

IN THE SUPREME COURT OF THE STATE OF NEVADA

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Elizabeth A. Brown
Clerk of Supreme Court

MICHAEL MANZANO RODEROS,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

Docket No. 83785

Appeal from a Judgment of Conviction
Following a Jury Trial and Verdict
Eighth Judicial District Court, Clark County
The Honorable Michelle Leavitt, District Judge
Case No. C-19-343096-1

APPELLANT'S OPENING BRIEF

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed pursuant to that rule. These representations are made so that the justices of this Court may evaluate any potential conflicts warranting disqualification or recusal.

1. Attorney of Record for Appellant:
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2. Publicly-held Companies Associated:
 - a. N/A
3. Law Firm(s) Appearing in the Court(s) Below:
 - a. Clark County District Attorney
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DATED this 7 of February, 2022.

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JURISDICTIONAL STATEMENT

This is an appeal from a verdict following a jury trial held before the Honorable Michelle Leavitt in the Eighth Judicial District Court and the subsequent Judgment of Conviction. (2 Appellant's Appendix [AA] 151–52, 163–67.) This Court has jurisdiction pursuant to NRS 177.015 (3), which provides for the defendant's right to appeal a final judgment in a criminal case.

ROUTING STATEMENT

This appeal is presumptively retained by the Supreme Court because it relates to convictions for, *inter alia*, category B felonies. NRAP 17(b)(2)(A).

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

The State improperly vouched for its complaining witness Samantha Roderos during her testimony. (2 AA 33:17–24.)

The State introduced during testimony improper character evidence, which is to say, evidence that Mr. Roderos was fired from his job for the instant conduct. (*Id.* at 36:14–21.)

The district court erred in limiting Mr. Roderos's right to present a defense vis-à-vis inconsistent statements by his daughter alleging he hit her with his left vs. his right hand. (2 AA 78:3–79:8.)

There was insufficient evidence adduced at trial to support the convictions.

Lastly, the doctrine of cumulative error requires reversal in this case.

STATEMENT OF FACTS

The facts that follow are those presented by the State at trial. Defendant Michael Roderos and Samantha Roderos are husband and wife. (2 AA 16:3–18:15.) They met at work, and have one son together, Sabrien. (*Id.* at 18:17–19:14.) They lived together at 594 Campus Oaks Court in Las Vegas, Clark County, Nevada. (*Id.* at 19:15–22.) Mr. Roderos’s teenage daughter, Noelani, came to live with them. (*Id.* at 19:25–20:7, 22:21–22, 45:13–47:9.)

On August 18, 2019, Mrs. Roderos and Noelani had returned home from a K-Pop convention in Los Angeles, California. (*Id.* at 22:9–23:22, 49:6–24.) On their return, Mr. Roderos was intoxicated, and he and Mrs. Roderos began to argue. (*Id.* at 23:23–24:15, 49:25–51:5.) At some point Noelani became involved in the argument. (*Id.* at 24:18–25:16, 51:6–11.) Mr. Roderos began to act threatening to Noelani. (*Id.* at 25:21–26:22, 51:12–18.) Mrs. Roderos stepped between Mr. Roderos and his daughter, and then the two adults began to struggle. (*Id.* at 27:2–17, 41:17–42:2, 53:2–16.)

The fight broke up; Mrs. Roderos began to pack up the children to leave for the night when she heard a bang and a scream and then saw Noelani with a black eye. (*Id.* at 28:2–29:9.) Mr. Roderos had backhanded Noelani twice, breaking her glasses. (*Id.* at 55:8–25.) Mr. Roderos tried to take the packed bags away from Mrs. Roderos, and in the confusion Sabien was knocked

over. (*Id.* at 31:23–32:10.) Mr. Roderos tried to keep Mrs. Roderos from leaving with the children. (*Id.* at 32:23–33:21, 58:15–59:6.) Eventually, the father of one of Noelani’s friends arrived, and Mrs. Roderos put Noelani into his car before leaving herself with Sabrien. (*Id.* at 33:25–34:21, 60:25–61:4.) Noelani and her friend’s father called police. (*Id.* at 61:5–11.) Police later contacted Mrs. Roderos for a statement. (*Id.* at 35:17–24.) Mr. Roderos was later arrested at work. (*Id.* at 84:8–85:8.)

When Mr. Roderos testified, he indicated that he never touched Noelani when they argued. (*Id.* at 96:6–14, 98:25–99:19.) Instead, Mrs. Roderos grabbed his wrist, and he pulled away. (*Id.* at 100:20–101:10.) He then took Noelani’s glasses off of her face. (*Id.* at 101:11–23.)

STATEMENT OF THE CASE

On June 16, 2016, the State of Nevada filed a Criminal Complaint in Las Vegas Justice Court case number 19F17159X charging Michael Roderos with: child abuse, neglect, or endangerment; and battery constituting domestic violence. (1 AA 1–2.) Mr. Roderos waived his right to a preliminary hearing, and the court bound the matter over to the Eighth Judicial District Court. (*Id.* at 4:7–8:19.) The State filed an Information on September 12, 2019, charging Mr. Roderos with coercion and battery constituting domestic

violence. (*Id.* at 11:9–12:9.) The State filed an Amended Information on September 23, 2019, charging Mr. Roderos with child abuse, neglect, or endangerment, and battery constituting domestic violence. (*Id.* at 13:9–14:9.) On June 2, 2020, the State filed a Second Amended Information adding a charge of coercion constituting domestic violence. (*Id.* at 15:9–16:21.)

Trial commenced before Judge Michelle Leavitt on August 10, 2021. (*Id.* at 17.) On August 12, 2021, the jury returned verdicts of guilty on all charges. (2 AA 147:4–148:4, 151–52.) On November 28, 2021, Judge Mary Kay Holthus sentenced Mr. Roderos to (1) 28 to 72 months; (2) credit for time served; and (3) 28 to 72 months, consecutive to 1; or an aggregate sentence of 56 to 144 months, suspended for not more than 60 months. (*Id.* at 160:6–161:24, 163:28–164:6.)

Mr. Roderos’s Judgment of Conviction issued on November 5, 2021. (*Id.* at 163.) Mr. Roderos filed a timely notice of appeal on November 10, 2021. (*Id.* at 168.) This appeal follows.

SUMMARY OF THE ARGUMENT

The State improperly vouched for its complaining witness Samantha Roderos during her testimony. This improper vouching constituted a constitutional error requiring reversal. (2 AA 33:17–24.)

The State introduced during testimony improper character evidence, which is to say, evidence that Mr. Roderos was fired from his job for the instant conduct. (*Id.* at 36:14–21.) This testimony was adduced without the benefit of a hearing pursuant to *Petrocelli v. State*, and therefore should not have been admitted.

The district court erred in limiting Mr. Roderos’s right to present a defense vis-à-vis inconsistent statements by his daughter alleging he hit her with his left vs. his right hand. (2 AA 78:3–79:8.)

Ultimately, there was insufficient evidence adduced at trial to support the convictions, and the State’s case rests only on the unstable foundation of improper witness vouching, character evidence, and the district court’s own limitation of Mr. Roderos’s right to present a defense. Lastly, the doctrine of cumulative error requires reversal in this case.

ARGUMENT ON THE ISSUES

I. The Prosecutor Improperly Vouched for the Complaining Witness’s Testimony.

During rebuttal argument, the State improperly vouched for the complaining witness’s testimony. This constituted prosecutorial misconduct that unduly prejudiced Mr. Roderos in the eyes of the jury and warrant reversal as violations of Mr. Roderos’s Fifth and Fourteenth Amendment right to due

process and Sixth and Fourteenth Amendment right to trial by an impartial jury.

When analyzing a claim of prosecutorial misconduct, the question a reviewing court must ask is whether a remark “so infected the trial with unfairness as to make the resulting conviction a denial of due process.” *Donnelly v. DeChristoforo*, 416 U.S. 637, 643 (1974). This Court has set forth a two-step analysis: (1) was the conduct improper, and (2) does the improper conduct warrant reversal. *Valdez v. State*, 124 Nev. 1172, 1190, 196 P.3d 465, 476–77 (2008). This Court has held that plain or constitutional errors are subject to review even absent a contemporaneous objection. *See, e.g. Bradley v. Romeo*, 102 Nev. 103, 105, 716 P.2d 227, 228 (1986); *McCullough v. State*, 99 Nev. 72, 74, 657 P.2d 1157, 1158 (1983).

During the testimony of complaining witness Mrs. Roderos, the prosecutor improperly vouched for her testimony. The relevant passage from the transcript follows:

Q Okay. So was there pushing involved?

A Yeah.

Q And Michael pushing Noelani?

A Yeah.

Q All right. As he was trying to get the bags
from her?

A Yeah.

Q Okay. Is that a “yes”?

A Yes, I’m sorry.

Q Perfect. Nah, you’re – you’re – how much sleep are you going off of right now?

A About two hours.

Q Two hours’ sleep, okay.

A Yeah.

Q You’re doing great. . . .

(2 AA 33:11–24.)

It is improper for a prosecutor to vouch for his or her witnesses. *United States v. Sanchez*, 176 F.3d 1214, 1224 (9th Cir. 1999). Here, the prosecutor’s statements served to tip the scales in the State’s favor; the State had not presented sufficient evidence, and so it needed to rely on unduly prejudicial and unconstitutional statements to obtain a conviction. For this reason, the jury verdict is infirm and must be overturned.

II. The State Elicited Character Evidence at Trial, Warranting Reversal.

At trial, Mrs. Roderos testified that Mr. Roderos lost his job as a result of this offense. (2 AA 36:14–21.) This testimony constituted inadmissible character evidence, warranting reversal.

To render admissible other bad acts pursuant to NRS 48.045, a district court must first hold a hearing at which the State must establish the bad acts by clear and convincing evidence and demonstrate that the evidence is relevant and not unduly prejudicial. *Petrocelli v. State*, 101 Nev. 46, 51–52, 692 P.2d 503, 507–08 (1985); *Tinch v. State*, 113 Nev. 1170, 1176, 945 P.2d 1061, 1064–65 (1997); see also *Bigpond v. State*, 128 Nev. 108, 116–17, 270 P.3d 1244, 1249–50 (2012). A “presumption of inadmissibility attaches to all prior bad act evidence.” *Bigpond*, 128 Nev. at 116, 270 P.3d at 1249 (quoting *Rosky v. State*, 121 Nev. 184, 195, 111 P.3d 690, 697 (2005)). To overcome that presumption, the State must request a *Petrocelli* hearing and demonstrate: (1) the prior bad act is relevant to the crime charged for reasons other than propensity; (2) by clear and convincing evidence that the act occurred; and (3) the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice. *Bigpond*, 128 Nev. at 117, 270 P.3d at 1250. This Court has held that plain or constitutional errors are subject to review even absent a contemporaneous objection. See, e.g. *Bradley v. Romeo*, 102 Nev. 103, 105, 716 P.2d 227, 228 (1986); *McCullough v. State*, 99 Nev. 72, 74, 657 P.2d 1157, 1158 (1983).

A *Petrocelli* hearing was not held in this case. Instead, the State elicited this testimony during trial, when the defense was unprepared for that evidence to come out. Considering the scant evidence presented to the jury, *see infra* section IV, the prejudicial effect of this evidence cannot be overstated. For that reason, Mr. Roderos would ask this Court to reverse his conviction and vacate his sentence.

III. The District Court Improperly Limited Mr. Roderos's Right to Present a Defense.

During trial, counsel sought to elicit testimony regarding whether Mr. Roderos hit Noelani with his left or right hand:

Q And Noelani said that – told you that Michael Roderos had hit her?

A I believe he – she said that he slapped her, pushed her, and then tried to drag her down the stairs.

Q Okay. So in the incident where she said that he tried to slap her, did she say with what hand?

A I believe she said with his left hand, I believe.

Q Would reviewing your report refresh your recollection?

A It would.

. . . .

Q So did Noelani indicate that he had used his left hand or right hand to –

MR. KERN: May we approach, Your Honor?

THE COURT: Sure.

....

(2 AA 77:2–78:5.) The State then objected on hearsay grounds, which the district court sustained. (*Id.* at 78:7–79:8.)

The rules of evidence, codified in Title 4 of the Nevada Revised Statutes, govern the admission of evidence at trial: generally, courts must admit evidence that is relevant unless one of those rules indicates otherwise. NRS 48.025. NRS 48.035 provides that a district court must balance the probative value of otherwise-admissible evidence against its risk of unduly prejudicing the opposing party.

As a counterpoint to the rules of evidence, which generally serve to exclude certain types of evidence, it is one of the defining characteristics of the American system of justice that a criminal defendant is given a meaningful opportunity to present a complete defense. *Holmes v. South Carolina*, 547 U.S. 319, 324 (2006) (quoting *Crane v. Kentucky*, 476 U.S. 683, 690 (1986)); *Hoagland v. State*, 126 Nev. 381, 386, 240 P.3d 1043, 1047 (2010) (quoting *California v. Trombetta*, 467 U.S. 479, 485 (1984)). A defendant may present

his or her version of the facts, and present evidence that might influence the jury in their deliberations. *Pennsylvania v. Ritchie*, 480 U.S. 39, 56 (1987); *Chambers v. Mississippi*, 410 U.S. 284, 294 (1973); *Washington v. Texas*, 388 U.S. 14, 19 (1967).

The district court's decision effectively prevented Mr. Roderos from raising his defense: that Noelani had lied when she said he backhanded her with his left hand. Had he been given the opportunity to present these opinions, the jury likely would not have convicted Mr. Roderos of these offenses. For these reasons, Mr. Roderos would submit that the district court erred when it limited his right to present a defense, and asks this Court to reverse his convictions and sentence.

IV. The Evidence Adduced at Trial was Insufficient to Sustain a Finding of Guilty.

A defendant in a criminal action is entitled to due process of law as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution. The Constitution prohibits the criminal conviction of any person except upon proof of guilt beyond a reasonable doubt. *In re Winship*, 397 U.S. 358, 364 (1970); *Edwards v. State*, 90 Nev. 255, 258–59, 524 P.2d 328, 331 (1974). In reviewing an insufficiency of the evidence claim, a court must determine whether, viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could find the essential elements of the

crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). A verdict will be upheld only if supported by “substantial evidence.” *Cunningham v. State*, 94 Nev. 128, 130, 575 P.2d 936, 937 (1978). The burden in a criminal case is always on the prosecution to prove that the accused has committed an act in violation of a criminal statute. *See, e.g., Johnson v. Florida*, 391 U.S. 596, 598 (1968).

Nevada Revised Statute 200.508(1) prohibits the willful causing of a child under 18 to suffer unjustifiable physical pain or mental suffering as a result of abuse or neglect. The State presented a “he-said, she-said” case where the only evidence that the amazingly fast-forming bruise came from Mr. Roderos’s blow to the face. Common sense will indicate that such a bruise could only have been several days old, and must have been acquired while Noelani was out of town. (*See* 2 AA 22:9–23:22, 28:2–29:9, 49:6–24.) The State could not and did not prove beyond a reasonable doubt that Mr. Roderos’s acts caused that bruise, or that he struck Noelani at all. (*See id.* at 101:11–23.)

Similarly, the evidence showed with regard to the battery constituting domestic violence charge that Mr. Roderos was only defending himself from an attack from Mrs. Roderos. (*Id.* at 100:20–101:10.) Because battery requires “any willful and unlawful use of force or violence,” *see* NRS

200.481(1)(a), and Mr. Roderos was simply defending himself, *see Davis v. State*, 130 Nev. 136, 141, 321 P.3d 867, 871 (2014), this charge was not supported by substantial evidence.

Lastly, the evidence did not support the charge of coercion constituting domestic violence. Felony coercion requires that a defendant “with the intent to compel another to do or abstain from doing an act which the other person has the right to do or abstain from doing” use physical force or the threat thereof. *See* NRS 107.190. Mr. Roderos was merely attempting to prevent his daughter from leaving with an unknown man, an act that does not fall within the statute. *See id.*

For those reasons, Mr. Roderos submits that the jury’s verdict is untenable based on the dearth of substantial evidence.

V. Cumulative Error Warrants Reversal in this Case.

The above enumerated errors individually served to deprive Mr. Roderos of his constitutional rights at trial; collectively, they mandate reversal.

The cumulative effect of errors in a trial may violate a defendant’s right to a fair trial even if the errors are harmless individually. *Hernandez v. State*, 118 Nev. 513, 535, 50 P.3d 1100, 1115 (2002). The Court must consider (1) whether the issue of guilt is close; (2) the quantity and character of the errors;

and (3) the gravity of the crime charged. *Mulder v. State*, 116 Nev. 1, 17, 992 P.2d 845, 854–55 (2000).

Here, the issue of guilt was close, as Mr. Roderos offered a competing and compelling version of events. *See* section IV *supra*. Mr. Roderos has put forth four assignments of error, each reversible in and of themselves. And one cannot argue against the gravity of the crimes charged in this case, including two category B felonies.

These errors are severe enough to warrant reversal, even if individually they do not rise to reversible error. For that reason, this Court should vacate the underlying convictions and sentences.

CONCLUSION

For these reasons, Mr. Roderos would ask this Court to reverse and vacate the verdict and sentence of the lower court.

DATED this 7 of February, 2022.

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ATTORNEY’S CERTIFICATE OF COMPLIANCE

I certify that I have read this brief and, to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I certify that this brief is typed in 14-point Georgia font using Microsoft Word for Windows 10, is 21 pages and 3695 words long, and complies with the typeface and -style requirements of NRAP 32(a)(4)-(6), as well as the page length requirements of NRAP 32(a)(7)(A). I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure and/or subsequent orders of this Court and with NRAP 28(e), which requires every assertion in the brief regarding matters in the record be supported by a reference to a page of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 7 of February, 2022.

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CERTIFICATE OF SERVICE

I hereby certify that on the 7 of February, 2022, I served this document on the following via the eFlex system:

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AFFIRMATION

Pursuant to NRS 239B.030, this document contains no social security numbers.

/s/ Leslie Park

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2-7-22

Date