

2019 JAN 22 AM 10:49

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

PEDRO PABLO NAVARRO,

Appellant.

DIVISION ONE

No. 77354-2-1

UNPUBLISHED OPINION

FILED: January 22, 2019

DWYER, J. — Following a jury trial, Pedro Pablo Navarro was convicted on eight counts of communication with a minor for immoral purposes and on two counts of extortion with sexual motivation. In this, his third appeal, Navarro avers that the trial court committed reversible error when it denied his motion for a continuance and for further reasons set forth in a statement of additional grounds. We disagree with all of Navarro’s contentions and affirm the trial court.

I

The facts giving rise to Navarro’s conviction are set forth in State v. Navarro, 188 Wn. App. 550, 552-53, 354 P.3d 22 (2015). In that opinion, we rejected Navarro’s challenges to the imposition and term of sexual assault protection orders and no-contact orders, to his waiver of the right to proceed pro se, and his further arguments advanced in a statement of additional grounds. Navarro, 188 Wn. App. at 553-58. However, we remanded to the trial court to correct errors in the judgment and sentence. Navarro, 188 Wn. App. at 558-59.

Upon resentencing, the trial court erroneously added six months to Navarro's sentence; Navarro again appealed and we reversed and remanded for correction of that error. Before the trial court on the second remand, Navarro requested a continuance for the purpose of preparing a challenge to the sufficiency of the State's evidence that his crimes of extortion were committed with sexual motivation. The trial court denied Navarro's request, opining that it did not have discretion to decide any issues outside of this court's mandate. Navarro appeals from this denial.

II

The State concedes that the trial court's reasoning in denying Navarro's request was mistaken. Nevertheless, the State argues that reversal is not warranted because Navarro cannot show any prejudice resulting from the denial. We agree and affirm.

"[T]he decision to grant or deny a motion for a continuance rests within the sound discretion of the trial court." State v. Downing, 151 Wn.2d 265, 272, 87 P.3d 1169 (2004) (citing State v. Miles, 77 Wn.2d 593, 597, 464 P.2d 723 (1970)). Thus, we review a trial court's decision to deny a motion for a continuance under an abuse of discretion standard. Downing, 151 Wn.2d at 272 (citing State v. Hurd, 127 Wn.2d 592, 594, 902 P.2d 651 (1995); Skagit Ry. & Lumber Co. v. Cole, 2 Wash. 57, 62, 65, 25 P. 1077 (1891)). We will not disturb the trial court's decision unless the appellant "makes 'a clear showing . . . [that the trial court's] discretion [is] manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.'" Downing, 151 Wn.2d at 272-73

(alterations in original) (quoting State ex rel. Carroll v. Junker, 79 Wn.2d 12, 26, 482 P.2d 775 (1971)).

Moreover, “even where the denial of a motion for continuance is alleged to have deprived a criminal defendant of his or her constitutional right to compulsory process, the decision to deny a continuance will be reversed only on a showing that the accused was prejudiced by the denial and/or that the result of the trial would likely have been different had the continuance not been denied.” State v. Tatum, 74 Wn. App. 81, 86, 871 P.2d 1123 (1994) (citing State v. Eller, 84 Wn.2d 90, 95-96, 524 P.2d 242 (1974)).

As our Supreme Court has noted, “there are no mechanical tests for deciding when the denial of a continuance violates due process, inhibits a defense, or conceivably projects a different result; and, that the answer must be found in the circumstances present in the particular case.” Eller, 84 Wn.2d at 96 (citing State v. Cadena, 74 Wn.2d 185, 443 P.2d 826 (1968)). “In exercising discretion to grant or deny a continuance, trial courts may consider many factors, including surprise, diligence, redundancy, due process, materiality, and maintenance of ordinary procedure.” Downing, 151 Wn.2d at 273 (citing Eller, 84 Wn.2d at 95; RCW 10.46.080; CrR 3.3(f)). Additionally, good faith is an essential component of an application for a continuance. State v. Edwards, 68 Wn.2d 246, 258, 412 P.2d 747 (1966). “If it is manifest that the request for recess or continuance is designed to delay, harry, or obstruct the orderly process of the trial, or to take the prosecution by surprise, then the court can justifiably in the exercise of its discretion deny it.” Edwards, 68 Wn.2d at 258.

In the present case, the trial court's decision to deny Navarro's motion for continuance was made on untenable grounds, which the State concedes. However, to warrant reversal Navarro must show that he was prejudiced thereby or that, but for the denial, the outcome of the proceeding would have been different. This he has not done.

The due process clauses of the federal and state constitutions require that the State prove every element of a crime beyond a reasonable doubt. Apprendi v. New Jersey, 530 U.S. 466, 476-77, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000); U.S. CONST. amend. XIV, § 1; WASH. CONST. art. 1, § 3. "[T]he critical inquiry on review of the sufficiency of the evidence to support a criminal conviction must be . . . to determine whether the record evidence could reasonably support a finding of guilt beyond a reasonable doubt." Jackson v. Virginia, 443 U.S. 307, 318, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979). "[T]he relevant question 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." Jackson, 443 U.S. at 319 (emphasis in original).

"A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom." State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). "In determining the sufficiency of the evidence, circumstantial evidence is not to be considered any less reliable than direct evidence." State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). "Deference must be given to the trier of fact who resolves conflicting testimony and evaluates the credibility of witnesses and persuasiveness of material

evidence.” State v. Carver, 113 Wn.2d 591, 604, 781 P.2d 1308, 789 P.2d 306 (1989).

The evidence herein plainly shows that Navarro committed the crime of extortion with sexual motivation. Navarro acted with the expressed purpose of convincing children to send him sexually explicit photographs and, eventually, to engage with him in sexual contact. The counts of extortion pertained to two of these children, J.B. and K.P., who Navarro targeted.

Navarro repeatedly communicated with J.B. offering to perform oral sexual acts. When J.B. declined these offers and attempted to cease further communications, he was met with threats of arrest or violence. Later, Navarro demanded from J.B. a nude photograph of J.B. and an in-person meeting for overtly sexual purposes.¹ Even after J.B. obliged Navarro's request for the explicit photograph, his refusal to meet Navarro in person was met with the threat that Navarro's father would “hunt [him] down.”

Meanwhile, Navarro was also communicating with K.P., employing the ruse of two different feminine aliases. Navarro sent to K.P. various pornographic images and, as with J.B., requested that K.P. send him a sexually explicit photograph of K.P. When K.P. refused, Navarro threatened to burn down his house. Ultimately, K.P. obliged the request, hoping that this would placate Navarro. However, Navarro was not satisfied, and subsequently threatened to publicly post the explicit photograph unless K.P. agreed to meet with him personally. Navarro also threatened K.P. using another alias, drove to K.P.'s

¹ Navarro phrased the proposed activity as “playing around” with J.B.'s person.

house, and communicated, via text message, to the effect that he was watching K.P.'s movements.

A rational trier of fact could conclude that Navarro committed these acts of extortion in the pursuit of his own sexual gratification. Navarro's conversations with these children were sexually explicit in nature and made in the furtherance of sexual goals. In addition, Navarro sought to attain said goals through intimidation and threatened violence. Viewing the evidence in the light most favorable to the State, as we must, there is no possibility that the outcome of the proceeding would have been any different were the error complained of not made. Navarro cannot show prejudice.

III

Navarro submits a statement of additional grounds for review. None of the arguments raised therein merit appellate relief.

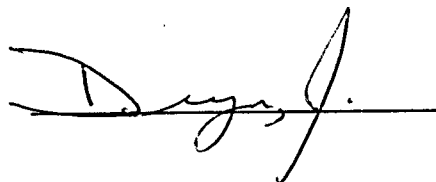
Navarro first contends that the trial court's imposition of an exceptional sentence based on sexual motivation was improper. This argument relies on the unsupported assertion that extortion is a crime "inherently sexual" in nature and, thus, that sexual motivation cannot be an aggravating factor supporting an exceptional sentence. RCW 9A.56.110 defines extortion as "knowingly to obtain or attempt to obtain by threat property or services of the owner, and specifically includes sexual favors." The mere inclusion of sexual favors in the category of "services" does not render extortion an inherently sexual offense because extortion may also occur in the absence of sexual motivation—i.e., blackmailing someone for money. Navarro's claim fails.

Navarro's second argument is that the trial court's failure to grant his motion for a continuance was an abuse of discretion. For the reasons discussed above, this argument lacks merit.

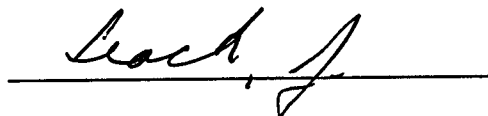
Finally, Navarro avers that the Department of Corrections unlawfully altered his final judgment and sentence in exceedance of its authority. This is based only upon the court's adjustment of his exceptional sentence to run concurrently with his base sentence. He ignores the trial court's note that this modification was made pursuant to our mandate on the last remand of this case wherein a 114-month term of confinement was imposed. With this in mind, there is no basis to contend that his sentence was unlawfully altered.

Thus, none of the claims of error raised in Navarro's statement of additional grounds entitle him to appellate relief.

Affirmed.

A handwritten signature in cursive script, appearing to read "D. J. ...", written over a horizontal line.

We concur:

A handwritten signature in cursive script, appearing to read "Beach, J.", written over a horizontal line.A handwritten signature in cursive script, appearing to read "Chen, J.", written over a horizontal line.