the sexual assaults and argued that she was not a credible witness. The jury convicted Acosta of both counts of sexual assault, and he was sentenced to an aggregate term of life in prison with the possibility of parole after ten years. This appeal followed.

Acosta first argues the district court abused its discretion in denying his sixth request to continue trial because the court was required to consider sanctions against counsel and because the court's inquiry into the basis for Acosta's requested continuance was insufficient. "This court reviews the district court's decision regarding a motion for continuance for an abuse of discretion." *Rose v. State*, 123 Nev. 194, 206, 163 P.3d 408, 416 (2007). "[M]uch weight is given to the reasons offered to the trial judge at the time the request for a continuance is made." *Higgs v. State*, 126 Nev. 1,

9, 222 P.3d 648, 653 (2010). While the denial of a motion to continue may be an abuse of discretion if it leaves the defense with inadequate time to prepare for trial, *see Zessman v. State*, 94 Nev. 28, 31-32, 573 P.2d 1174, 1177 (1978), the district court's decision to deny a continuance is not an abuse of discretion if a defendant fails to demonstrate that he was prejudiced, *Rose*, 123 Nev. at 206, 163 P.3d at 416.

In this case, Acosta was unable to articulate to the district court why a sixth continuance was necessary. Acosta was unaware of the investigator's efforts or of what further witnesses required interviews, and on appeal Acosta does not articulate how he was prejudiced by the denial. Although Acosta summarily asserts that he was prejudiced because his counsel was unprepared to proceed with trial, he does not explain what further preparation or investigation was necessary. *Cf. Zessman*, 94 Nev. at 32, 573 P.2d at 1177 (providing that the district court abused its discretion by denying appellant's request to continue to prepare for a new first degree murder charge added shortly before trial, which amounted to "prejudicial surprise").

As to Acosta's assertions that the district court was required to sanction counsel or engage in a more thorough inquiry, Acosta does not cogently argue these claims or provide any supporting authority, and therefore we decline to consider them. *See Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (explaining that this court need not consider an appellant's argument that is not cogently argued or lacks the support of relevant authority). In the absence of prejudice or cogent argument, we

conclude that the district court did not abuse its discretion in denying Acosta's sixth request to continue his trial.<sup>1</sup>

Acosta next argues that his convictions were not supported by sufficient evidence because L.P. was "wholly discredited such that it is beyond the bounds of the jury's discretion to find proof of the alleged offenses beyond a reasonable doubt." When reviewing the sufficiency of the evidence, "[t]he relevant inquiry for this Court is 'whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *Koza v. State*, 100 Nev. 245, 250, 681 P.2d 44, 47 (1984) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). Further, "it is the function of the jury, not the appellate court, to weigh the evidence and pass upon the credibility of the witness." *Walker v. State*, 91 Nev. 724, 726, 542 P.2d 438, 439 (1975).

During trial, both L.P. and Acosta provided competing testimony describing the events that occurred on February 28, 2020. Although both Acosta and L.P. testified that sexual activity occurred, L.P. stated that she did not consent whereas Acosta testified that she did. Acosta also argued in his closing argument that L.P. was not a credible witness, but the jury was not required to credit this argument. The jury was able to weigh the witnesses' credibility and conflicting testimony, and

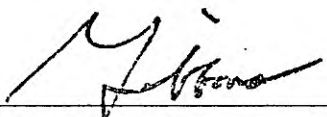
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<sup>1</sup>Insofar as Acosta argues that his counsel was ineffective for being inadequately prepared to proceed to trial, we decline to address this claim in the first instance on direct appeal. *Archanian v. State*, 122 Nev. 1019, 1036, 145 P.3d 1008, 1020-21 (2006) ("This court has repeatedly declined to consider ineffective-assistance-of-counsel claims on direct appeal unless the district court has held an evidentiary hearing on the matter or an evidentiary hearing would be needless.").

this court will not reweigh evidence or credibility on appeal. *Id.* Therefore, we conclude that Acosta failed to establish that his conviction was not supported by sufficient evidence.

Lastly, Acosta argues that he is entitled to relief under the doctrine of cumulative error. However, because he failed to demonstrate any error, he is not entitled to relief. *See Chaparro v. State*, 137 Nev. 665, 673-74, 497 P.3d 1187, 1195 (2021).<sup>2</sup> Accordingly, we

ORDER the judgment of conviction AFFIRMED.

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

  
\_\_\_\_\_, J.  
Bulla

  
\_\_\_\_\_, J.  
Westbrook

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<sup>2</sup>Acosta also argues that the district court plainly erred in permitting and making references to a “victim” during trial, which presupposed Acosta’s criminal culpability and infringed on the presumption of innocence. However, Acosta did not cite any authority providing that such references are plainly or clearly erroneous, nor did he argue how he was actually prejudiced, and thus he did not establish plain error. *See Green v. State*, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003) (noting that to establish plain error, the appellant must establish an error that was plain or clear in the record that resulted in actual prejudice).

To the extent that Acosta makes other arguments not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.

cc: Hon. Eric Johnson, District Judge  
Liberators Criminal Defense  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk