

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

EDRICK DILLARD, A/K/A EDERICK
DILLARD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 85904-COA

FILED

FEB 22 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Edrick Dillard appeals from a judgment of conviction for sex trafficking and pandering following a jury trial. Eighth Judicial District Court, Clark County; Kathleen E. Delaney, Judge.

In January 2022, Dillard met A. J. (Alexia) while Alexia was walking alone on Las Vegas Boulevard. Dillard told Alexia that he was a club promoter, and asked Alexia to get a drink with him. Alexia, a self-proclaimed exotic dancer, agreed, and the two went to a nearby bar in the Bally's plaza. At the bar, Dillard told Alexia that his promoter gig was a "cover-up," and that he was not only a pimp, but one of Las Vegas's original pimps. As the evening wore on, Alexia maintains that Dillard kept the conversation focused on his work as a pimp. Dillard allegedly told Alexia that he could help Alexia promote herself online and would get Alexia "cards."¹ Dillard also said that he wanted to introduce Alexia to a woman named Amber Stone because Alexia looked "like a fish out of water" walking by herself. In discussing Amber, Dillard also showed Alexia Amber's cards

¹Cards, or "escort cards," are small advertising cutouts that typically showcase a woman dressed in a revealing outfit, along with the woman's contact and website information, so that potential customers can purchase her services. Promoters often "flip," or hand out, these cards out on the Las Vegas Strip.

to exemplify the type of promotion he could offer Alexia Dillard said that Amber was "one of his girls," which Alexia interpreted to mean one of Dillard's prostitutes.

Throughout this conversation, Alexia contended that she dismissed Dillard's continuous and clear attempts to recruit her to work for him as a prostitute and told Dillard that while she was happy to spend time with him at the bar, she would not pay him, and he would not get any of her money. Dillard responded to Alexia's refusals by stating that, eventually, Alexia would "see the good things" he could do for her and would "want to choose up." In pimp subculture, to "choose up" can be understood as choosing to be a specific pimp's prostitute.²

The next morning, Dillard and Alexia met for breakfast, where Dillard again emphasized his connections and told Alexia that he could help Alexia with her taxes and housing. Alexia interpreted Dillard's offers as attempts to convince her to be his prostitute, but Alexia remained steadfast that she did not want Dillard to be her pimp or to work for Dillard in any capacity. Following Alexia's persistent refusals, Dillard pushed Alexia to reach out to Amber. Although it took a few days, Alexia eventually texted Amber, and Amber invited Alexia to her apartment.

Within a few hours of arriving at Amber's apartment, Amber called Dillard and expressed frustration that Dillard had sent Alexia, as well as Alexia's children, to stay with her. Despite her frustration at Dillard, Amber was initially welcoming towards Alexia. That evening, Dillard

²The definitions provided throughout the order reflect the expert's and officers' testimony, which was based on their knowledge and experience. We do not adopt these definitions as a matter of law and use these terms for this case only.

dropped off food for Alexia and Amber, the two women apparently bonded over their experiences with abusive men, and Alexia spent the night. The following morning, however, things took a violent turn.

While Alexia was on the phone with the Clark County Detention Center, she maintained that Amber called her “a snitch,” a “dumb bitch,” and told Alexia that “she sees why people want to beat [her].” Alexia responded that, if her kids were not there, she would “beat [Amber].” Alexia then tried to pack her things and leave, but Amber threw a glass soap dispenser at Alexia’s head. The two women then engaged in a brutal fight, during which, among other things, Alexia apparently bit off Amber’s finger, and Amber bit off a portion of Alexia’s chin, to the point where bone was visible.

During the fight, Alexia recalled saying to Amber, “we’re supposed to be friends, stop hitting me,” to which Amber responded, “Bitch we’re not friends, he sent me to knock you.” To “knock” someone in the sex trafficking subculture was presented in this case to mean forcing that person to work as a prostitute for a specific pimp, often, but not always, through violence. Alexia testified that, soon after the fight, she realized that Dillard had “set [her] up” and instructed Amber to convince Alexia to “be on their team” as Dillard’s prostitute by any means necessary.

After the fight, Alexia drove herself to UMC for treatment and was eventually arrested and taken to jail in connection with the fight. She was charged with battery with a deadly weapon, but that charge was later reduced to a misdemeanor in exchange for Alexia testifying at Dillard’s trial. Upon her release, Alexia contended that Dillard began calling her persistently, telling Alexia that she needed to stop saying that he had sent Amber to attack her. In response, Alexia threatened to report Dillard to the LVMPD vice unit if he did not leave her alone. Alexia neither actually

reported Dillard to the vice unit nor planned to; rather, she testified she made the threat to get Dillard to stop calling her.

The situation escalated after Alexia made an inflammatory post on her Instagram story. By Alexia's account, she posted the story to "warn[] all the girls not to deal with [Dillard]." Specifically, in the story, she posted a picture of Dillard, along with the words "Ederick Dillard ha[d] his prostitute bite off half of my chin because I wouldn't pay him or be with their team. Ladies, this man uses his own daughter whom he has sex with to entrap and traffic women."

Upon seeing the post, Dillard proactively reached out to the vice unit and requested to speak with a detective. Detective Richard Pierce spoke with Dillard over the phone, and in their conversation, Dillard described Alexia's Instagram story and told Detective Pierce that Alexia had inaccurately accused him of sex trafficking her. Dillard also recounted Alexia's fight with Amber, stated that Alexia was now claiming that Dillard had set her up, and called Alexia a "paranoid schizophrenic psycho female." Post-call, Dillard emailed Detective Pierce a timeline and description of his interactions with Alexia, which included their initial meeting at the bar, breakfast at Denny's, the fact that he was trying to help Alexia with her taxes and living arrangements, and his introduction of Alexia to Amber.

Dillard also mentioned several Nevada statutes related to sex trafficking and pandering to Detective Pierce—he explicitly listed the requirements for each and explained why his behavior did not meet those requirements. Detective Pierce found this odd, and it prompted him to contact Alexia, who relayed her version of the events that took place with Dillard, as well as her fight with Amber. Detective Pierce asked Alexia to give a recorded statement, but Alexia refused, and Detective Pierce

eventually transferred the information he had gathered to the vice unit's proactive squad, where Detective Nicholas Perez took over the investigation.

Around this time, the vice proactive unit was independently investigating a case involving a beauty pageant contestant, L.F., who had recently gone missing in Las Vegas. During its investigation, the vice unit linked L.F. to Dillard through Dillard's phone number. Together, Detective Pierce's information from Dillard and Alexia, coupled with L.F.'s link to Dillard, prompted the vice proactive unit to conduct surveillance on Dillard's apartment. During this surveillance, the vice detectives were able to locate L.F., who was living with one of Dillard's acquaintances. Ultimately, L.F. returned home to North Carolina, and no charges were filed.

Having had two separate instances of possible sex trafficking related to Dillard, the vice proactive unit decided to set up a sting operation. An undercover female officer, Detective Jordan Fox, created a fake Instagram profile and reached out to Dillard via Dillard's Instagram profile. Detective Fox—familiar with the pimp subculture—used coded language to present herself as a prostitute who was interested in Dillard as her potential pimp. Dillard's conversations with Detective Fox largely mirrored the conversations he had with Alexia; he told Detective Fox he could provide her with nice cars and a lavish lifestyle and offered to promote Detective Fox if she chose to work with him.

Detective Fox and Dillard eventually agreed to meet in-person at the Bally's hotel. Detective Fox arrived wearing a recording device, and her conversation with Dillard substantiated Dillard's pimp status. Among other things, Dillard referenced "the game," which Detective Fox testified refers to the prostitution lifestyle, asked Detective Fox whether she had a "dude," meaning a pimp, discussed popular "track[s]," in Las Vegas and Los Angeles,

which Detective Fox explained are common areas where prostitution occurs, and engaged in recognized screening tactics meant to ensure that Detective Fox was not working with law enforcement. Dillard also discussed pricing in the prostitution context, during which time Dillard used the prostitution industry term “bareback” and asked Detective Fox whether she utilized condoms when she performed oral sex.

Detective Fox was not alone when she met with Dillard at Bally’s. Detective Perez was also present with other officers from the vice proactive team. At the end of Detective Fox’s conversation with Dillard, Detective Perez and the other officers determined that, under the totality of the circumstances, there was probable cause sufficient to arrest Dillard. After taking Dillard into custody, the officers also obtained search warrants for Dillard’s car and apartment. Inside Dillard’s apartment, officers discovered a “bucket of books” that pertained to pimping, prostitution, and sex trafficking, including books titled *Pandering* and *The Making of a Prostitute*. The officers also discovered a “tip sheet” Dillard created for his prostitutes that included, among other things, details regarding sexual acts, how to remain safe when engaging in sexual acts with clients, and how to screen clients effectively to ensure that they are not working with law enforcement.

In June 2022, the State charged Dillard with one count of sex trafficking against Alexia, one count of pandering against Alexia, and one count of pandering against Detective Fox, whom the amended indictment referred to as “VUCE 4.” Over the course of the jury trial which took place in November 2022, the jury heard testimony from: Alexia, Detective Richard Pierce, Detective Jordan Fox, Detective Nicholas Perez, Officer Gregory

Flores, and retired Sergeant Donald Hoier, who served as the State's expert in pimp and prostitution subculture.

Before jury selection, Dillard stated that, based on Alexia's grand jury and preliminary hearing testimony, he believed that Alexia would testify to Amber's statement that Dillard sent Amber to "knock" her and wanted to preemptively exclude this statement as hearsay. The State responded that Amber's statements to Alexia were admissible because they were statements made by a coconspirator about and in furtherance of the conspiracy. Additionally, Amber was named in count 1 of the amended indictment as an uncharged coconspirator. The district court agreed with the State that Amber's statements fell under the exception for coconspirator statements and were non-hearsay.

During her direct examination, Alexia testified to her interactions with Dillard, her fight with Amber, and the impact this case's resulting consequences continue to have on her life. On cross examination, Alexia testified that she and Dillard met in-person only twice, and that Dillard never explicitly asked Alexia to have sex for money. Additionally, Alexia acknowledged that Dillard called the cards he showed her "escort cards," and that it is possible to work as a legal escort who goes on dates with clients but does not have sex with them. To that end, Alexia affirmed that, prior to meeting Dillard, she was legally working as a dancer in the adult entertainment industry and had a valid sheriff's card.³

Detective Pierce testified to his interactions with Dillard and noted that, although it was atypical for people who sex traffic and pander to

³Sheriff's cards, or work cards, are issued by the LVMPD as part of the licensing requirements individuals must meet in order to work in the adult entertainment industry.

initiate contact with law enforcement, Dillard's proactive actions may have been a reactive attempt to "get in front of" the situation. Moreover, Detective Pierce asserted that Dillard never referenced an escort statute when establishing why his behavior was legal; rather, Dillard discussed only those related to sex trafficking and pandering.

During her direct examination, Detective Fox recounted her Instagram, text message, phone, and in-person interactions with Dillard and also testified to her role in the vice proactive unit and experience effectuating undercover investigations of potential pimps. The State played excerpts of Detective Fox's recorded conversation with Dillard for the jury, and the conversation revealed that both Detective Fox and Dillard consistently used coded terms like "the game," "dude," and "facilitator." Detective Fox emphasized that, in the pimp subculture, people use these coded terms to avoid detection by law enforcement. However, on cross examination, Detective Fox acknowledged that the meaning of "dude" may be context-dependent and could also mean "husband or boyfriend" under certain circumstances. Regarding Dillard's offer to promote Detective Fox on Tryst—a social media platform for sex workers—she estimated that approximately half of the Tryst profiles she has investigated belonged to legitimate escorts, while the other half belonged to prostitutes offering illegal services.

On cross examination, Dillard also attempted to ask Detective Fox about the demographic breakdown of suspects in her investigations. The State objected and argued that the demographic breakdown of Detective Fox's investigations was irrelevant. Dillard responded that demographic questions were relevant to Detective Fox's training and experience, as well as to the types of businesses Detective Fox chooses to investigate as potential fronts for prostitution. The district court ultimately sustained the State's

objection, reasoning that Dillard's questions called for an expert opinion that Detective Fox was not qualified to give.

Regarding the prostitution and pandering books and "tip sheet" that officers obtained during the search of Dillard's apartment, Detective Perez noted on cross examination that he did not know how old either the books or tip sheet were. This was significant, given that police almost certainly knew that Dillard was arrested and convicted of sex trafficking between 2013 and 2014. Sergeant Gregory Flores briefly testified as to the prior investigation and stated that he remembered a tip sheet—though not necessarily the specific tip sheet at issue in Dillard's current case—being a part of Dillard's 2013 case. There was no objection to this testimony, and Dillard did not raise it as an issue on appeal.

Sergeant Hoier was the State's final witness, and he served as an expert in pimp and prostitution subculture. Sergeant Hoier not only provided supplemental definitional testimony as to the subculture's coded language, but he also explained the psychology of pimping and the ways pimps exercise control over their prostitutes. He explained that there are six phases to grooming someone to become a prostitute and connected Dillard's behavior towards both Alexia and Detective Fox to the early stages of this grooming process. Notably, Sergeant Hoier also testified that the term "choosing up" is associated with prostitution and never legitimate escort services and defined the term "bottom" or "bottom bitch" as the pimp's "top prostitute" or "second in command." The pimp's bottom is the disciplinarian who oversees the other prostitutes to ensure compliance with the pimp's directives. The bottom also aids in recruitment, and Sergeant Hoier declared that it was common for the bottom to not only partake in the grooming process but also play a significant role in convincing potential prostitutes

who had previously declined the pimp's offers to ultimately choose up. Sergeant Hoier also defined "knocking" as "convincing the prostitute to become [the pimp's] own" and explained that this process could be done by the pimp himself through persuasion or violence, or someone close to the pimp, "whether that be the bottom or another associate."

On cross examination, Sergeant Hoier reiterated that to "knock" is not always violent, and that legal escort and stripping work is possible. At this point, Dillard was also able to ask questions about potential bias and racial demographics within the vice training unit. Specifically, in response to Dillard's questions, Sergeant Hoier stated that he had trained new classes of LVMPD vice officers and had taught the officers that pimps admonish their prostitutes to stay away from Black men because those men may be competing pimps. Yet, Sergeant Hoier noted that the pimp subculture is "very racist," and that his training criteria merely reflected the subculture's realities.

Regarding jury instructions, Dillard orally requested that the district court instruct the jury that pandering was a lesser included offense of sex trafficking. To that end, Dillard argued, without citing any authority or providing proposed instructions and/or verdict forms, that sex trafficking and pandering have identical elements, apart from sex trafficking's violence requirement. The State responded that, procedurally, Dillard's concern was about the charging document and not the instructions, which could have been challenged through a pretrial writ petition. The State argued that Dillard would therefore need to wait to address this issue by post-adjudication motion. On the merits, the State argued that sex trafficking and pandering are separate charges with separate elements, such that pandering cannot be a lesser included offense of sex trafficking. After hearing both sides'

arguments, the district court agreed with the State and explained that, while it recognized Dillard's multiple adjudication concerns, he must wait to make his argument, if necessary, post-conviction.

In its closing, the State emphasized that, as to sex trafficking, there were three theories of liability under which the jury could find Dillard guilty. First, by direct action; second, by aiding and abetting; and third, by conspiracy. Regarding conspiracy, the State's theory was that Amber was Dillard's "bottom," and that Dillard sent Amber to "knock" Alexia. The State contended that Amber did, in fact, knock Alexia when she violently attacked her. Dillard was actively involved in Alexia's arrangement with Amber—he gave Alexia Amber's phone number, pressured Alexia to contact Amber, was in constant communication with both Amber and Alexia while Alexia was at Amber's apartment, and brought food to Amber's apartment for Alexia and Amber to share. With this in mind, the State contended that Amber's statement "he sent me to knock you" was a statement made by a coconspirator about and in furtherance of the conspiracy, and that the jury could use this statement as evidence against Dillard to support a sex trafficking conviction under a conspiracy theory of liability.

In Dillard's closing, he argued that, while his actions running an escort business might seem "slimy," they were not illegal. He emphasized the distinction between legal escort services and prostitution and maintained that his actions of making escort cards and advertising profiles on websites like Tryst were consistent with running a legal escort business. Dillard also suggested that Detective Fox, Sergeant Hoier, and the LVMPD vice unit writ large all demonstrated bias as to the people they choose to investigate as potential pimps. Finally, Dillard rebuked the State's conspiracy evidence on the basis that Dillard played no role in Amber and Alexia's physical fight.

Specifically, Dillard contended that the fight stemmed from Amber's personal animosity towards Alexia and was not the result of Dillard's directives to Amber. Thus, because sex trafficking necessitates violence—and Dillard was neither himself violent towards Alexia nor part of a conspiracy with Amber—Dillard argued that he could not be found guilty of sex trafficking.

The jury found Dillard guilty on all three counts. At the sentencing hearing's outset, the district court noted that, as a result of a prior motion, it would dismiss count 2 and proceed with sentencing on only counts 1 and 3. Specifically, the court would sentence Dillard based on count 1 sex trafficking against Alexia and count 3 pandering against VUCE 4 (Detective Fox). The prior motion resulted in the dismissal of count 2, pandering, because of the sex trafficking offense against Alexia. The State preemptively pointed out a small clerical error on the PSI, which stated that Dillard was being sentenced based on count 1 and count 2, as opposed to count 1 and count 3, and the district court clarified for the record that its sentencing decision would reflect only count 1 and count 3.

The district court then asked if there was any reason it should not proceed with sentencing. Dillard stated that his PSI incorrectly indicated that he did not make a statement during his interview, despite the fact that he had made a written statement. He requested that the court grant a two-to-four-week continuance to review his written statement and for the Nevada Department of Public Safety Division of Parole and Probation (P and P) to correct the PSI to reflect the statement's contents. Additionally, Dillard noted an additional error regarding his alcohol use history. According to the PSI, Dillard's history was "minor," but Dillard stated that he told P and P his drinking history was "major." Dillard acknowledged that this error was

insignificant. In response, the State argued that it was prepared to go forward, and that Dillard had already submitted multiple pages of material to the court that essentially constituted a sentencing memorandum that covered the relevant information. Further, Dillard planned to speak to the district court directly before it issued its sentencing decision and would have an opportunity to fully express himself.

The district court denied the continuance and stated that Dillard's issues regarding the PSI were immaterial and did not warrant a delay. The district court also acknowledged that it had reviewed Dillard's submitted paperwork, understood what Dillard's position would be, and that Dillard's history of substance abuse was not determinative as to its sentencing decision.

After hearing arguments from both parties, and from Dillard himself, the district court convicted Dillard of counts 1 and 3, and sentenced Dillard to an aggregate sentence of 48 to 180 months in NDOC custody with 303 days credit for time served. The court also recommended Dillard for the 184 program, a rehabilitative drug treatment program, with the possibility of early parole if he was accepted. It is from this judgment of conviction that Dillard appeals.

On appeal, Dillard raises five issues. He argues that the district court erred when it: (1) allowed the State to admit an alleged coconspirator's out-of-court statement without independent evidence of a conspiracy; (2) limited Dillard's cross-examination of Detective Fox; and (3) did not permit a jury instruction that made pandering a lesser included offense of sex trafficking. Additionally, Dillard challenges the sufficiency of the evidence as to sex trafficking and argues that (4) the State did not prove that Dillard was guilty of sex trafficking beyond a reasonable doubt. Finally, Dillard

argues that (5) the district court erred when it refused to order P and P to correct errors in Dillard's PSI.⁴ We conclude that none of these issues warrant reversal and therefore affirm Dillard's judgment of conviction.

The district court did not abuse its discretion when it permitted Alexia to testify to Amber's statement

Dillard argues that the district court erred when it permitted Alexia to testify to Amber's statement that Dillard sent Amber to "knock" Alexia. Specifically, Dillard maintains that Amber's statement is hearsay and inadmissible under the hearsay rule for coconspirator statements because the State did not offer independent evidence of a conspiracy between Amber and Dillard. The State counters that it presented independent evidence sufficient to prove a conspiracy, which renders the statement admissible pursuant to the rule. We review the district court's decisions to admit or exclude evidence for an abuse of discretion, *McLellan v. State*, 124 Nev. 263, 267, 182 P.3d 106, 109 (2008), which includes decisions regarding hearsay, *Holmes v. State*, 129 Nev. 567, 576, 306 P.3d 415, 421 (2013) ("[W]hether proffered evidence fits an exception to the hearsay rule [is reviewed] for abuse of discretion." (quoting *Fields v. State*, 125 Nev. 785, 795, 220 P.3d 709, 716 (2009))). An abuse of discretion occurs if the court's decision is arbitrary or capricious, or if it exceeds the bounds of law or reason. *Crawford v. State*, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005). We conclude that the district court did not abuse its discretion when it allowed Alexia to

⁴Dillard also argues that reversal is warranted because the cumulative error in this case was sufficient to render his trial fundamentally unfair. However, Dillard does not identify any errors that would entitle him to relief; thus, there are no errors to cumulate, and we decline to address this issue on appeal. *Chaparro v. State*, 137 Nev. 665, 673-74, 497 P.3d 1187, 1195 (2021) (concluding that, because the court "rejected Chaparro's assignments of error . . . his allegation of cumulative error lacks merit").

testify to Amber's statement because the State proffered independent evidence sufficient to prove the existence of a conspiracy between Dillard and Amber.

"Hearsay" refers to out-of-court statements offered to prove the truth of the matter asserted. NRS 51.035. These statements are generally inadmissible. *Carroll v. State*, 132 Nev. 269, 276, 371 P.3d 1023, 1028 (2016). There exists, however, a well-recognized exemption to this general prohibition for coconspirator statements. NRS 51.035(3)(e); *Carroll*, 132 Nev. at 277, 371 P.3d at 1029. Namely, a statement may be admitted into evidence where the statement is made "by a coconspirator of a party during the course and in furtherance of the conspiracy." NRS 51.035(3)(e).

A conspiracy is "an agreement between two or more persons for an unlawful purpose." *Doyle v. State*, 112 Nev. 879, 894, 921 P.2d 901, 911 (1996), *overruled on other grounds by Kaczmarek v. State*, 120 Nev. 314, 91 P.3d 16 (2004). In order for the coconspirator exemption to apply, the statement's proponent must first establish the existence of a conspiracy by independent evidence that excludes the alleged coconspirator's extrajudicial statements. *Carr v. State*, 96 Nev. 238, 239, 607 P.2d 114, 116 (1980); *Goldsmith v. Sheriff of Lyon Cnty.*, 85 Nev. 295, 304-05, 454 P.2d 86, 92 (1969). The amount of independent evidence necessary to prove the conspiracy's existence may be "slight," and "the conspiracy needs to be proved only to the extent of producing prima facie evidence of the fact." *Goldsmith*, 85 Nev. at 305, 454 P.2d at 92 (internal quotation marks omitted); *McDowell v. State*, 103 Nev. 527, 529, 746 P.2d 149, 150 (1987) ("In determining the admissibility of the extra-judicial statements, the district court properly found the existence of a conspiracy by 'slight evidence' as required in Nevada.").

A “slight or prima facie showing” is one that “permit[s] [a] reasonable inference” that the conspiracy existed. *Doyle*, 112 Nev. at 892, 921 P.2d at 910 (quoting *People v. Alcala*, 685 P.2d 1126, 1136 (Cal. 1984)); see also *LaPena v. State*, 96 Nev. 43, 45, 604 P.2d 811, 812 (1980) (explaining that “independent evidence necessary to show the existence of a conspiracy need only be slight although it must be independent of the extrajudicial statements sought to be admitted” (citation omitted)), *overruled on other grounds by Funches v. State*, 113 Nev. 916, 944 P.2d 775 (1997). Crucially, “[c]onspiracy is seldom susceptible of direct proof and is usually established by inference” from the parties’ conduct. *Doyle*, 112 Nev. at 894, 921 P.2d at 911 (quoting *Gaitor v. State*, 106 Nev. 785, 790 n.1, 801 P.2d 1372, 1376 n.1 (1990)). Circumstantial evidence of “a coordinated series of acts in furtherance of the underlying offense” is often sufficient to infer the agreement’s existence. *Id.* (internal quotation marks omitted).

Here, the district court did not abuse its discretion when it permitted Alexia to testify to Amber’s statement that Dillard sent Amber to “knock” Alexia because, even without Amber’s extrajudicial statement, the State established the existence of a conspiracy between Dillard and Amber to sex traffic Alexia by slight evidence or more. From the outset, it is clear that Dillard was interested in recruiting Alexia and wanted Amber and Alexia to meet. The night Dillard and Alexia met, in an effort to demonstrate the perks that Dillard could offer Alexia, Dillard showed Alexia Amber’s escort cards. Dillard also gave Alexia Amber’s contact information, called Amber “his girl,” and was adamant that Alexia befriend Amber because Alexia “looked like a fish out of water” walking on Las Vegas Boulevard by herself.

At Denny's, the morning after their first meeting, Dillard espoused his "connections" and the ways in which he could help Alexia if Alexia were to "choose up" with him as her pimp. Tellingly, upon Alexia's persistent refusals, Dillard again pressured Alexia to contact Amber. When Alexia eventually contacted Amber and went to Amber's apartment, Dillard not only brought both women food—thereby ensuring that Alexia would not need to leave Amber's apartment—but also remained in consistent communication with Amber the entire time Alexia was present. Alexia testified that, in addition to multiple text messages, there were at least two phone calls between Amber and Dillard, and that, during the second call, Amber expressed frustration that Dillard had sent Alexia and her children to Amber's apartment.

Sergeant Hoier's expert testimony regarding pimp subculture and coded language additionally substantiated both Dillard's pimp status, as well as Alexia's claims that Dillard's intent was to recruit Alexia as his prostitute. As Sergeant Hoier explained, Dillard's use of the term "choose up" refers to "the act of a prostitute choosing a pimp" and is a term that is associated with prostitution and not legitimate escort services. Amber's actions were also consistent with being, as Sergeant Hoier testified, Dillard's "bottom." Amber answered to Dillard, and Dillard enlisted Amber to effectuate his directive to recruit Alexia after Alexia's consistent refusals.

Taken together, there was at least slight evidence to show that Dillard intended to recruit Alexia to be his prostitute, was frustrated when Alexia refused his advances, utilized Amber as his "bottom," and worked in concert with Amber in a conspiracy to induce Alexia to "be on their team" by any means necessary, including violence. Thus, as the State proved the existence of a conspiracy between Dillard and Amber by slight or greater

evidence, Amber's statement was admissible under the coconspirator rule, and the district court did not abuse its discretion by allowing Alexia to testify to that statement during her direct examination.

The district court did not abuse its discretion when it limited Dillard's cross examination of Detective Fox

Dillard argues that the district court abused its discretion, and vaguely suggests a constitutional violation, when the court did not allow him to ask Detective Fox questions on cross examination about the demographic breakdown of the suspects in her investigations. Questions about demographics, Dillard contends, would have supported his theory that he was targeted and would also have influenced the jury's perception of Detective Fox's credibility and expose her potential bias. Moreover, Dillard contends that questions about demographics were relevant because they would expose a pattern of bias in the LVMPD vice unit, and Detective Fox is a vice officer. The State responds that trial courts have wide latitude to impose reasonable limits on cross examination, and that the demographic questions were irrelevant. The State also maintains that the district court's restrictions did not limit Dillard's ability to present a complete defense because Dillard had other opportunities to impeach Detective Fox's credibility as a witness. Finally, the State argues that any error was harmless because there was overwhelming evidence of Dillard's guilt. We review a district court's evidentiary rulings for an abuse of discretion but review potential Confrontation Clause violations de novo, *Farmer v. State*, 133 Nev. 693, 702, 405 P.3d 114, 123 (2017), and in doing so we conclude that the district court did not abuse its discretion or violate Dillard's constitutional rights when it limited his cross examination of Detective Fox because Dillard did not raise targeting or entrapment as an affirmative defense, had sufficient opportunities to otherwise challenge Detective Fox's

credibility, and laid no foundation as to Detective Fox's knowledge of vice training.

NRS 50.115 grants judges "reasonable control over the mode and order of interrogating witnesses and presenting evidence." NRS 50.115(1). Specifically, judges "retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on . . . cross examination." *Farmer*, 133 Nev. at 702-03, 405 P.3d at 123 (quoting *Delaware v. Van Arsdall*, 475 U.S. 673, 679 (1986)). These permissible limits reflect concerns about harassment, prejudice, confusion of the issues, witness safety, and/or interrogation that elicits repetitive or irrelevant testimony. *Id.* at 703, 405 P.3d at 123. This "wide latitude" is not limitless, however, and district courts have "less discretion to curtail cross-examination where potential bias is at issue." *Leonard v. State*, 117 Nev. 53, 72, 17 P.3d 397, 409 (2001). Nonetheless, even inquiries that pertain to a witness's potential bias or motive to testify may be restricted when the inquiries are "repetitive, irrelevant, vague, speculative, or designed merely to harass, annoy or humiliate the witness." *Id.* (quoting *Bushnell v. State*, 95 Nev. 570, 573, 599 P.2d 1038, 1040 (1979)).

Here, we conclude that the district court's decision to restrict Dillard's cross examination of Detective Fox was a permissible exercise of its wide latitude to control the mode of interrogating witnesses. As an initial matter, Dillard explicitly waived his right to assert the affirmative entrapment defense, and the jury was instructed that law enforcement did not entrap Dillard when it sent Detective Fox to meet with him undercover. Consequently, because Dillard did not argue entrapment, the demographic questions could permissibly be used only to impeach Detective Fox's credibility and expose her potential bias, which Dillard was able to do

elsewhere on cross examination without engaging in a fishing expedition. Specifically, in response to Dillard's questions, Detective Fox testified on cross examination that many of the coded terms Dillard used in his conversations with Alexia could be interpreted harmlessly under certain circumstances. Moreover, Detective Fox admitted that she had no experience with legal escort businesses, and that most of her work focused on pimp investigations. Dillard was therefore able to sufficiently probe Detective Fox's credibility within the bounds of permissible evidence.

As to Dillard's argument that the demographic questions would expose a larger pattern of systemic bias within LVMPD's vice unit, the district court acted within its discretion when it concluded that those questions were more appropriate for an expert like Sergeant Hoier who has experience training vice officers. From the outset, Dillard did not lay a proper foundation as to Detective Fox's knowledge of vice officer training; there was no pretrial motion or hearing, and Dillard made no specific offer of proof. *See* NRS 47.040(1)(b) (error may not be predicated on the exclusion of evidence unless a substantial right is affected, and the trial court is apprised of the proposed evidence). Dillard was also subsequently permitted to question Sergeant Hoier about potentially biased vice training criteria during Sergeant Hoier's cross examination and argue the same during closing. Thus, Dillard was not prejudiced by the district court's limitations on Detective Fox's cross examination, retained his ability to present a complete defense, and does not argue on appeal that the limitations impacted the result of his trial or otherwise affected his substantial rights. *See generally* NRS 178.598 ("Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.").

Consequently, because Dillard did not raise an affirmative entrapment defense, was able to probe Detective Fox's credibility, and later had an opportunity to ask Sergeant Hoier questions about potential systemic bias within the vice training unit, the district court did not abuse its discretion when it restricted Dillard's ability to question Detective Fox about the demographics of her investigations.

The district court did not abuse its discretion when it declined to instruct the jury that pandering was a lesser included offense of sex trafficking

Dillard argues that the district court abused its discretion when it rejected an oral request for an instruction making count 2 pandering against Alexia a lesser included offense of count 1 sex trafficking against Alexia. According to Dillard, pandering should have been a lesser included offense under the elements test because the elements of pandering are identical to sex trafficking minus the violence. Dillard also argues that an instruction making pandering a lesser included offense of sex trafficking was mandatory—even if he had not requested it—as there was evidence sufficient to absolve him of sex trafficking but still support a conviction on pandering. The State counters that the language of the sex trafficking and pandering are not duplicitous; rather, sex trafficking and pandering are separate charges, and each charge is comprised of different elements required for a conviction. Additionally, the State maintains that, procedurally, Dillard should have dealt with the potential duplicitous nature of the charges in a pretrial writ petition and not during the settling of jury instructions. Finally, the State argues that any error is harmless because there was overwhelming evidence of guilt on the primary charge—sex trafficking.

The district court has broad discretion to settle jury instructions and decide evidentiary issues, and we review its decisions to give, or not give, specific jury instructions for an abuse of discretion or judicial error. *Alotaibi*

v. State, 133 Nev. 650, 652, 404 P.3d 761, 763-64 (2017). An abuse of discretion occurs if the district court's decision is arbitrary or capricious, or if it exceeds the bounds of law or reason. *Crawford*, 121 Nev. at 748, 121 P.3d at 585. We conclude that the court did not abuse its discretion when it rejected Dillard's request to instruct the jury that pandering is a lesser included offense of sex trafficking.⁵

As an initial matter, the issue is procedurally moot because the jury found Dillard guilty of the primary charge of sex trafficking. Juries are permitted to consider lesser included offenses only if either (1) the jury finds the defendant not guilty of the primary charged offense or (2) is unable to agree whether to acquit or convict on that charge. *Green v. State*, 119 Nev. 542, 548, 80 P.3d 93, 97 (2003). Here, on count 1 sex trafficking, the primary charge, the jury unanimously found Dillard guilty. Consequently, even if the district court instructed the jury that pandering was a lesser included offense of count 1, the jury would not have been able to consider it, so the issue is moot. Dillard provides no authority to the contrary, and we therefore need not consider the issue on appeal. *See Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (explaining that this court need not consider an appellant's argument that is not cogently argued or lacks the support of relevant authority).

Regardless, even on the merits, any error is harmless because the district court convicted and sentenced Dillard based solely on count 1 sex trafficking against Alexia and count 3 pandering against VUCE 4. *See*

⁵To the extent that Dillard argues that count 1 and count 2 should have been merged at trial, his argument was non-cogent, and we therefore do not consider it. *See Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3,6 (1987) (rejecting an appellant's argument because it lacked the support of relevant authority).

Schoels v. State, 115 Nev. 33, 35, 975 P.2d 1275, 1276 (1999) (noting that an error is harmless if, in absence of the error, the outcome would have been the same). The record is unclear as to why the court dismissed count 2 pandering against Alexia—the court stated only that its decision to proceed with sentencing on count 1 and count 3 was based on “prior motion.” It appears that the court treated count 2 as a mutually exclusive alternative to count 1 and sentenced Dillard based only on the greater offense. At any rate, the dismissed pandering charge against Alexia would have been the lesser included offense Dillard was seeking, as there was no sex trafficking charge against VUCE 4 in which pandering could have been included as a lesser offense. Thus, because the district court dismissed and did not sentence Dillard based on the disputed pandering charge, the alleged error is harmless. Dillard does not suggest otherwise.

Accordingly, the district court did not abuse its discretion or commit judicial error when it declined to instruct the jury that pandering was a lesser included offense of count 1 sex trafficking.

The State’s evidence was sufficient to sustain Dillard’s conviction of sex trafficking

Dillard argues that the State failed to establish that he was guilty of sex trafficking beyond a reasonable doubt. Specifically, Dillard challenges the sufficiency of the evidence and contends that the only evidence fulfilling sex trafficking’s “violence” requirement was Amber’s inadmissible hearsay statement that Dillard sent Amber to “knock” Alexia. The State responds that the standard of review for evaluating sufficiency on appeal is lenient, Amber’s statement was admissible under the coconspirator hearsay exception, Alexia was a credible witness, Sergeant Hoier’s testimony corroborated Dillard’s attempts to sex traffic Alexia, and there was ample circumstantial evidence sufficient to sustain Dillard’s conviction. We

conclude that the evidence was sufficient to establish that Dillard was guilty of sex trafficking beyond a reasonable doubt.

In criminal cases, the standard of review for sufficiency of evidence on appeal is whether the jury, acting reasonably, “could have been convinced of the defendant’s guilt beyond a reasonable doubt.” *Doyle*, 112 Nev. at 891, 921 P.2d at 910; *Mason v. State*, 118 Nev. 554, 559, 51 P.3d 521, 524 (2002) (“The question for the reviewing court is ‘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.’” (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979))). To that end, it is the jury’s function, and not the reviewing court’s role, “to assess the weight of the evidence and determine the credibility of witnesses.” *Doyle*, 112 Nev. at 891-92, 921 P.2d at 910. We will therefore not disturb the jury’s verdict on appeal where substantial evidence supports the verdict. *Mason*, 118 Nev. at 559, 51 P.3d at 524.

The sufficiency issue in this case concerns only sex trafficking. As charged, there were three theories of liability from which the jury could find Dillard guilty, and the jurors did not need to agree on the underlying theory of liability, so long as they unanimously found Dillard guilty beyond a reasonable doubt. *See Crawford*, 121 Nev. at 750, 121 P.3d at 586 (holding that “the jury need not unanimously agree on a single theory of the [crime charged].”). Specifically, the district court instructed the jury that, as to sex trafficking, the amended indictment stated,

Defendant did willfully, unlawfully and feloniously induce, cause, compel or procure [Alexia] to engage in prostitution by threats, violence, force, intimidation, fraud, duress, or coercion; Defendant being liable under one or more of the following principles of criminal liability: (1) by Defendant

directly performing such acts; and/or (2) by Defendant acting with AMBER STONE and/or others unknown pursuant to a *conspiracy* with AMBER STONE and/or others in performing such acts; and/or (3) by Defendant and AMBER STONE and/or others unknown *aiding and abetting* each other by counseling, encouraging, inducing or otherwise procuring each other to commit such acts.

(Emphases added.) The jury was further instructed that a conspiracy is

an agreement between two or more persons for an unlawful purpose. To be guilty of conspiring to commit a crime, a defendant must intend to commit the specific crime agreed to. The crime is the agreement to do something unlawful

Mere knowledge or approval of, or acquiescence in, the object and purpose of a conspiracy without an agreement to cooperate in achieving such object or purpose does not make one a party to a conspiracy. Conspiracy . . . is usually established by inference from the conduct of the parties. In particular, a conspiracy may be supported by a coordinated series of acts, in furtherance of the underlying offense, sufficient to infer the existence of an agreement.

The instructions defined “aiding and abetting” as follows:

A person aids and abets the commission of a crime if he knowingly and with criminal intent aids, promotes, encourages or instigates by act or advice . . . the commission of such crime with the intention that the crime be committed.

With these instructions in mind, as well as the State’s admitted evidence, we conclude that the jury’s verdict finding Dillard guilty of sex trafficking is supported by substantial evidence and should not be disturbed.

The evidence supports a conclusion that, from the beginning of Dillard’s relationship with Alexia, he saw her as a potential recruit and wanted her to work as his prostitute. Dillard bragged to Alexia about being

one of the first convicted pimps in Las Vegas and had, in fact, been previously convicted of sex trafficking; used language like “choose up” and “the game”; espoused his “connections”; expressed that he would help Alexia with her taxes, housing, and cars; and showed Alexia the cards and websites he would create on her behalf to promote her services. Perhaps most importantly, Alexia testified that Dillard stated his promoter gig was a “cover-up,” and that he was “really a pimp,” which renders his insistence that Alexia reach out to Amber further evidence of sex trafficking. Dillard was not only adamant that Alexia meet with Amber, but he also facilitated Amber’s and Alexia’s continued interaction at Amber’s apartment once Alexia finally made contact. Dillard brought Amber and Alexia food—thereby ensuring that Alexia did not need to leave—and remained in communication with both Amber and Alexia via text and phone calls the entire time Alexia was at Amber’s apartment.

Both Dillard’s and Amber’s behavior towards Alexia also reflected the beginning stages of the prostitute grooming process to which Sergeant Hoier testified. Specifically, Dillard (1) identified Alexia as a potential target when he saw her walking alone and singled her out; (2) built trust with Alexia by communicating with her and identifying her needs; and (3) created the illusion that he was uniquely suited to fulfill those needs and could connect Alexia with people who would help her with taxes and living arrangements. In explaining the grooming process, Sergeant Hoier also testified that a pimp’s “bottom” plays an important role, and Amber—Dillard’s bottom—certainly played a role here. Amber not only opened her home to Alexia and bonded with Alexia at Dillard’s request but also remained in contact with Dillard while Alexia was staying with her. Amber’s sudden animosity towards Alexia is also consistent with Sergeant Hoier’s theory of

“intermittent reinforcement,” which occurs in the fourth stage of the grooming process.

Thus, in contrast to Dillard’s assertion that the only evidence supporting the State’s conspiracy theory of sex trafficking was Amber’s statement to Alexia, multiple factors supported the State’s theory that Amber and Dillard acted in concert to induce Alexia to engage in prostitution. Amber’s statement that Dillard sent her to “knock” Alexia simply underscores the State’s already robust body of evidence. In the same vein, the State’s evidence also tended to show that Dillard aided and abetted Amber in sex trafficking Alexia. Specifically, Dillard instigated and encouraged Amber and Alexia’s relationship and advised Amber to knock Alexia with the intention that, by knocking Alexia, Alexia would agree to work with Dillard as his prostitute.

With the foregoing evidence, a reasonable jury could find that Dillard was guilty of sex trafficking Alexia. Accordingly, the State’s evidence was sufficient to establish Dillard’s guilt as to count 1 sex trafficking beyond a reasonable doubt.

The district court did not err when it did not order Parole and Probation to correct Dillard’s PSI

Dillard argues that the district court erred when it did not continue the sentencing and order P and P to correct clerical errors in his PSI. Specifically, on appeal, Dillard notes that the PSI makes it appear that he faced two counts of sex trafficking and three counts of pandering in the instant offense, as opposed to one count of sex trafficking and two counts of pandering.⁶ Dillard also contends that the PSI inaccurately states that this

⁶Upon review, we find that the PSI incorrectly states both the number of charges, as well as the type of consolidated charge. However, in contrast

erroneous additional sex trafficking charge was presented as a consolidated offense when, in reality, the consolidated offense was the second pandering charge. These inaccuracies, Dillard maintains, may negatively impact his future parole eligibility. The State responds that the court did not err when it declined to continue sentencing and instruct P and P to correct the PSI's errors because the court sentenced Dillard based on accurate information, the court proceeded with sentencing on the correct charges, defendants cannot object to errors in the PSI after sentencing, and Dillard did not object at sentencing to any of the errors he now alleges on appeal.

We review decisions regarding a motion for a continuance, as well as decisions regarding corrections to a PSI, for an abuse of discretion. *Higgs v. State*, 126 Nev. 1, 9, 222 P.3d 648, 653 (2010) (addressing a motion for a continuance); *Blankenship v. State*, 132 Nev. 500, 503-04, 375 P.3d 407, 409 (2016) (addressing a PSI recommendation error). We conclude that Dillard forfeited this argument because he did not properly preserve it. Further, Dillard was not prejudiced by the inaccuracies because the district court proceeded with sentencing based on the accurate charges and conveyed its understanding of the concerns Dillard raised during the sentencing hearing. There is also no indication that Dillard utilized the statutory amendment period to correct the clerical errors.

Procedurally, Dillard did not properly preserve his argument because he objected to the PSI on grounds different from those he now raises on appeal. *See Grey v. State*, 124 Nev. 110, 120, 178 P.3d 154, 161 (2008)

to Dillard's assertion that the PSI makes it appear that he was facing *two* counts of sex trafficking and *three* counts of pandering, the PSI actually reflects *four* counts of pandering and *one* count of sex trafficking. This is still an inaccurate representation of Dillard's charges in the instant offense, but this discrepancy does not impact our analysis or conclusion.

(recognizing that, in order to properly preserve an objection, a defendant must object to the same grounds he asserts on appeal). Specifically, at the sentencing hearing, Dillard expressed two concerns regarding the PSI. First, he stated that the PSI inaccurately conveyed that he did not give a statement to P and P, even though he had made and signed a written statement. Second, he contended that the PSI improperly characterized his drinking history as “minor” when it should have stated “major.” In response, the district court stated that it had received and reviewed all of Dillard’s submitted materials, and that the alleged inaccuracies did not necessitate a continuance to amend them. The district court also noted that Dillard would have an opportunity to fully express himself during the hearing, and that it would proceed with sentencing based on the accurate charges—count 1 sex trafficking and count 3 pandering. At no point did Dillard mention either the inaccurate charges for the instant offense or the misstated consolidated charge, which are the specific clerical errors he now raises on appeal. Consequently, Dillard forfeited his argument because he did not properly preserve it and does not argue plain error on appeal. *See Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48 (2018) (noting that the failure to preserve an error forfeits the right to assert that error on appeal, but that plain error can be considered).

Even on the merits, there is no basis for relief because the district court sentenced Dillard based on the accurate charges, and the errors or omissions were immaterial. NRS 176.135 mandates that P and P prepare a PSI for the district court to use at sentencing for any defendant who pleads guilty or is adjudicated guilty of a felony. NRS 176.135(1). The PSI contains information about the defendant’s prior criminal record, as well as the defendant’s life circumstances that may have impacted the defendant’s

behavior and contributed to the defendant committing the offense. NRS 176.145(1). The PSI also describes the offense's impact on the victim. *Id.*

As the PSI is of high importance, it "must not include information based on 'impalpable or highly suspect evidence.'" *Stockmeier v. State, Bd. of Parole Comm'rs*, 127 Nev. 243, 248, 255 P.3d 209, 213 (2011) (quoting *Goodson v. State*, 98 Nev. 493, 495-96, 654 P.2d 1006, 1007 (1982)). However, a defendant must generally contest any factual errors in the PSI at the time of sentencing. *Id.* at 249-50, 255 P.3d at 213-14. In 2017, the Nevada Legislature introduced an exception that made it possible for courts to order P and P to correct inaccuracies in the PSI under certain conditions. Specifically, in order to amend the PSI post-sentencing, both the prosecuting attorney and the defendant must stipulate to correcting the PSI's contents within 180 days after the district court enters the judgment of conviction. *See* NRS 176.156(1).

Regardless of timing, alleged factual inaccuracies in a PSI do not warrant relief if the inaccuracies do not impact the defendant's sentence. *Stockmeier*, 127 Nev. at 250 n.6, 255 P.3d at 214 n.6 (explaining that "this court generally will not grant relief to a defendant with regard to an alleged factual inaccuracy in the PSI that did not affect the defendant's sentence"). For errors that do not impact the defendant's sentence, there exists, however, a narrow exception for "materially prejudicial" inaccuracies. *Id.* An inaccuracy is materially prejudicial if it has the potential to impact "the defendant's prison classification or parole eligibility." *Id.*




Here, the district court did not err by refusing to order P and P to correct the clerical errors in Dillard's PSI because Dillard did not raise these specific clerical errors presentencing, and the record does not reflect that Dillard attempted to utilize the statutory postsentencing amendment

period. Moreover, the errors did not impact Dillard's sentence, as evidenced by the district court twice clarifying for the record that it would proceed on sentencing Dillard based on the accurate charges: count 1 sex trafficking and count 3 pandering. The court also emphasized that it had reviewed the supplemental information Dillard submitted regarding his personal circumstances. Finally, Dillard's concern that the errors may negatively impact his future parole eligibility are unpersuasive because he has access to the amended indictment, charging documents, and judgment of conviction, all of which accurately reflect both the charges he originally faced, as well as the charges of which he was ultimately convicted. If necessary, Dillard can present these documents to the Board of Parole Commissioners.

Consequently, we conclude that Dillard forfeited the specific issues he raises for the first time on appeal, and the district court did not abuse its discretion when it declined to continue the sentencing and order P and P to correct clerical errors.

Accordingly, we

ORDER the judgment of conviction AFFIRMED.⁷

	 _____, C.J.
	Gibbons
 _____, J.	 _____, J.
Bulla	Westbrook

⁷Insofar as Dillard has raised arguments that are not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.

cc: Hon. Kathleen E. Delaney, District Judge
SDS Chartered, LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk