



IN THE SUPREME COURT OF THE STATE OF NEVADA

COURTNEY MOTLEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 88757

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of residential burglary while in possession of a deadly weapon, two counts of battery, battery with intent to commit sexual assault, first-degree kidnapping, three counts of sexual assault with the use of a deadly weapon, robbery, coercion where physical force or the immediate threat of physical force is used, and sexually motivated coercion. Eighth Judicial District Court, Clark County; Danielle K. Pieper, Judge. Appellant Courtney Motley raises seven issues on appeal.

Sufficiency of the evidence

Motley argues there was insufficient evidence of first-degree kidnapping because any movement or restraint of the victim was incidental to the commission of the sexual assault and did not substantially increase the risk of danger. In reviewing a challenge to the sufficiency of evidence, this court considers “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.” *Jackson v.*

Virginia, 443 U.S. 307, 319 (1979); *Origel-Candido v. State*, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998). When a kidnapping charge and sexual assault charge arise from the same course of conduct, the movement or restraint of the victim “must stand alone with independent significance from the act of [the other crime] itself, create a risk of danger to the victim substantially exceeding that necessarily present in [the other crime], or involve movement, seizure or restraint substantially in excess of that necessary to its completion.” *Mendoza v. State*, 122 Nev. 267, 275, 130 P.3d 176, 181 (2006).

At trial, the victim testified that Motley broke into her house and sexually assaulted her in her bedroom. When Motley briefly left her bedroom, the victim was able to retrieve her phone and alert a friend and the police about the assault. Motley returned to her bedroom and sexually assaulted her again but stopped when the police arrived and knocked at her front door. Upon hearing the knocks, Motley grabbed the victim, moved her to another room, and instructed her to hide in the room with him to avoid detection by the police. The jury was properly instructed on dual convictions, and we conclude that a rational juror could have found beyond a reasonable doubt that this movement substantially exceeded and was independently significant from the movement and restraint necessary to perpetrate the sexual assault. *See Curtis D. v. State*, 98 Nev. 272, 274, 646 P.2d 547, 548 (1982) (“Whether the movement of the victim is incidental to the associated offense and whether the risk of harm is substantially increased thereby are questions of fact to be determined by the trier of fact in all but the clearest cases.”). Therefore, we hold there was sufficient evidence to convict Motley of first-degree kidnapping.

Motion to suppress

Motley argues the district court erred in denying his motion to suppress statements Motley made to police officers before receiving a *Miranda* warning. Even if we were to conclude that Motley's responses were obtained in violation of *Miranda*, any error in admitting those statements was harmless beyond a reasonable doubt. *See Belcher v. State*, 136 Nev. 261, 267, 464 P.3d 1013, 1023 (2020) ("When an appellant demonstrates error of a constitutional nature . . . we must reverse unless the error was harmless beyond a reasonable doubt."). In addition to testimony by the victim regarding the sexual assault, the jury heard testimony from the officers that Motley was caught fleeing from the victim's house partially unclothed and with some of the victim's valuables in his possession alongside a weapon. Thus, we conclude that a rational jury would have found Motley guilty even if his unwarned statements were not admitted at trial.

Batson challenge

Motley argues the district court erred in denying his *Batson* challenge after the State exercised a peremptory strike on prospective juror 579, an African-American woman. *See Batson v. Kentucky*, 476 U.S. 79, 86 (1986). The district court must use a three-step analysis to assess a *Batson* challenge: (1) the opponent of the peremptory challenge must articulate a prima facie case of discrimination, (2) the proponent of the peremptory challenge must then assert a race-neutral explanation for the challenge, and (3) the trial court must determine whether the opponent of the peremptory challenge has proved purposeful discrimination. *Williams v. State*, 134 Nev. 687, 689, 429 P.3d 301, 305-06 (2018).

The district court found Motley made a prima facie showing of discrimination to satisfy step one. The State then offered a race-neutral reason for the strike: prospective juror 579's brother had recently been convicted of sexual assault following a home invasion—similar offenses to those alleged here—by the same district attorney's office prosecuting Motley's case. After additional discussion about the brother's case and the prosecutor's observation that no other veniremember was similarly situated, the district court summarily denied the *Batson* challenge.

The district court failed to engage in the sensitive inquiry required under step three, most notably failing to give Motley the opportunity to challenge the State's race-neutral explanation as pretextual. *See Williams*, 134 Nev. at 692, 429 P.3d at 308 (“[The defendant] should not have had to ask the district court to conduct step three of the *Batson* analysis. The sensitive inquiry required by step three necessarily includes that district court giving the defendant the opportunity to challenge the State's proffered race-neutral explanation as pretextual.”). In these circumstances, the district court's decision is not entitled to deference and we “are left to examine the cold record to determine whether the State's peremptory challenge . . . was more likely than not motivated by race.” *Matthews v. State*, 136 Nev. 343, 346, 466 P.3d 1255, 1260 (2020).

We nevertheless discern no basis for reversal. The record supports the State's race-neutral reason for the peremptory challenge. It does not reflect any basis to conclude that the challenge was more likely than not motivated by race. Motley argues that prospective juror 701, who stated that her son was involved in an ongoing criminal case and that she hoped her son would be held responsible for his actions, was similarly situated to prospective juror 579. We disagree. Unlike prospective juror

579's brother, prospective juror 701's son was not accused of home invasion and sexual assault—offenses similar to those at issue in this case. Because the record does not demonstrate discriminatory intent, we conclude that the district court did not clearly err in denying Motley's *Batson* challenge. *See King v. State*, 116 Nev. 349, 354, 998 P.2d 1172, 1175 (2000) (determining the defendant failed to demonstrate the State's race-neutral explanation was pretextual when "no other venireperson was impaneled who displayed the characteristics for which the stricken venireperson was dismissed"); *McCarty v. State*, 132 Nev. 218, 226-27, 371 P.3d 1002, 1007-08 (2016) (discussing the considerations that may be relevant in determining whether the defendant has proven purposeful discrimination). *Motion for mistrial*

Motley argues the district court abused its discretion in denying his motion for a mistrial based on prejudicial testimony. "A defendant's request for a mistrial may be granted for any number of reasons where some prejudice occurs that prevents the defendant from receiving a fair trial." *Rudin v. State*, 120 Nev. 121, 144, 86 P.3d 572, 587 (2004). "Denial of a motion for mistrial is within the district court's sound discretion, and this court will not overturn a denial absent a clear showing of abuse." *Randolph v. State*, 117 Nev. 970, 981, 36 P.3d 424, 431 (2001).

Motley requested a mistrial after the victim testified that she thought she would die that night in response to a question regarding the weapon Motley used to threaten the victim. Motley contends that this testimony was unfairly prejudicial because it was inflammatory and irrelevant to the crimes charged. We disagree because evidence that Motley used the weapon to produce a fear of harm was relevant to the charges of sexual assault with the use of a deadly weapon. *See Allen v. State*, 96 Nev.

334, 336, 609 P.2d 321, 322 (1980) (“In order to ‘use’ a deadly weapon for purposes of NRS 193.165, there need not be conduct which actually produces harm but only conduct which produces a fear of harm or force by means or display of the deadly weapon in aiding the commission of the crime.”), *overruled on other grounds by Berry v. State*, 125 Nev. 265, 212 P.3d 1085 (2009); NRS 48.015 (defining relevant evidence). Because evidence of the victim’s fear of the weapon was relevant and not unduly prejudicial, we conclude the district court did not abuse its discretion in denying the requested mistrial. NRS 48.035 (excluding evidence “if its probative value is substantially outweighed by the danger of unfair prejudice”).

No-corroboration instruction

Motley argues the district court erred in giving the jury a no-corroboration instruction. Because Motley did not object below and concedes we have approved an identical instruction in *Gaxiola v. State*, 121 Nev. 638, 649, 119 P.3d 1225, 1233 (2005), we discern no plain error. *See Green v. State*, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003) (“Generally, the failure to clearly object on the record to a jury instruction precludes appellate review. However, this court has the discretion to address an error if it was plain and affected the defendant’s substantial rights.” (citation modified)). And while Motley argues that *Gaxiola* was wrongly decided, he has not demonstrated compelling reasons to depart from our precedent. *See Miller v. Burk*, 124 Nev. 579, 597, 188 P.3d 1112, 1124 (2008) (“[U]nder the doctrine of *stare decisis*, [this court] will not overturn [precedent] absent compelling reasons for so doing.”). No relief is therefore warranted on this ground.

Vouching

Motley argues the State improperly vouched for the credibility of the victim in closing. “It is improper for the prosecution to vouch for the credibility of a government witness. Vouching may occur in two ways: the prosecution may place the prestige of the government behind the witness or may indicate that information not presented to the jury supports the witness’s testimony.” *Lisle v. State*, 113 Nev. 540, 553, 937 P.2d 473, 481 (1997) (quoting *United States v. Roberts*, 618 F.2d 530, 533 (9th Cir. 1980)).

Here, after Motley called the victim a liar in closing, the State argued that inconsistencies in the victim’s testimony were indicative of her honesty. The State’s comments, particularly after Motley repeatedly attacked the victim’s credibility and called her a liar, were not “personal assurances of [the] witness’s veracity,” *Browning v. State*, 120 Nev. 347, 359, 91 P.3d 39, 48 (2004), but rather “a fair response to defense counsel’s argument,” *Owens v. State*, 96 Nev. 880, 885, 620 P.2d 1236, 1239 (1980). Further, when, as here, “the outcome depends on which witnesses are telling the truth, reasonable latitude should be given to the prosecutor to argue the credibility of the witness.” *Rowland v. State*, 118 Nev. 31, 39, 39 P.3d 114, 119 (2002). Because the State did not exceed that reasonable latitude, we conclude that Motley has not demonstrated the State acted improperly.

Cumulative error

Motley argues that cumulative error deprived him of a fair trial. Because we discern, at most, only one, harmless error, “there is nothing to

cumulate.” *Belcher v. State*, 136 Nev. 261, 279, 464 P.3d 1013, 1031 (2020).

Accordingly, we

ORDER the judgment of conviction AFFIRMED.



Bell, J.



Stiglich, J.



Cadish, J.

cc: Hon. Danielle K. Pieper, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk