

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANCISCO RODOLFO ALCARAZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42683

FILED

SEP 29 2004

ORDER OF AFFIRMANCE

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

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. Eighth Judicial District Court, Clark County; Sally L. Loehrer, Judge. The district court sentenced appellant Francisco Rodolfo Alcaraz to serve a prison term of 28 to 72 months for the conspiracy count and a concurrent prison term of 24 to 100 months for the robbery count, with an equal and consecutive prison term for the use of a deadly weapon.

Alcaraz contends that his conviction should be reversed because witness Kelli Thompson testified to inadmissible hearsay that was highly prejudicial. Thompson testified that, while her friends Alcaraz and Sonia Timson were at her apartment, she overheard Timson say to Alcaraz that they were going to rob an individual who was coming to pick her up, and Alcaraz agreed. Alcaraz contends that the district court erred in ruling that Timson's statement was nonhearsay pursuant to NRS 51.035(3)(e) because there was no independent evidence that a conspiracy existed between Alcaraz and Timson. We disagree.

NRS 51.035(3)(e) provides that a statement offered against a defendant for the truth of the matter asserted is not hearsay if the statement was made by the defendant's coconspirator in furtherance of the conspiracy. "For NRS 51.035(3)(e) to apply, the existence of the conspiracy

must be established by independent evidence.”¹ However, the independent evidence required to prove a conspiracy existed may be slight.² Moreover, a conspiracy, defined as an agreement between at least two persons for an unlawful purpose, is rarely proven by direct evidence, but instead established by inference from the coordinated conduct of the parties.³

In this case, the district court did not err in ruling that the statement was admissible as nonhearsay because there was ample independent evidence that a conspiracy existed between Timson and Alcaraz. The victim, a limousine driver, testified that, when he picked up Timson, Alcaraz was with her and Timson introduced Alcaraz as her brother. Timson and Alcaraz both got into the back of the limousine, and Timson instructed the victim to drive east to an apartment complex parking lot. According to the victim, Timson then told him "I'm sorry," as Alcaraz placed a gun to his head, demanding the victim hand over his wallet, money, and cellular phone. In addition to the victim's testimony, Thompson testified that, after Timson made the phone call requesting a ride, she observed a male individual hand Alcaraz a gun, and then Timson and Alcaraz left the apartment complex together to meet the individual for the ride. Finally, several trial witnesses identified Alcaraz and Timson running away from the limousine immediately after the robbery occurred.

¹Crew v. State, 100 Nev. 38, 46, 675 P.2d 986, 991 (1984).

²Fish v. State, 92 Nev. 272, 275, 549 P.2d 338, 340 (1976); see also McDowell v. State, 103 Nev. 527, 529, 746 P.2d 149, 150 (1987).

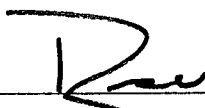
³Doyle v. State, 112 Nev. 879, 894, 921 P.2d 901, 911 (1996), overruled on other grounds by Kaczmarek v. State, 120 Nev. ___, 91 P.3d 16 (2004).

Accordingly, we conclude that the district court did not err in ruling that Thompson's testimony was admissible because Timson's statement was not hearsay pursuant to NRS 51.035(3)(e).

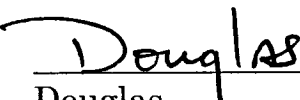
In a related argument, Alcaraz contends that Thompson's testimony consisted of inadmissible hearsay because it was inherently unreliable. In particular, Alcaraz contends that: "it doesn't make sense that Timson would ask Alcaraz to agree to help her rob [the victim] after she had already made the decision to rob him and made the call to [the victim] to come pick her up." We disagree that Thompson's testimony was inherently unreliable and note that, as previously discussed, there was sufficient independent evidence that a conspiracy existed between Alcaraz and Timson to render the statement admissible under NRS 51.035(3)(e).⁴

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

ORDER the judgment of conviction AFFIRMED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Douglas

⁴Because we conclude that Timson's statement was not hearsay pursuant to NRS 51.035(3)(e), we need not address Alcaraz's remaining contention that the statement was also not admissible under NRS 51.345, the statement against interest exception to the hearsay rule.

cc: Hon. Sally L. Loehrer, District Judge
Amesbury & Schutt
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk