

IN THE SUPREME COURT OF THE STATE OF NEVADA

JESUS E. ESPINOZA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41624

FILED

FEB 18 2004

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Bloom*
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of grand larceny auto (count I), attempted murder with the use of a deadly weapon (count III), robbery with the use of a deadly weapon (count IV), stop required on the signal of a police officer (count V), and robbery with the use of a deadly weapon (count VII).¹ The district court sentenced appellant Jesus E. Espinoza to serve a prison term of 22-60 months for count I, a consecutive prison term of 60-156 months plus an equal and consecutive prison term for the deadly weapon enhancement for count III, a concurrent prison term of 60-156 months plus an equal and consecutive prison term for the deadly weapon enhancement for count IV, a consecutive prison term of 13-60 months for count V, and a consecutive prison term of 35-156 months plus an equal and consecutive prison term for the deadly weapon enhancement for count VII. Espinoza was also ordered to pay \$7,385.00 in restitution.

Initially, we note that Espinoza has not provided this court with any relevant authority, statute or case law in support of his arguments on appeal. This court has repeatedly stated that “[i]t is appellant’s responsibility to present relevant authority and cogent

¹The following counts were dismissed: possession of a stolen vehicle (counts II, VI) and grand larceny auto (count VIII).

argument; issues not so presented need not be addressed by this court.”² Nevertheless, we have reviewed Espinoza’s arguments and concluded that they are without merit.

First, Espinoza contends that the evidence presented at trial was insufficient to support the jury’s finding that he was guilty beyond a reasonable doubt of attempted murder with the use of a deadly weapon. Espinoza argues that the State failed to demonstrate that he possessed the intent to kill, claiming that “[a] reasonable jury would . . . conclude that [he] would have approached [the victim] with something more stout than a small kitchen paring knife if homicide was his goal.” We disagree.

Our review of the record on appeal reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact.³ The jury was instructed by the district court that in order to find Espinoza guilty of attempted murder with the use of a deadly weapon, they would have to find that Espinoza did, “then and there, without authority of law, and with the intent to kill, malice aforethought and express malice, wilfully and feloniously attempt to kill [the victim] . . . by stabbing the said [victim] two times in the chest, with a deadly weapon, to-wit: scissors or other sharp object.”

The 59-year old victim testified at trial that after parking outside a Kmart and starting to exit her vehicle, she was attacked by Espinoza. Espinoza gained control of the victim’s purse and placed it on the ground outside the vehicle. Espinoza then pushed the victim back into

²Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987).

³See Wilkins v. State, 96 Nev. 367, 609 P.2d 309 (1980); see also Mason v. State, 118 Nev. 554, 559, 51 P.3d 521, 524 (2002) (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979)).

her vehicle and began choking her, twice demanding that she give him the keys to the vehicle. According to the victim, Espinoza stated, “let go of your keys or I’m going to kill you.” The victim stated that she believed Espinoza’s threat. While still choking her with one hand, Espinoza stabbed the victim twice with a knife, first under her left breast and then in her left armpit. Espinoza attempted to stab the victim a third time but she managed to knock the knife out of his hand. At that point, Espinoza grabbed the purse off the ground and walked to his vehicle. As a result of the attack, the victim suffered a punctured lung, scars from the wounds, and remained in the hospital for approximately three days.

Based on the above, we conclude that the jury could reasonably infer from the evidence presented that Espinoza committed the crime of attempted murder with the use of a deadly weapon.⁴ It is for the jury to determine the weight and credibility to give testimony, and the jury's verdict will not be disturbed on appeal where, as here, sufficient evidence supports the verdict.⁵ We also note that circumstantial evidence alone may sustain a conviction.⁶ Therefore, we conclude that the State presented sufficient evidence to sustain the conviction.

Finally, Espinoza contends that the State committed prosecutorial misconduct during its rebuttal closing argument. During defense counsel’s closing argument, several references were made to the State’s resources and the State’s high burden of proving guilt beyond a

⁴See NRS 200.010; NRS 200.030; NRS 193.330; NRS 193.165(5).

⁵See Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981); see also McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

⁶See Buchanan v. State, 119 Nev. ___, ___, 69 P.3d 694, 705 (2003).

reasonable doubt. At the beginning of the State's rebuttal closing argument, the following exchange took place:

STATE: [Defense counsel] in his closing argument told you that this was not a fair contest, that we had the equipment, and the exhibits and the show, and this isn't CSI. Well, we have a high burden of proof. It is our burden to prove these counts beyond a reasonable doubt. We do not take that burden lightly, and I would submit to you that Ms. Krisko and I have met that burden, and we have proved the set of crimes.

DEFENSE COUNSEL: I object to that argument. I don't think a prosecutor can give her own opinion as to whether or not she thinks she has proven the case.

STATE: As argument.

COURT: Statements and opinions of counsel are not appropriate for argument, so try to restrict your comments that way, please.

Espinoza claims that based on the above comment, the State improperly "offered personal assurances to the jury in [rebuttal] closing that there was proof [of the crimes] beyond a reasonable doubt." We conclude that although the prosecutor's comment may have been improper, any error was harmless and not reversible.


Espinoza has failed to demonstrate, how the State's comment prejudiced his defense.⁷ Moreover, this court has stated that "[t]he level of misconduct necessary to reverse a conviction depends upon how strong


⁷See NRS 178.598 ("Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded."); Rowland v. State, 118 Nev. 31, 40, 39 P.3d 114, 118-19 (2002); Gallego v. State, 117 Nev. 348, 365-66, 23 P.3d 227, 239 (2001).


and convincing is the evidence of guilt.”⁸ “If the issue of guilt or innocence is close, [and] if the state's case is not strong, prosecutor[ial] misconduct will probably be considered prejudicial.”⁹ In this case, the State presented overwhelming evidence of Espinoza’s guilt. Therefore, in light of the above, we conclude that the prosecutor’s misconduct, if any, amounted to harmless error.¹⁰

Having considered Espinoza’s contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Becker


_____, J.
Agosti


_____, J.
Gibbons

⁸Oade v. State, 114 Nev. 619, 624, 960 P.2d 336, 339 (1998).

⁹Garner v. State, 78 Nev. 366, 374, 374 P.2d 525, 530 (1962).

¹⁰See King v. State, 116 Nev. 349, 356, 998 P.2d 1172, 1176 (2000) (holding “where evidence of guilt is overwhelming, even aggravated prosecutorial misconduct may constitute harmless error”); Skiba v. State, 114 Nev. 612, 614-15, 959 P.2d 959, 960-61 (1998) (although prosecutorial comment was violative, it was not reversible because there was overwhelming evidence of defendant’s guilt); Rippo v. State, 113 Nev. 1239, 1254-55, 946 P.2d 1017, 1026-27 (1997) (prosecutorial error was harmless in light of the overwhelming evidence of guilt supporting the conviction).

cc: Hon. David Wall, District Judge
Clark County Public Defender
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk