IN THE COURT OF APPEALS OF THE STATE OF NEVADA

NATHAN MICHAEL NARCHO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 90782-COA

FILED

MAY 21 2026

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

Nathan Michael Narcho appeals from a judgment of conviction, entered pursuant to a jury verdict, of burglary of a motor vehicle, first offense, and possession of a schedule I controlled substance, less than 14 grams. Second Judicial District Court, Washoe County; Egan K. Walker, Chief Judge.

Narcho first argues the district court erred in denying his motion for judgment of acquittal and to set aside the verdict as to the burglary count. In particular, he contends the State failed to present sufficient evidence that he had the specific intent to commit larceny when he entered the victim's vehicle.

Where there is insufficient evidence to support a conviction, the trial judge may set aside a jury verdict and enter a judgment of acquittal. NRS 175.381(2). "Because the district court decides a motion for a judgment of acquittal under NRS 175.381(2) based on a sufficiency of the evidence standard, appellate review of an order denying such a motion is in essence the same as a review of the sufficiency of the evidence." *Kassa v. State*, 137 Nev. 150, 152, 485 P.3d 750, 755 (2021) (internal citations and quotation marks omitted). When reviewing a challenge to the sufficiency of the

evidence, we view the evidence in the light most favorable to the prosecution and determine whether "*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *accord Mitchell v. State*, 124 Nev. 807, 816, 192 P.3d 721, 727 (2008).

As relevant to this case, to obtain a conviction for burglary of a motor vehicle, the State had to prove that Narcho entered the vehicle "with the intent to commit grand or petit larceny." NRS 205.060(1)(c). At trial, a witness who worked security for a business called Dotty's, Tia Guenther, testified that Narcho attempted to enter her vehicle in a Dotty's parking lot before he entered the victim's vehicle and that Narcho left her vehicle after she yelled at him. Guenther testified that she observed Narcho enter the victim's vehicle, pick up an article of clothing from within the vehicle and put it back down, and pull at the center console.[1] The victim, who was inside the Dotty's when these events occurred, testified that he did not give Narcho permission to enter the vehicle and that he had clothing in the vehicle and a CD player in the center console. He further testified that, when he drove the vehicle home, he noticed the CD player had been pulled out about three to four inches from the center console, some of the wires were disconnected, and it was no longer working.

Viewing this evidence in the light most favorable to the prosecution, a rational juror could find beyond a reasonable doubt that Narcho had the specific intent to commit larceny when he entered the victim's vehicle. *See Grant v. State*, 117 Nev. 427, 435, 24 P.3d 761, 766

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[1]Surveillance video corroborates Guenther's testimony that Narcho approached the passenger side of her vehicle while she was inside before approaching and entering the victim's vehicle.

(2001) ("Intent need not be proven by direct evidence but can be inferred from conduct and circumstantial evidence."); *see also Washington v. State*, 132 Nev. 655, 661, 376 P.3d 802, 807 (2016) (stating "[c]ircumstantial evidence may constitute the sole basis for a conviction" (quotation marks omitted)). Although Narcho testified that he was intoxicated to a degree such that he was hallucinating and hearing voices and that he entered the vehicle because he believed his girlfriend was in a trunk and he had to save her, "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); *see also Jackson*, 443 U.S. at 319 (stating it is the jury's responsibility "to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts"). Therefore, we conclude the district court did not err by denying Narcho's motion for judgment of acquittal and to set aside the verdict.[2]

Second, Narcho argues the district court erred in denying his motion to sever the possession count. He contends that the offenses were not related to one another, that they were not "part of a single transaction or any common plan or scheme," and that he did not possess methamphetamine for the purpose of committing burglary.

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[2]To the extent Narcho contends the district court misstated or misapplied the applicable legal standard, we conclude the district court recited and applied the proper test in adjudicating the motion. Although we agree that the unanimity of a jury verdict is not a relevant consideration in determining whether the State presented sufficient evidence to support a verdict, we conclude the district court did not rely on such a finding in denying Narcho's motion.

Separate offenses may be joined in a single information if they are (1) "[b]ased on the same act or transaction" or (2) "[b]ased on two or more acts or transactions connected together or constituting parts of a common scheme or plan." NRS 173.115(1). We review a district court's decision to deny a motion to sever for an abuse of discretion. *Rimer v. State*, 131 Nev. 307, 320, 351 P.3d 697, 707 (2015). "Error due to misjoinder requires reversal only if the error has a substantial and injurious effect or influence in determining the jury's verdict." *Mitchell v. State*, 105 Nev. 735, 739, 782 P.2d 1340, 1343 (1989) (internal quotation marks omitted).

Even assuming the district court abused its discretion in denying Narcho's motion to sever, we conclude any such error was harmless. Initially, we note that the district court instructed the jury that it was to consider each charge and its evidence separately and that a finding of guilt as to one charge should not control its verdict as to the other charge. *See Summers v. State*, 122 Nev. 1326, 1333, 148 P.3d 778, 783 (2006) (stating "this court generally presumes that juries follow district court orders and instructions").

More importantly, Narcho's extreme intoxication was central to his trial defense. As previously mentioned, Narcho testified that he had consumed several drugs, including methamphetamine, that he was hallucinating and hearing voices, and that he believed his girlfriend was in a trunk and in need of saving due to his intoxication. In closing argument, defense counsel conceded that Narcho had methamphetamine in his pocket and that Narcho had entered the vehicle without permission and instead focused on whether Narcho lacked burglarious intent in light of his intoxication. Narcho does not contend that he would have pursued a different defense at trial, or that he would not have testified as to his

consumption of methamphetamine, had the charges been severed.[3] In light of Narcho's defense, evidence indicating Narcho was found to possess methamphetamine after exiting the victim's vehicle had minimal, if any, impact on the jury's verdict. Therefore, we conclude Narcho is not entitled to relief on this claim.

Third, Narcho argues the district court erred in providing jury instruction no. 27, which stated as follows:

> The prosecution is not required to call as witnesses in this trial all people who may appear to have some knowledge of the matters in question. The Defendant is not required to call any witnesses nor present any evidence. The Defendant has no burden or duty to call any witnesses or produce any evidence.

Narcho contends that a defense attorney is permitted to argue negative inferences that may arise from the State's failure to call important witnesses pursuant to *Rimer*, 131 Nev. at 329, 351 P.3d at 713, and that jury instruction no. 27 reduced the State's burden of proof. "The district court has broad discretion to settle jury instructions," and we review the district court's "decision to give or not give a specific jury instruction for [an] abuse of discretion." *Mathews v. State*, 134 Nev. 512, 517, 424 P.3d 634, 639 (2018).

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[3]Indeed, on appeal, Narcho cites the fact that he was found to possess methamphetamine in support of his claim that the district court erred in denying his motion for judgment of acquittal and to set aside the verdict as to the burglary charge.

Jury instruction no. 27 does not speak to the quantum of proof necessary to establish a defendant's guilt,[4] and nothing in *Rimer* indicates the district court's instruction incorrectly stated the law. To the contrary, the instruction accurately states that (1) the prosecution is not required to call all witnesses who may have knowledge of a matter, as it may "present its case in the manner it believes will be most effective," *Harris v. State*, 134 Nev. 877, 882, 432 P.3d 207, 212 (2018), and (2) the defendant has no burden to call any witnesses or produce any evidence, *see Barron v. State*, 105 Nev. 767, 778, 783 P.2d 444, 451 (1989) ("It is a fundamental principle of criminal law . . . that the defendant is not obligated to take the stand or produce any evidence whatsoever."). To the extent *Rimer* holds that a defense attorney is permitted to argue negative inferences that may arise from the State's failure to call important witnesses, instruction no. 27 did not prohibit Narcho from making such argument.[5] Therefore, we conclude the district court did not abuse its discretion in providing jury instruction no. 27.

Fourth, Narcho argues the State committed prosecutorial misconduct during its rebuttal argument. In particular, Narcho contends the State impermissibly shifted the burden of proof to the defense when it stated that "neither side called Officer Harr." In considering claims of

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[4]We note that the district court provided other instructions regarding the State's burden of proof, including jury instruction no. 18 ("the burden is upon the prosecution to prove both act and intent beyond a reasonable doubt") and jury instruction no. 22 (stating a defendant is "presumed innocent until the contrary is proved, and the burden rests upon the prosecution to establish every element of the crime . . . beyond a reasonable doubt").

[5]As discussed further below, the record indicates defense counsel did in fact make such an argument in closing.

prosecutorial misconduct, we determine whether the prosecutor's conduct was improper and, if so, whether the improper conduct requires reversal. *Valdez v. State*, 124 Nev. 1172, 1188, 196 P.3d 465, 476 (2008). "[I]t is generally improper for a prosecutor to comment on the defense's failure to produce evidence or call witnesses as such comment impermissibly shifts the burden of proof to the defense." *Whitney v. State*, 112 Nev. 499, 502, 915 P.2d 881, 883 (1996).

During closing, defense counsel argued that the State did not call the "primary investigating officer" in the case, that the State had the burden of proof, and that the "lack of any testimony from Officer Harr [was] telling." In rebuttal, the State argued that there was no reasonable doubt as to Narcho's guilt and that Officer Harr was not a necessary witness. In particular, the prosecutor stated, "And that's true, neither side called Officer Harr. Officer Harr was not the first to arrive on the scene." Narcho objected, and the district court overruled the objection. The prosecutor then argued as follows:

> [Officer Harr] wasn't there first. He wasn't even there second. There were a few officers there before him. He wrote the report, because it was his beat. That's what Officer Sharp told you. It was his beat. Officer Sharp wrote a report. We saw it yesterday.
>
> All the evidence is here. Every single element has been met. You saw the photos, you saw the testimony, you saw the video of him committing the offense. All of the elements are here. We try to do these trials as efficiently and effectively as we can. You have everything you need to decide this case. It's not necessary. He was not a necessary witness.

Immediately thereafter, the prosecutor acknowledged that the State had the burden to demonstrate Narcho's guilt beyond a reasonable doubt and argued that the State had met that burden.

After review, we conclude the State's argument cannot reasonably be interpreted as commenting on Narcho's failure to present evidence. *Cf. Barron*, 105 Nev. at 779, 783 P.2d at 451-52 ("Indirect references to a defendant's failure to testify are constitutionally impermissible if the language used was manifestly intended to be or was of such a character that the jury would naturally and necessarily take it to be a comment on the defendant's failure to testify." (internal quotation marks omitted)). When read in context, the State's argument permissibly rebutted defense counsel's suggestion that Officer Harr's testimony was important and/or that the State was unable to prove Narcho's guilt absent such testimony. Therefore, we conclude the prosecutor's conduct was not improper and that Narcho is not entitled to relief on this claim.

Fifth, Narcho argues that cumulative error warrants reversal. For the reasons previously discussed, Narcho has not demonstrated multiple errors to cumulate. *See Burnside v. State*, 131 Nev. 371, 407, 352 P.3d 627, 651 (2015) (recognizing cumulative error claims require "multiple errors to cumulate"). Therefore, we conclude he is not entitled to relief on this claim.

For the foregoing reasons, we

ORDER the judgment of conviction AFFIRMED.

_____, C.J.
Bulla

_____, J.
Gibbons

_____, J.
Westbrook

cc: Hon. Egan K. Walker, Chief Judge
Washoe County Alternate Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk