

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CHARLES EDWARD COOPER, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 85474-COA

FILED

JAN 08 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Charles Edward Cooper, Jr., appeals from a judgment of conviction, entered pursuant to a jury verdict, of three counts of sexual assault resulting in substantial bodily harm. Eighth Judicial District Court, Clark County; Jasmin D. Lilly-Spells, Judge.

Cooper first argues the State failed to present sufficient evidence to prove he was guilty of sexual assault resulting in substantial bodily harm. When reviewing a challenge to the sufficiency of the evidence, we review the evidence in the light most favorable to the prosecution and determine whether “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); *accord Mitchell v. State*, 124 Nev. 807, 816, 192 P.3d 721, 727 (2008). “[I]t is the function of the jury, not the appellate court, to weigh the evidence and pass upon the credibility of the witness.” *Walker v. State*, 91 Nev. 724, 726, 542 P.2d 438, 439 (1975). And circumstantial evidence is enough to support a conviction. *Washington v. State*, 132 Nev. 655, 662, 376 P.3d 802, 807 (2016). “[T]he testimony of a sexual assault victim alone is sufficient to uphold a conviction” as long as the victim

“testif[ies] with *some* particularity regarding the incident.” *LaPierre v. State*, 108 Nev. 528, 531, 836 P.2d 56, 58 (1992) (emphasis in the original).

First, Cooper argues the State failed to present sufficient evidence at trial because the victim identified Cooper in court while he was wearing a mask and she could only see his eyes. The credibility of the victim’s identification was for the jury to decide. *See Steese v. State*, 114 Nev. 479, 498, 960 P.2d 321, 333 (1998). Further, the State presented other sufficient evidence at trial that Cooper committed the crimes. At trial, the State presented testimony from the victim as to the sexual assault. She testified with specificity as to what occurred. Further, she testified that the person who committed the crime wiped himself clean with a red piece of clothing. That piece of clothing was collected and tested, and the DNA profile found on the clothing matched Cooper’s. Further, semen was collected from the victim’s vagina that also matched with Cooper. Thus, Cooper is not entitled to relief on this claim.

Second, Cooper argues the State failed to present sufficient evidence at trial because the State failed to collect evidence from the car to support the victim’s testimony. Cooper’s claim regarding the failure to collect evidence does not implicate the sufficiency of the evidence presented at trial. Even assuming Cooper’s claim did implicate the sufficiency of the evidence, Cooper fails to establish that the failure to collect evidence demonstrates that no rational trier of fact could have found Cooper guilty given the victim’s testimony and the DNA evidence.

Third, Cooper argues that the State failed to produce sufficient evidence that the victim suffered substantial bodily injury. Cooper claims the victim’s testimony that she was hit on the left side of her face was inconsistent with medical evidence that her injury was on the right side of

her face. Cooper does not allege that the victim was not actually hurt, nor does he challenge the severity of the injury. Therefore, he fails to demonstrate that no rational trier of fact could have found Cooper guilty. Accordingly, we conclude that Cooper fails to demonstrate the State failed to present sufficient evidence at trial.

Cooper next argues that four alleged errors at trial constituted cumulative error and he is entitled to relief. Cumulative error results when an individual error, standing alone, does not warrant reversal, but the cumulative effect prevents the defendant from receiving a fair trial. *Big Pond v. State*, 101 Nev. 1, 3, 692 P.2d 1288, 1289 (1985). “Relevant factors to consider in evaluating a claim of cumulative error are (1) whether the issue of guilt is close, (2) the quantity and character of the error, and (3) the gravity of the crime charged.” *Mulder v. State*, 116 Nev. 1, 17, 992 P.2d 845, 855 (2000).

First, Cooper argues the district court erred by denying his motion for dismissal of the jury venire. Partway through jury selection, Cooper made an oral motion to dismiss the jury venire arguing that the jury venire had an inordinate amount of people who had experienced a sexual assault or knew someone that had been sexually assaulted. Thus, he claims the jury was not a jury of his peers.

By arguing that he did not receive a jury of his peers, Cooper appears to be arguing that the jury venire did not constitute a fair-cross section of the population. *See Williams v. State*, 121 Nev. 934, 942, 125 P.3d 627, 632 (2005) (explaining that “[a] jury of one’s peers is simply a randomly selected cross section of the members of your community” and applying the factors for determining whether the jury venire violated the fair-cross section requirement (internal quotation marks omitted)). “In order to

establish a prima facie violation of the fair-cross section requirement, the defendant must show (1) that the group alleged to be excluded is a 'distinctive' group in the community; (2) that the representation of this group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community; and (3) that this underrepresentation is due to systematic exclusion of the group in the jury-selection process." *Duren v. Missouri*, 439 U.S. 357, 364 (1979).

Cooper did not provide either the district court or this court with proof to support his claim that he was not tried by a jury of his peers. Cooper failed to demonstrate that those who are not victims of sexual assault and do not know anyone who is constitute a "distinctive group" in the community. Even assuming this group could be considered "distinctive" in the community, Cooper fails to cite to anything in the record to indicate that the representation of this group in his venire was not fair and reasonable in relation to the number of those people in the community or that the alleged underrepresentation of jurors belonging to this group was due to "systematic exclusion" in the jury selection process. Therefore, Cooper fails to demonstrate the district court erred by denying his motion for dismissal of the jury venire.

Second, Cooper argues the district court erred by failing to have the correct number of chairs for the jury venire. "It is appellant's responsibility to present relevant authority and cogent argument, issues not so presented need not be addressed by this court." *Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987). Cooper fails to support this claim with relevant authority or cogent argument. Thus, we decline to consider this claim on appeal.

Third, Cooper argues the district court erred by allowing a juror to be seated who required a Spanish language interpreter. On the first day of trial, the district court excused this juror from the panel. Cooper specifically stated he did not object to excusing the juror. Cooper fails to cite to any relevant authority or make any cogent argument as to how the seating of the juror, or the removal of the juror, caused him harm. Thus, we decline to consider this claim on appeal. *See id.*

Fourth, Cooper argues the district court abused its discretion by denying his motion for mistrial where a detective testified regarding Cooper's alleged membership in a gang. "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). We review a district court's ruling on a motion for mistrial for an abuse of discretion. *Ledbetter v. State*, 122 Nev. 252, 264, 129 P.3d 671, 680 (2006).

At trial, the detective stated, "Oh, I thought you were asking about if she said the name of somebody. That was the last thing you asked me." Cooper's counsel stated, "Yeah. So -- well, let me ask you this. So --. The detective interrupted counsel and stated, "I do recall her identifying by G somebody. That was the name she used or a Piru Blood, I believe. Is what she said. How she [sic] identified himself to her."

After hearing arguments from counsel and the State, the district court denied the motion. Specifically, the district court found that the statement was not so prejudicial that it prevented Cooper from receiving a fair trial given the evidence presented and the DNA evidence that was to be presented. Further, the district court found that the statement did not

indicate that the detective was talking about Cooper, but rather, the earlier question referred to by the detective was whether she had identified anyone.

We agree with the district court that the detective's one reference to gang affiliation did not prejudice Cooper to the point that he could not receive a fair trial, especially given the evidence presented at trial. Therefore, we conclude the district court did not abuse its discretion by denying the motion for mistrial.

Having found that Cooper either failed to demonstrate error, or failed to preserve the alleged errors for review, we conclude he fails to demonstrate cumulative error such that he is entitled to relief. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Jasmin D. Lilly-Spells, District Judge
Mayfield, Gruber & Sanft/Las Vegas
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk