

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIDGET LYNN PASCUA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 41548

**FILED**

MAR 17 2005

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

This is an appeal from a judgment of conviction, upon a jury verdict, of one count each of burglary while in possession of a firearm, robbery with the use of a deadly weapon, coercion, and conspiracy to commit coercion. Eighth Judicial District Court, Clark County; Sally L. Loehrer, Judge.

On July 21, 2000, at approximately 1 a.m., appellant Bridget Lynn Pascua and her friend went to the residence of Shelley Tabakin and Ogundele Bassett. Pascua announced that she had come to retrieve personal belongings that she had left with Bassett about two weeks earlier. Bassett told her to come back at a more convenient time. Pascua then entered the house and began taking items that belonged to her and also took Tabakin's purse. Pascua's friend put a gun to Bassett's head while Pascua took the items and they left.

Shortly thereafter, Bassett called the police who arrested Pascua and her friend. After a three-day trial, the jury convicted Pascua on all counts. The district court sentenced Pascua to a minimum of 26 months and a maximum of 120 months for count I; a minimum of 26 months and a maximum of 120 months for count II, plus an additional minimum of 26 months and a maximum of 120 months to run consecutively for use of a deadly weapon; a minimum of 12 months and a

maximum of 48 months for count III; and 12 months for count IV. Counts I through IV were to be served concurrently. Pascua timely appealed the judgment of conviction.

Pascua argues on appeal that (1) the district court erred in not advising counsel when it answered a question from the jury, (2) the district court abused its discretion in denying her motion for a mistrial, (3) the district court abused its discretion in denying her motion to re-cross-examine witnesses, and (4) the cumulative effect of these errors warrant a reversal of her conviction. We disagree.

#### Jury question

Pursuant to NRS 175.451, the district court must bring the jury and counsel into the courtroom to clarify any testimony or law if the jury is confused.

We have concluded that it is harmless error for the district court to communicate with the jury on a substantive matter so long as the district court gives correct instructions.<sup>1</sup>

In the case at bar, the jury posed a question to the district court during deliberations: “Definition of personal property, does it mean any property in the house?” The district court instructed the bailiff to tell the jury “yes.” The district court erred in instructing the bailiff to provide this answer to the jury;<sup>2</sup> however, this error was harmless because the district court’s answer was correct. When the answer is correct, the error

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<sup>1</sup>Cavanaugh v. State, 102 Nev. 478, 484, 729 P.2d 481, 484-85 (1986).

<sup>2</sup>NRS 175.451.

is harmless.<sup>3</sup> Pascua's reliance on Daniel v. State is misplaced. In that case, the district court's answers to the jury were unclear.<sup>4</sup> In this case, there was only one question with the simple answer "yes." Accordingly, the district court committed no reversible error.

Denial of Pascua's motion for a mistrial

"[I]t is within the sound discretion of the trial court to determine whether a mistrial is warranted. Absent a clear showing of abuse of discretion, the trial court's determination will not be disturbed on appeal."<sup>5</sup>

In the instant case, Pascua's attorney alleges that Pascua was under the influence of prescription narcotics during the Faretta canvass and experienced adverse reactions from her medications. Pascua never indicated on the record that she was medicated or that she was unable to proceed on her own behalf. The record indicates that Pascua became ill during the lunch break because she ate a rotten sandwich, but until that point there is nothing to indicate she was unable to proceed properly. Because of her illness, Pascua requested that the district court instruct her attorney to represent her for the remainder of trial.

Pascua's attorney moved the district court for a mistrial on the last day of trial. The district court denied the motion for several reasons. First, the district court noted that it had conducted an extensive Faretta canvass and found Pascua competent to represent herself. Second, Pascua submitted a well-written letter to the court regarding her desire to

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<sup>3</sup>Cavanaugh, 102 Nev. at 484, 729 P.2d at 484-85.

<sup>4</sup>119 Nev. 498, 511, 78 P.3d 890, 899 (2003).

<sup>5</sup>Geiger v. State, 112 Nev. 938, 942, 920 P.2d 993, 995 (1996).

represent herself and how she aspired to become an attorney. Third, the district court noted that Pascua spent many hours preparing for trial and that she probably knew the case better than her attorney did. The district court acknowledged that Pascua's attorney was at a disadvantage because she commenced representation during the State's final witness. Nevertheless, the district court denied Pascua's motion for a mistrial. The district court considered the arguments of Pascua's attorney, reviewed the evidence, and concluded that Pascua had adequately prepared and presented her defense. Pascua's attorney was not prejudiced. Therefore, the district court did not abuse its discretion in denying Pascua's motion for a mistrial.

Denial of motion to re-cross-examine witnesses

The district court has the discretion to deny a party's request to recall a witness for additional cross-examination when the party already had an "abundant opportunity to draw out his case."<sup>6</sup> We will not reverse the district court's decision unless there was an abuse of discretion.<sup>7</sup>

Pascua had the opportunity to cross-examine all the State's witnesses. The State's first witness, Tabakin, testified that Pascua entered her home by force and began taking things, including Tabakin's purse. Pascua, representing herself, conducted a thorough cross-examination. Pascua even impeached Tabakin's testimony, pointed out prior inconsistent statements, and asked whether Tabakin's houseguest may have stolen the purse.

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<sup>6</sup>Collins v. State, 88 Nev. 9, 14, 492 P.2d 991, 993 (1972).

<sup>7</sup>Id.

Pascua also cross-examined Bassett regarding the incident. She asked Bassett whether he remembered her apologizing to him and if he thought she was a violent person. Pascua asked appropriate leading questions and impeached Bassett's testimony as well. The State's third witness, Officer Bryan Miller from the Las Vegas Metropolitan Police Department, had arrested Pascua after the incident. Pascua cross-examined him about his account of the events and pointed out the discrepancies between his written report and his testimony.

After Pascua ate a rotten sandwich and became ill, she asked the district court to have her counsel begin representing her. Pascua's attorney stated that she was at a disadvantage and orally moved the district court to permit her to re-cross-examine witnesses. The district court denied the motion and stated that Pascua had already cross-examined the State's witnesses. The district court further explained that Pascua had spent many hours preparing for this case.

The district court conducted an extensive Faretta canvass and found Pascua competent to represent herself. The district court reviewed Pascua's performance and noted that she knew the case better than her attorney. The district court stated that it did not want the case to be tried twice. The district court's decision is sound. Therefore, the district court did not abuse its discretion.

#### Cumulative error


Typically, the cumulative effect of errors may violate a defendant's constitutional right to a fair trial even though the errors are


individually harmless.<sup>8</sup> In this case, the district court's answer to the jury was harmless. Therefore, no cumulative error existed.

CONCLUSION

The district court erred when it answered a question from the jury outside counsel's presence; however, the error was harmless because the court's answer was correct. The district court did not abuse its discretion in denying Pascua's motion for a mistrial. Finally, the district court did not abuse its discretion in denying Pascua's motion to re-cross-examine witnesses and this case does not present cumulative errors sufficient to mandate a reversal. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Rose

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

  
\_\_\_\_\_, J.  
Hardesty

cc: Hon. Sally L. Loehrer, District Judge  
Daniel J. Albregts, Ltd.  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

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<sup>8</sup>Hernandez v. State, 118 Nev. 513, 535, 50 P.3d 1100, 1115 (2002).