

IN THE SUPREME COURT OF THE STATE OF NEVADA

TIMOTHY JAMES WARRENS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 89826

FILED

APR 30 2026

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 domestic battery with intent to commit sexual assault and misdemeanor domestic battery. Second Judicial District Court, Washoe County; Scott N. Freeman, Judge.

After being convicted of the two battery crimes, the district court sentenced appellant Timothy James Warrens to life in prison with the possibility of parole after 20 years. On appeal, Warrens claims that certain trial errors warrant reversal of his convictions and that the district court otherwise abused its discretion by imposing an overly harsh sentence. As to the trial errors, Warrens first argues that the State elicited improper, prejudicial testimony when investigating officer Deputy Joseph Teixeira, responding to a question about Warrens' demeanor during a phone call, opined that Warrens "was being untruthful" in claiming that the victim was a drug user and that "Warrens had guilty knowledge" because Teixeira never told Warrens the call concerned a battery or sexual assault. Warrens claims that the State improperly bolstered Teixeira's testimony by eliciting that he had conducted hundreds of interviews. Warrens argues this

questioning allowed Teixeira to opine on Warrens' truthfulness and ultimate guilt.

*The investigating officer's testimony was not prejudicial and did not result in plain error*

Witnesses, including police officers, investigators, or other lay witnesses, are not allowed to provide a direct opinion on a defendant's innocence or guilt. *Collins v. State*, 133 Nev. 717, 724, 405 P.3d 657, 664 (2017). But this does not preclude a witness from "giv[ing] testimony from which an inference of guilt—even an inference that the witness is of the opinion the defendant is guilty—may be drawn." *Id.* at 725-26, 405 P.3d at 664-65 (recognizing that a police officer may testify about investigative steps and the basis for an arrest, but such testimony is improper if it conveys a direct or explicit opinion that the defendant is guilty).

Because Warrens did not object, we review for plain error and conclude that Warrens has not shown that Teixeira impermissibly opined on Warrens' guilt in a way that is unmistakable from a casual inspection of the record or, even if the testimony was improper, that it caused actual prejudice or a miscarriage of justice. NRS 178.602; *Martinorellan v. State*, 131 Nev. 43, 48, 343 P.3d 590, 593 (2015). Viewed in context, Teixeira's reference to "guilty knowledge" and his statement that Warrens was "untruthful" arose while explaining his rejection of Warrens' claim that the victim, S.C., was a drug user, as no evidence supported that assertion and, at that point, Teixeira had not disclosed that he was investigating the victim's allegation that Warrens had battered and sexually assaulted her. Teixeira did not comment about whether he believed Warrens was guilty of the charged offenses, and given the context of these comments, they do not amount to an improper opinion on Warrens' guilt. Even if we were to conclude that Teixeira did improperly opine on Warrens' demeanor and

untruthfulness in claiming the victim was a drug user, Warrens has not shown plain error affecting his substantial rights given that this was a brief, passing statement that was not emphasized by the State and there is ample evidence supporting the jury's guilty verdict, including the victim's testimony, which alone may suffice to uphold the conviction. *See Gaxiola v. State*, 121 Nev. 638, 648, 119 P.3d 1225, 1232 (2005) (addressing plain error); *Martinorellan*, 131 Nev. at 48, 343 P.3d at 593; *see also LaPierre v. State*, 108 Nev. 528, 531, 836 P.2d 56, 58 (1992) (discussing victim testimony).

*Warrens' Fifth Amendment right to remain silent was not violated*

Next, Warrens argues that the State improperly elicited testimony calling into question Warrens' right to remain silent when Teixeira testified that he had probable cause to arrest Warrens, "[b]ut that could have changed if Mr. Warrens had sat down and had an interview with me and gave me his side of the story." Warrens also contends that in closing, the State commented that Warrens expressed to police that he intended to make a statement in the investigation, but he failed to follow through, thus implying that Warrens is guilty because he did not share his side of the story. Prosecutors cannot comment on a defendant's silence per the Fifth Amendment. *Buff v. State*, 114 Nev. 1237, 1248, 970 P.2d 564, 571 (1998). Under *Valdez v. State*, 124 Nev. 1172, 1188-89, 196 P.3d 465, 476 (2008) "[t]he proper standard of harmless-error review depends on whether the prosecutorial misconduct is of a constitutional dimension," and improper comments on a defendant's silence are "harmless beyond a reasonable doubt if (1) at trial there was only a mere passing reference . . . or (2) there is overwhelming evidence of guilt." *Morris v. State*, 112 Nev. 260, 264, 913 P.2d 1264, 1267-68 (1996). Here, we conclude that the alleged misconduct

is harmless beyond a reasonable doubt. The comment was a mere passing reference used to discuss failing to secure an interview, and there was overwhelming evidence that Warrens battered and sexually assaulted S.C. resulting in her injuries and physical damage in the house. We therefore conclude that Warrens has not shown reversible error under the Fifth Amendment.

*The comment about investigators from the public defender's office does not warrant reversal*

Warrens next claims the State improperly asked Warrens' witness whether "[she had] spoken with investigators from the public defender's office." Warrens points out that he objected and outside the presence of the jury, the district court denied Warrens' request for a mistrial, while acknowledging that the State had agreed pretrial that "Warrens' representation by the public defender was both irrelevant and presented a danger of unfair prejudice." Warrens did not ask for other relief besides declaring a mistrial, and the State acknowledged that it was a violation of their pretrial motions but that the error would not warrant a mistrial. The State also argued that a curative instruction was not needed because it would draw further attention to the mistake. Warrens did not request such a curative instruction thereafter, and on appeal argues that knowledge of his public defense caused unfair prejudice in the minds of the jury and the reference to his public defender amounted to prosecutorial misconduct requiring reversal.

Warrens preserved the alleged error by objecting. A two-step analysis is used to consider claims of prosecutorial misconduct. *Valdez v. State*, 124 Nev. 1172 at 1189, 196 P.3d at 476. The first step is to "determine whether the prosecutor's conduct was improper," and if so, the second step is to "determine whether the improper conduct warrants reversal." *Id.* This

court will not reverse a conviction on prosecutorial misconduct if it is harmless error, because “we will reverse only if the error substantially affects the jury’s verdict.” *Id.*; *Morales v. State*, 122 Nev. 966, 972, 143 P.3d 463, 467 (2006) (recognizing that “a criminal conviction is not to be lightly overturned on the basis of a prosecutor’s comments standing alone”). We do not consider the prosecutor’s comment in this context improper because she asked a witness a single question of whether she spoke to public defender investigators, without referring to the public defender as Warrens’ attorney. This does not warrant reversal since the record supports that it was an inadvertent mention of the public defender office and was not a comment on Warrens’ legal representation or indigency status.

Though Warrens relies on *McGuire v. State*, 100 Nev. 153, 677 P.2d 1060 (1984), in claiming he meets the harmless error standard, we are not persuaded. There is no parallel here between *McGuire* and Warrens’ case, as that case dealt with numerous improper comments in two trials, including comments about taxpayer funds being used to pay for a defendant’s medical witnesses. In contrast to the prosecutor’s egregious conduct in *McGuire*, the State here made no such comments nor discussed taxpayer costs related to Warrens’ public defense counsel, and Warrens concedes there was no reference here to taxpayer costs. So the district court correctly ruled that “[the State’s comment] was not stressed as a matter of his indigency, but more of a label,” and we perceive no basis for reversal based on that comment because it did not prejudice Warrens.

*The district court did not abuse its discretion in sentencing Warrens*

Warrens argues that his sentence constitutes cruel and unusual punishment in violation of the Eighth Amendment. He claims that his life sentence with a minimum 20-years before parole eligibility shocks the

conscience because he was convicted for a crime that did not cause substantial physical harm. Warrens argues that his sentence is more severe than sentences that may be imposed for more serious offenses, and that the district court punished him for uncharged conduct and a history of alleged prior bad sexual acts noted in his presentence investigation report (PSI). He also claims that the district court relied on his psychosexual risk assessment (PRA) to inappropriately increase the length of his prison sentence. He contends that a heightened standard of review should apply given that NRS 200.400(4)(b) permits a large sentencing range.

When evaluating sentencing decisions, we defer to the district court because “[a] sentencing judge is allowed wide discretion in imposing a sentence.” *Randell v. State*, 109 Nev. 5, 8, 846 P.2d 278, 280 (1993). An abuse of that discretion occurs “when the record demonstrates ‘prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence.’” *Lloyd v. State*, 94 Nev. 167, 170, 576 P.2d 740, 742 (1978) (quoting *Silks v. State*, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976)). Absent consideration of such questionable evidence, this court “refrain[s] from interference with the trial court’s imposition of [a] sentence” within the statutory guidelines. *Id.* Sentencing courts may consider information outside the PSI, *Denson v. State*, 112 Nev. 489, 492, 915 P.2d 284, 286 (1996), but “must refrain from punishing a defendant for prior uncharged crimes,” *id.* at 494, 915 P.2d at 287. In considering sentencing challenges, we have recognized that the Eighth Amendment to the U.S. Constitution “does not require strict proportionality between crime and sentence but forbids only an extreme sentence that is grossly disproportionate to the crime.” *Chavez v. State*, 125 Nev. 328, 347-48, 213 P.3d 476, 489 (2009). “A sentence that is within the

statutory limits is not cruel and unusual punishment unless the statute fixing punishment is unconstitutional or the sentence is so unreasonably disproportionate to the offense as to shock the conscience.” *Id.* at 348, 213 P.3d at 489 (internal quotation marks omitted).

We are not persuaded by Warrens’ arguments. The applicable statute, NRS 200.400(4)(b), allows a wide sentencing range between two years and life in prison with the possibility of parole. The district court’s sentence is supported by the PSI, Warrens’ criminal record, and the PRA, assessing that Warrens “possesses a high risk of re-offense.” The record supports that the district court properly considered information in Warrens’ PSI and PRA without punishing him for uncharged offenses, nor are we convinced that the sentence is grossly disproportionate to the crime given this showing. We also note that it falls within the statutory limits prescribed by the legislature, which amended NRS 200.400 to increase the penalties and elevate the felony classification for battery with intent to commit sexual assault. 2005 Nev. Stat., ch. 507, § 28, at 2876.

At trial, the victim testified to fearing for her life as Warrens threw her on the floor, where she hit the wall. She further testified that Warrens grabbed her neck and slammed her to the ground as he demanded oral sex, resulting in bruises on her arms and “bone spurs” in her hand. She subsequently had neck surgery to address injuries from the crime. The testimony and physical evidence thus support that the district court did not base Warrens’ sentence on prior bad acts “or highly suspect evidence,” *Lloyd*, 94 Nev. at 170, 576 P.2d at 742 (internal quotation marks omitted); rather, the sentence punished Warrens within the statutory parameters based on his conduct and his likelihood of reoffending if released from prison. The sentence does not shock the conscience as cruel and unusual

punishment because the sentence is reasonably proportionate to the offense.

Contrary to Warrens' assertion, no heightened standard of review applies in considering sentences imposed under NRS 200.400(4)(b). Indeed, we have consistently acknowledged that the district court retains discretion to set the minimum term within the statutory range. *See, e.g., Luna v. Carpenter*, No. 71507, 2017 WL 2628544, at \*1 (Nev. June 15, 2017) (affirming a minimum 10-year sentence for battery with intent to commit sexual assault and holding that “[t]he statute’s plain language requires a maximum term of life in prison but affords the district court discretion in setting the minimum term so long as that term is not less than 2 years”); *Faraci v. State*, No. 82056-COA, 2021 WL 2935289, at \*1 (Nev. Ct. App. July 12, 2021) (affirming a life sentence with the possibility of parole after a minimum 10-years served for battery with intent to commit sexual assault as the “statute’s plain language affords the district court discretion in setting the minimum term so long as that term is not less than two years”). The legislature chose to give district courts broad discretion to sentence anywhere between two years and life in prison depending on the circumstances of the battery. Therefore, Warrens' argument for a heightened standard of review fails.

*Cumulative error is not met here*

Lastly, Warrens argues that cumulative errors require reversal and remand for a new trial. This court evaluates cumulative error by looking at three factors: “(1) whether the issue of guilt is close, (2) the quantity and character of the error, and (3) the gravity of the crime charged.” *Valdez*, 124 Nev. at 1195, 196 P.3d at 481 (2008) (internal quotation marks omitted). But if there is only one error, “there is nothing

