IN THE SUPREME COURT OF THE STATE OF NEVADA

RAMON RAMIREZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41982

FILED

JAN 30 2004

JANETTE M BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count each of conspiracy to commit robbery and robbery with the use of a deadly weapon. The district court sentenced appellant Ramon Ramirez to serve a prison term of 12 to 30 months for the conspiracy count and a concurrent prison term of 30 to 90 months for the robbery count with an equal and consecutive term for the use of a deadly weapon.

Ramirez first contends that the State presented insufficient evidence that Ramirez committed conspiracy to commit robbery because Ramirez's alleged co-conspirator, Eugene Parra, Jr., did not actively participate in the robbery, but instead was merely "standing around" at the time the robbery occurred. We conclude that Ramirez's contention lacks merit.

This court has explained that it is rarely possible to establish a conspiracy through direct proof; instead, a conspiracy usually is "established by inference from the conduct of the parties."[1] For example, a

[1]Doyle v. State, 112 Nev. 879, 894, 921 P.2d 901, 911 (1996) (quoting Gaitor v. State, 106 Nev. 785, 790 n.1, 801 P.2d 1372, 1376 n.1 (1990),

continued on next page . . .

conspiracy conviction may be supported by "'a coordinated series of acts,'" in furtherance of the criminal purpose "'sufficient to infer the existence of an agreement.'"[2] Our review of the record in this appeal reveals sufficient evidence from which a rational jury could find Ramirez guilty of conspiracy to commit robbery beyond a reasonable doubt.[3]

At trial, the State presented evidence that Ramirez and Parra engaged in a coordinated series of acts sufficient to infer that they had an agreement to rob the victim. In particular, the victim testified that, on February 8, 2003, as he was buckling his son into the car seat of his minivan, Ramirez threatened the victim with a knife and demanded the keys to minivan. Notably, the victim testified that, during the course of the robbery, there was a man later identified as Parra standing behind Ramirez looking around. The victim also testified that, after he removed his son from the minivan, Ramirez and Parra both got in the car and drove away. Additionally, two law enforcement officers testified that, shortly after the robbery occurred, they apprehended Ramirez and Parra driving the stolen minivan; the victim subsequently identified Ramirez and Parra as the men who had robbed him earlier that evening. The jury could reasonably infer from the evidence presented that Ramirez conspired with Parra to rob the victim. It is for the jury to determine the weight and credibility to give conflicting testimony, and the jury's verdict will not be

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overruled on other grounds by Barone v. State, 109 Nev. 1168, 866 P.2d 291 (1993)).

[2]Id.

[3]See Wilkins v. State, 96 Nev. 367, 609 P.2d 309 (1980); see also Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998).

disturbed on appeal where, as here, substantial evidence supports the verdict.[4]

Ramirez next contends that State presented insufficient evidence of the deadly weapon enhancement because the State did not admit the knife purportedly used in the robbery into evidence, and the victim could not say definitively whether Ramirez had a knife. Our review of the record on appeal, however, reveals sufficient evidence from which a rational jury could find that Ramirez robbed the victim using a deadly weapon beyond a reasonable doubt.[5]

In particular, the victim testified at trial that Ramirez threatened him with a knife. The victim described the weapon as a skinny kitchen knife with a six-inch blade and even drew a picture of the knife for the jury. On cross-examination, defense counsel told the victim that the picture he drew resembled a screwdriver and questioned the victim in detail about whether Ramirez actually had a knife. Although, at trial, defense counsel argued to the jury that the victim was mistaken about the knife, it is for the jury to determine the weight and credibility to give the testimony presented, and the jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict.

Finally, Ramirez contends that the prosecutor engaged in misconduct during closing arguments warranting reversal of his conviction. In particular, Ramirez contends that the prosecutor misstated

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[4]See 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).

[5]See Wilkins, 96 Nev. 367, 609 P.2d 309; see also Origel-Candido, 114 Nev. at 381, 956 P.2d at 1380.

the evidence and drew impermissible inferences when he argued that the victim was an "easy target"[6] and, also, when he argued that Ramirez had gotten rid of the knife.[7] We conclude that Ramirez's contention lacks merit.

As a preliminary matter, we note that Ramirez failed to object to the purported instances of prosecutorial misconduct. As a general rule, the failure to object to prosecutorial misconduct precludes appellate review absent plain or constitutional error.[8] Moreover, even if we were to consider Ramirez's contention, we would conclude that the prosecutor's arguments did not amount to misconduct because they were reasonable inferences drawn from the evidence presented at trial.[9] First, the prosecutor's argument that Ramirez chose an "easy target" was a permissible inference drawn from the victim's testimony that he complied with Ramirez's request for the minivan in order to keep his young son

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[6]In context, the prosecutor argued: "The victim . . . he indicated he was in the first parking spot bringing his three year old son, putting him in the car seats. Great easy target. It's not going to give -- he's not going to give them any problems because the victim is going to protect his son. He is not going to risk his life and his son's life for a car."

[7]Particularly, the prosecutor argued: "But by the time the vehicle stop was conducted, the six inch knife is gone. . . . And you had the instruction, the State doesn't have to show [the knife]. . . because we don't know what happened during that 45 minutes. [The knife] could have easily been disposed of. Open up the window, throw out the knife. Go somewhere; ditch the knife. Isn't it easy to get rid of the weapon?"

[8]Parker v. State, 109 Nev. 383, 392, 849 P.2d 1062, 1068 (1993); Williams v. State, 103 Nev. 106, 110-11, 734 P.2d 700, 703 (1987).

[9]See Klein v. State, 105 Nev. 880, 883-84, 784 P.2d 970, 972-73 (1989).

safe. Likewise, the prosecutor's argument that Ramirez had gotten rid of the knife was a proper inference drawn from the police officers' testimony that the knife described by the victim was not found when Ramirez and the stolen minivan were apprehended shortly after the robbery occurred. Accordingly, the prosecutor did not engage in misconduct during closing argument.

Having considered Ramirez's contentions and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.

Becker, J.
Becker

Agosti, J.
Agosti

Gibbons, J.
Gibbons

cc: Hon. Stewart L. Bell, District Judge
Robert M. Draskovich, Chtd.
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk