

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARIO BLADIMIR TREJO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 84724

FILED

FEB 13 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT

ORDER OF AFFIRMANCE BY


DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of burglary while in possession of a firearm, seven counts of robbery with use of a deadly weapon, first-degree kidnapping, assault on a protected person with use of a deadly weapon, conspiracy to commit robbery, and attempted robbery with use of a deadly weapon. Eighth Judicial District Court, Clark County; Erika D. Ballou, Judge.

Appellant Mario Trejo appeals his criminal conviction stemming from an attempted robbery and a robbery of the same SuperPawn in 2018. During the robbery, Trejo was shot by police, and later underwent a medical procedure that left him unable to speak. Trejo nonetheless hears, understands, and writes fluent English. In March 2021, Trejo moved to dismiss his appointed counsel, and the district court held two hearings to determine whether Trejo could represent himself in compliance with *Faretta v. California*, 422 U.S. 806 (1975). The court found Trejo capable of representing himself and appointed his public defender as standby counsel. During the *Faretta* hearings, the court failed to provide Trejo with an interpreter, instead relying on corrections officers to read Trejo's written statements to the court or relying on Trejo signaling "yes" or "no" to questions with a thumbs-up or thumbs-down.

Once self-represented, Trejo requested a disability accommodation from the court to have someone other than a corrections officer read his written statements. The State did not oppose the motion, and the district court granted the motion. An interpreter appeared at one subsequent status hearing, but at no other pretrial hearing. The district court did provide a Spanish-language interpreter during trial to read Trejo's written statements.

At trial, during the State's opening statement, the State played video of the robbery that Trejo claimed he had not seen. Trejo's standby counsel confirmed for the court that counsel had access to all video materials when he represented Trejo and after he was appointed standby counsel. The court also determined that Trejo knew of the videos' existence because Trejo and his counsel had discussed the video evidence.

The State presented overwhelming evidence of Trejo's guilt, including numerous eyewitnesses to the robbery attempt, video of the events, and Trejo's apprehension at the scene. When Trejo testified during trial, Trejo confirmed his prior admission to the crimes. At the conclusion of the trial, the jury returned a verdict of guilty on all counts and the court sentenced Trejo to life in prison with parole eligibility after 180 months. Trejo now appeals.

Trejo argues that his conviction should be reversed because the court did not provide him with a disability interpreter for pretrial proceedings as required under Nevada law. Nevada law requires a court to appoint an interpreter "for a person with a communications disability who is a party to or a witness in a criminal proceeding." NRS 50.051. The court "shall appoint a registered community interpreter to interpret" for the person, or follow the other guidance required by the statute. NRS

50.0515(1). Of note, a registered community interpreter is defined as a sign interpreter, even though the statute covers communications disabilities such as Trejo's that may not require a sign interpreter.

The failure of the district court to follow the statute and provide an appropriate interpreter was error. *See generally Nolan v. State*, 122 Nev. 363, 372, 132 P.3d 564, 570 (2006) (concluding that it represents manifest error when a district court fails to apply the unambiguous procedural safeguards provided by statute). At the same time, because Trejo understood the proceedings, the error in failing to provide him with a registered community interpreter during pretrial proceedings did not necessarily render the proceedings fundamentally unfair such that we consider structural error. *Cortinas v. State*, 124 Nev. 1013, 1023-24, 195 P.3d 315, 322 (2008) (defining structural error). Thus, we review this matter for an abuse of discretion. *See Ton v. State*, 110 Nev. 970, 971-72, 878 P.2d 986, 987 (1994) (reviewing a district court's decision on the need for an interpreter for abuse of discretion).

The district court's failure to provide Trejo with an interpreter for pretrial proceedings despite the statute requiring it do so and despite the district court granting his motion requesting disability accommodations represents a clear abuse of discretion. *See Cambridge Mgmt., Inc. v. Jadan*, 481 P.3d 63, 68 (Haw. 2021) (holding a district court abused its discretion by failing to provide a disabled litigant an interpreter after granting her motion for accommodations and emphasizing a party's self-represented status "heightened the need for a careful inquiry into whether her access to the court would be meaningful absent an interpreter"). Like the Hawaii Supreme Court, we are deeply troubled that the district court ignored mandatory language requiring the provision of an interpreter, and we are

further concerned that the district court granted a motion promising an interpreter but failed to provide one to a self-represented litigant for the vast majority of pretrial proceedings. We, like Hawaii, believe that a party's self-represented status should heighten the need for careful inquiry into whether that party needs disability accommodations.

Nevertheless, this abuse of discretion does not warrant reversal under the particular facts of this case as the resulting error was harmless. *Cortinas*, 124 Nev. at 1028, 195 P.3d at 325 (quoting *Delaware v. Van Arsdall*, 475 U.S. 673, 681 (1986)) (declining to reverse a conviction where an "error was harmless beyond a reasonable doubt"). A nonconstitutional error is harmless unless it had a substantial and injurious influence on the jury's verdict. *Tavares v. State*, 117 Nev. 725, 732, 30 P.3d 1128, 1132 (2001), modified in part by *McLellan v. State*, 124 Nev. 263, 182 P.3d 106 (2008). The error here is nonconstitutional; Trejo's due process rights were not implicated because he understood the proceedings and Trejo failed to show that his lack of an interpreter interfered with his ability to mount an effective defense. See *Ton*, 110 Nev. at 971-72, 878 P.2d at 987 (stating that defendants who did not understand English have a due process right to an interpreter because they could not otherwise understand or participate in the proceedings). Trejo cannot show harm under the nonconstitutional harmless error standard owing to the overwhelming nature of his guilt.

Further, to the extent that Trejo also challenges the failure during trial of the court to provide a certified disability interpreter, to follow the statute and conduct a voir dire to ensure the interpreter is capable, or to place the interpreter under oath, again we find error. Nonetheless, the error is harmless given that a court employed language interpreter assisted Trejo in communicating and Trejo fails to show any prejudice.

Trejo also challenges the decision by the district court to allow the State to play videos that Trejo had not viewed, which we review for abuse of discretion. *See Evans v. State*, 117 Nev. 609, 638, 28 P.3d 498, 518 (2001), overruled on other grounds by *Lisle v. State*, 131 Nev. 356, 351 P.3d 725 (2015). The most prudent path would have been to pause the proceedings and allow Trejo to view the footage in question. Failure to do so under the facts presented here, however, does not rise to an abuse of discretion because Trejo's standby counsel had access to the videos. *See Wilson v. State*, 121 Nev. 345, 360, 114 P.3d 285, 295 (2005) (concluding that standby counsel's access to material is sufficient access where a self-represented party cannot possess materials due to contraband rules in jail). Additionally, Trejo cannot show harm here considering the overwhelming evidence of his guilt. *See Tavares*, 117 Nev. at 732, 30 P.3d at 1132.

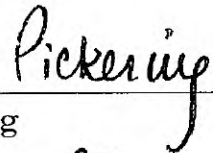
We find the rest of Trejo's arguments unpersuasive. First, the district court acted within its discretion when it denied Trejo's motion to substitute counsel and granted his motion to represent himself, finding his disagreements with counsel to be on tactical matters within counsel's sole control and therefore not an "irreconcilable conflict" requiring substitution. *See Young v. State*, 120 Nev. 963, 968-69, 102 P.3d 572, 576-77 (2004) (considering substitution appropriate only when, among other factors, a disagreement between a defendant and counsel rose to an "irreconcilable conflict"); *Rhyne v. State*, 118 Nev. 1, 8, 38 P.3d 163, 168 (2002) (recognizing that issues of "trial tactics[] remain within counsel's control" even when a client disagrees with those tactical decisions). Second, the district court did not abuse its discretion when it instructed the jury, and no evidence supported a lesser-included offense instruction. *Rosas v. State*, 122 Nev. 1258, 1264 n.9, 147 P.3d 1101, 1106 n.9 (2006) (holding that the district

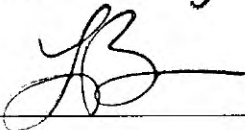
court need only include a lesser-included-offense instruction sua sponte when evidence absolves the defendant from guilt of the greater offense but supports guilt of the lesser offense), *abrogated on other grounds by Alotaibi v. State*, 133 Nev. 650, 404 P.3d 761 (2017). Third, the district court did not plainly err by allowing a State’s witness to testify that Trejo possessed a short-barreled rifle because Trejo cannot show actual prejudice from the statement due to the overwhelming evidence of guilt. *Jeremias v. State*, 134 Nev. 46, 50-51, 412 P.3d 43, 49 (2018) (stating that “plain error affects a defendant’s substantial rights when it causes actual prejudice or a miscarriage of justice (defined as a ‘grossly unfair’ outcome)”). Fourth, the State presented sufficient evidence to sustain the conspiracy conviction from the text messages between Trejo and another person agreeing to commit the robbery. *Origel-Candido v. State*, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998) (defining the standard for sufficiency of the evidence as “whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt” (internal quotation marks omitted)); *Deveroux v. State*, 96 Nev. 388, 391, 610 P.2d 722, 724 (1980) (concluding “that circumstantial evidence alone may sustain a conviction”). Finally, Trejo fails to demonstrate any combination of errors resulted in reversible error under the cumulative error standard, as we find only a single harmless error here. *Byford v. State*, 116 Nev. 215-16, 241, 994 P.2d 700, 717 (2000) (“Although individual errors may be harmless, the cumulative effect of multiple errors may violate a defendant’s constitutional right to a fair trial.”).

Given the overwhelming evidence of guilt, we find no error requiring reversal. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Cadish


_____, J.
Pickering


_____, J.
Bell

cc: Hon. Erika D. Ballou, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth Judicial District Court Clerk