IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOAQUIN HILL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 88847-COA

FILED
MAR 21 2025
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

Joaquin Hill appeals from a judgment of conviction, entered pursuant to a jury verdict, of open and gross lewdness and indecent or obscene exposure. Eighth Judicial District Court, Clark County; Jennifer L. Schwartz, Judge.

Hill was serving a sentence for an unrelated offense when a female corrections officer, Robin Hennequin, approached his cell to conduct a hearing related to an alleged prison disciplinary violation. Hill stood at his cell door as Officer Hennequin read him his rights. During this time, Officer Hennequin noticed Hill was masturbating and that his penis was exposed. As a result, the State charged Hill with open and gross lewdness and indecent or obscene exposure.

This matter proceeded to a two-day jury trial, where only Officer Hennequin and Hill testified. Officer Hennequin testified that on the day of the incident, she was conducting prison disciplinary proceedings. After announcing her presence and knocking, she peered into Hill's cell through a window to make sure that he was present and dressed. She described seeing Hill exit his bunk and approach the door wearing white boxers. Officer Hennequin observed Hill's right arm "moving up and down,"

and she assumed that he was masturbating. She told Hill to stop, but he continued while "staring at [her] in the eye" and "licking his lips." Officer Hennequin testified that she looked down to verify her suspicion and saw Hill's erect penis exposed from his boxers. She again warned Hill to stop. When Hill continued masturbating, Officer Hennequin terminated the proceeding and walked away.

In his defense, Hill testified that he suffered from a skin condition that caused his skin to alternate "from being real dry to other times [when] it's oozing." Because of this, Hill did not wear clothes while in his cell for comfort. He also claimed that he did not own white boxers and instead had gray boxer briefs. Hill testified that when he became aware of Officer Hennequin's presence, he got dressed in his gray boxer briefs and light blue sleep pants. Hill denied masturbating or exposing his penis and instead explained that he "probably scratched or something."

While settling jury instructions, Hill objected to the State's "no corroboration" instruction, which stated, "There is no requirement that the testimony of a victim of sexual offenses be corroborated, and their testimony standing alone, if believed beyond a reasonable doubt, is sufficient to sustain a verdict of guilty." Following arguments, the district court concluded that the "no corroboration" instruction was appropriate and delivered the instruction to the jury. Thereafter, Hill was convicted of both charges, and the district court sentenced Hill to credit for time served on both counts.

Hill timely appealed. On appeal, Hill argues that: (1) NRS 201.210, which prohibits open or gross lewdness, is unconstitutionally vague; (2) the State did not present sufficient evidence to support his convictions; (3) the district court erred by giving the "no corroboration" jury

instruction; and (4) cumulative error mandates reversal. After review, we conclude that Hill has not presented a basis for relief and therefore affirm his judgment of conviction.

NRS 201.210 is not unconstitutionally vague

Hill first argues that NRS 201.210 is unconstitutionally vague. Specifically, Hill contends that the statute "contains no specific elements and provides no guidelines for a person to conform their conduct or for law enforcement to align their investigation" and that the common law does not adequately resolve the statute's vagueness. In response, the State argues that Hill cites no authority to support his argument that statutes are required to articulate "elements" and that the supreme court has already upheld the constitutionality of NRS 201.210. We conclude that NRS 201.210 is not unconstitutionally vague.

This court reviews the constitutionality of a statute de novo. *Berry v. State*, 125 Nev. 265, 279, 212 P.3d 1085, 1095 (2009), *abrogated on other grounds by State v. Castaneda*, 126 Nev. 478, 482 n.1, 245 P.3d 550, 553 n.1 (2010). Nevertheless, "[b]ecause the court presumes that statutes are constitutional, a party challenging the statute has the burden of making 'a clear showing of invalidity.'" *Id.* (quoting *Silvar v. Eighth Jud. Dist. Ct.*, 122 Nev. 289, 292, 129 P.3d 682, 684 (2006)).

"Vagueness may invalidate a criminal law for either of two independent reasons: (1) if it fails to provide a person of ordinary intelligence fair notice of what is prohibited; or (2) if it is so standardless that it authorizes or encourages seriously discriminatory enforcement." *Castaneda*, 126 Nev. at 481-82, 245 P.3d at 553 (cleaned up). "The first prong is concerned with guiding those who may be subject to potentially vague statutes, while the second—and more important—prong is concerned

with guiding the enforcers of statutes." *Silvar*, 122 Nev. at 293, 129 P.3d at 685.

NRS 201.210(1)(a) states, "A person who commits any act of open or gross lewdness is guilty . . . for the first offense, of a gross misdemeanor." The Nevada Supreme Court has previously held that NRS 201.210 is not unconstitutionally vague under the first prong "[b]ecause the terms 'open,' 'gross,' and 'lewdness' all have well-defined and well-understood meanings." *Berry*, 125 Nev. at 282, 212 P.3d at 1097. Although *Berry* did not address the second prong,[1] Hill fails to demonstrate that the statute is so standardless that it authorizes or encourages seriously discriminatory enforcement. Nothing in the record supports Hill's contention that the statute was enforced against him in a seriously discriminatory manner. Moreover, Hill's argument on appeal that the victim could have acted differently in the moment to minimize her exposure to criminal activity does not show that NRS 201.210 lacks sufficient standards to guide its enforcement. NRS 201.210 also does not leave "the determination of whether conduct is criminal to a purely subjective determination." *Castaneda*, 126 Nev. at 482, 245 P.3d at 553. While law enforcement retains discretion in determining whether genital exposure constitutes open or gross lewdness in any specific instance, this discretion does not render the statute unconstitutionally vague. *Cf. id.* at 488, 245 P.3d at 557 ("Some discretion, to be sure, applies to determining when and where genital exposure may be open and indecent or obscene, but this is not

[1]*Berry* was abrogated in part because it had erroneously construed the aforementioned tests for vagueness as conjunctive rather than independent and alternative. *See Castaneda*, 126 Nev. at 482 n.1, 245 P.3d at 553 n.1.

enough to invalidate the statute on void-for-vagueness grounds."). Accordingly, Hill fails to demonstrate that NRS 201.210 is unconstitutionally vague, and we conclude that he is not entitled to relief on this claim.

There was sufficient evidence to support Hill's conviction for indecent or obscene exposure

Hill next argues that the State presented insufficient evidence to convict him of indecent or obscene exposure in violation of NRS 210.220. Specifically, Hill argues that the State failed to prove both that he acted intentionally and that his conduct was lewd. We disagree.

When analyzing the sufficiency of the evidence, this court examines "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." *McNair v. State*, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)).

To obtain a conviction for indecent or obscene exposure, the State must prove beyond a reasonable doubt that the defendant made "any open and indecent or obscene exposure of his or her person." NRS 201.220(1)(a). The Nevada Supreme Court has concluded that "[a] defendant must have intended to expose his or her genitals; accidental exposure is not enough." *Castaneda*, 126 Nev. at 486, 245 P.3d at 556.

Here, Officer Hennequin testified that Hill masturbated while looking her in the eyes and licking his lips. Officer Hennequin also testified that she observed Hill's exposed, erect penis and that he refused to stop masturbating after being instructed to do so twice. Given this testimony, a rational jury could determine beyond a reasonable doubt that Hill intentionally exposed his penis to Officer Hennequin and that such

exposure was open and indecent or obscene. *See Ebeling v. State*, 120 Nev. 401, 403-05, 91 P.3d 599, 600-02 (2004) (concluding a defendant "committed only one act of indecent exposure" when he exposed his penis to two children in a hotel room); *Quiriconi v. State*, 95 Nev. 195, 196, 591 P.2d 1133, 1134 (1979) (upholding a conviction where the defendant intentionally stood on his front porch without pants so as to expose his private parts to a person driving by). Moreover, the State need not prove a defendant committed a lewd act to obtain a conviction for indecent or obscene exposure. *See* NRS 201.220; *see also Castaneda*, 126 Nev. at 483, 245 P.3d at 554 (determining that NRS 201.220(1) incorporates "the common law prohibition against intentional exposure of the genitals or anus under circumstances that make such exposure open and indecent or obscene"). Therefore, the State presented sufficient evidence to support Hill's conviction for indecent or obscene exposure.

The district court properly instructed the jury

Hill argues the district court erred by providing the "no corroboration" jury instruction because the instruction is an incorrect statement of the law. He further argues that the district court's error in delivering this instruction was not harmless beyond a reasonable doubt because the instruction impermissibly bolstered the veracity of Officer Hennequin's testimony. The State responds that the instruction was an accurate statement of the law and that the jury was otherwise appropriately instructed on the reasonable doubt standard, the elements of the offenses, and how to assess a witness's credibility. We agree with the State.

"Although we generally review jury instructions for an abuse of discretion or judicial error, when the question is whether an instruction is an accurate statement of the law, our review is de novo." *Moore v. State*, 136 Nev. 620, 622, 475 P.3d 33, 35 (2020).

In *Gaxiola v. State*, the supreme court held that a materially identical "no corroboration" instruction was a correct statement of the law and that it did not "unduly focus the jury's attention on the victim's testimony." 121 Nev. 638, 649-50, 119 P.3d 1225, 1233 (2005). The supreme court stated that it was "appropriate for the district court to instruct the jurors that it is sufficient to base their decision on the alleged victim's uncorroborated testimony" because "[j]urors mistakenly assume that they cannot base their decision on one witness's testimony even if the testimony establishes every material element of the crime." *Id.* at 650, 119 P.3d at 1233.

Given that the supreme court previously approved this same instruction in *Gaxiola*, we reject Hill's contention that the instruction was an incorrect statement of the law.[2] Moreover, the instruction is not misleading or confusing, particularly where the jury was instructed that the State had the burden to prove every element of the charged crimes beyond a reasonable doubt and that it alone had the duty to weigh the evidence and to determine the credibility of witnesses. *See Summers v. State*, 122 Nev. 1326, 1333, 148 P.3d 778, 783 (2006) ("[T]his court generally presumes that juries follow district court orders and instructions."). Accordingly, we conclude that Hill is not entitled to relief on this claim.

There was no cumulative error

Hill argues that the doctrine of cumulative error mandates reversal. We disagree. Although "[t]he cumulative effect of errors may violate a defendant's constitutional right to a fair trial even though errors

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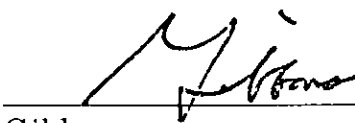
[2]To the extent Hill argues this court should overturn *Gaxiola*, this court cannot do so as it is bound by supreme court precedent. *Eivazi v. Eivazi*, 139 Nev., Adv. Op. 44, 537 P.3d 476, 487 n.7 (2023).

are harmless individually," *Hernandez v. State*, 118 Nev. 513, 535, 50 P.3d 1100, 1115 (2002), Hill has not demonstrated any errors to cumulate.[3] Therefore, he is not entitled to relief on this claim. *See Chaparro v. State*, 137 Nev. 665, 673-74, 497 P.3d 1187, 1195 (2021) (holding a claim of cumulative error lacked merit where there were no errors to cumulate); *see also United States v. Rivera*, 900 F.2d 1462, 1471 (10th Cir. 1990) ("[A] cumulative-error analysis should evaluate only the effect of matters determined to be error, not the cumulative effect of non-errors.").

Accordingly, we

ORDER the judgment of conviction AFFIRMED.

_____, C.J.
Bulla



_____, J.
Gibbons

_____, J.
Westbrook

cc: Hon. Jennifer L. Schwartz, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

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[3]Insofar as Hill has raised other arguments not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.