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Andrew Young v. State of Nevada, 139 Nev. Adv. Op. 20 (July 20, 2023)¹

CRIMINAL LAW: TIMELY OBJECTIONS, JUROR BIAS, AND CLARITY CONCERNING JURY INSTRUCTIONS

Summary

On appeal from a judgment of conviction, the appellant must have made timely objections to preserve the record in order to facilitate appellate review. Additionally, there are three types of juror bias that may lead to the removal of a juror: actual bias, implied bias, and inferable bias. If a juror's statements establish implied or inferable bias, the juror must be removed regardless of whether that juror subsequently expresses impartiality. By contrast, if a juror's statements suggest actual bias, the juror can still serve on the jury panel if the district court, after canvassing the juror, determines that they will be impartial despite the bias.

Finally, under the Nevada Pattern Jury Instructions: Criminal, the correct wording for an instruction for larceny from the person deems property as taken "from the person of another" if it is in some way actually upon or attached to the person or carried or held in actual physical possession.

Background

During June, July, and August of 2020, appellant Young and an accomplice committed a series of thefts against elderly victims. The thefts involved one person distracting the victim while the other took the victim's wallet, after which Young used the stolen credit and debit cards to purchase or attempt to purchase items from stores. The Las Vegas Metropolitan Police Department (LVMPD) eventually identified Young, and he was convicted of 20 counts of burglary, larceny, and fraudulent use of a credit or debit card.

Counts 1 through 5 involved Young and his accomplice targeting Mary Campo, age 72, while she was sitting at a gaming machine inside the Rampart casino. After the two men left the casino, the victim discovered her wallet was missing; her bank later contacted her and reported that her card was used at a 7-Eleven convenience store in Las Vegas. Detective Grimes of the LVMPD, having reviewed surveillance video from the casino and from the 7-Eleven, testified at trial that one of the men appeared to use his jacket to conceal his arm and grab something very close to the victim. Grimes also testified regarding a separate theft of an elderly woman's wallet at the Suncoast Hotel and Casino, saying he "immediately recognize[d] it's the same two males from the" Rampart casino incident.

Count 6 involved the burglary of Lydia Hefner's wallet at a Walmart. An employee had observed Young walking through the store, and, out of suspicion, she called LVMPD. Officer Wheeler, LVMPD, was one of the officers who accompanied the employee to the security office and observed Young stealing on the live surveillance footage. Wheeler testified at trial that the security showed him "footage of a male that [Walmart has] had problems with before, and that they're concerned about him trying to steal."

Counts 7 and 8 involved the theft of Rhonda Hatcher's wallet while riding in the Caesars' casino elevator. Hatcher testified that there were two men also in the elevator and that one of them asked her if he had pushed the correct button, claiming he was blind. After exiting the elevator, Hatcher looked in her purse and discovered her wallet was missing, immediately filing reports with security and LVMPD. Detective Jacobitz reviewed video surveillance from this theft

¹ By Keaunui Harris.

and other theft and fraud incidents from the summer of 2020. He identified Young in the casino elevator video played during his testimony at trial, and he commented that he felt Young was “smooth” and that Young had “been doing this for a long time. He’s good.” Despite the fact that Jacobitz admitted he had no information as to how long Young had been “doing this,” Young did not object or move to strike this portion of Jacobitz’s testimony.

The remaining counts 9 through 22 concern other incidents of burglary, larceny from the person, and fraudulent use of cards in which Young and an accomplice targeted other victims of age sixty (60) or older. In many of the counts, there were officers who testified of having reviewed extensive security surveillance footage depicting an individual that the officers identified as Young engaging in either a theft-related offense or fraudulent use of a credit or debit card.

The State’s second superseding indictment charged Young with the following twenty-two (22) counts: counts 1, 4, 6, 7, 9, 11, 13, 15, 17, 19, 21, and 22 (burglary); counts 2, 8, 10, and 16 (larceny from the person, victim 60 years of age or older); count 3 (grand larceny); and counts 5, 12, 14, 18, and 20 (fraudulent use of a credit or debit card). Following the jury trial, Young was found guilty on all counts except counts 14 and 20. The district court sentenced Young to serve concurrent and consecutive prison terms totaling ninety (90) years to life in the aggregate. Young subsequently appealed.

Of particular note, during the third day of trial, a seated juror, juror no. 11, wrote a note for the district court asking if he could “give each of the victims \$2,000.00 in an envelope after they are excused.” The court addressed the note during a recess, outside of the presence of jury; both the district court and Young canvassed the juror, and juror no. 11 assured the court that he would remain fair and impartial and “not form opinions until the end of the case.” Young moved for a mistrial following the juror’s exit from the courtroom, but the district court denied the motion and did not remove juror no. 11 from the jury.

Discussion

The District Court Did Not Improperly Admit Evidence of Uncharged Bad Acts

The Appellate Court first addressed whether the district court improperly admitted evidence of prior bad acts by admitting testimony from four different LVMPD officers relating to or identifying Young. Young argued that because the statements by LVMPD officers allowed the jurors to “speculate that Young was dangerous or had a criminal character,” the statements constituted “*de fact* bad act evidence” that required a pretrial hearing regarding admissibility. The State rejected the argument that it offered bad act evidence and countered that Young had waived the issue by failing to object below.

The Court concluded that Young failed to meet the requirements that obviate the Court’s reconsideration and correction of an unpreserved error. Specifically, Young failed to demonstrate that “(1) there was an ‘error’; (2) the error is ‘plain,’ meaning that it is clear under current law from a casual inspection of the record; and (3) the error affected the defendant’s substantial rights.”² The statements in question did not clearly constitute “[e]vidence of other crimes, wrongs or acts” to prove Young’s character, nor did they show he acted in conformity therewith.³ While the officers’ statements may have referenced past crimes that Young

² *Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48 (2018) (citing *Green v. State*, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003)).

³ NEV. REV. STAT. § 48.045(2).

committed and could have possibly been erroneously admitted into evidence, Young's failure to object prevented the Court from determining whether the statements were referring solely to criminal conduct during the summer months of 2020 or to other crimes or bad acts. Further, even if the statements allowed for an inference of past bad acts, Young failed to demonstrate that any error caused by the statements affected his substantial rights, especially in light of the remaining significant evidence establishing his guilt.

The Court also reasoned that the officers' testimony stating they reviewed surveillance video from theft crimes that occurred during the summer months of 2020 before identifying Young as a suspect was relevant "to explain their involvement" in the case and "why they took the actions they did during their investigations." Because the evidence related to other charges in the case, the evidence also was not unfairly prejudicial. Additionally, the statements by Wheeler and Jacobitz were "isolated, nonspecific, and did not affect Young's substantial rights." Therefore, the Court declined to conclude that the district court plainly erred.

Young also argued that the district court should have offered a limiting instruction regarding the jury's consideration of the alleged bad act evidence, while the State responded that any comment during the officers' testimonies was not "so prejudicial that it required the district court to act sua sponte to preclude testimony." The Court agreed with the State, reasoning that any actual error would have been harmless given the overwhelming evidence of Young's guilt compared to the brief nature of the alleged improper evidence. Therefore, the Court concluded that Young failed to establish reversible error.

The District Court Did Not Plainly Err in Allowing Officers to Narrate During Testimony About the Content of the Surveillance Footage

Young argued that the district court erred when it allowed LVMPD officers to narrate the events and identify Young in surveillance video because the officers lacked independent knowledge of Young aside from their review of video during their investigations. Because Young failed to object in the district court, the Court reviewed again for plain error.⁴

In order for the officers' testimonies to be permissible narrations and identifications of Young, a testifying officer must have "some prior knowledge or familiarity with" the individual or the defendant they identify in video surveillance.⁵ However, when the testimony describing surveillance footage is founded upon the use of independent evidence to confirm the identity of the person in the video, there is no invasion upon the province of the jury.⁶

The Court found that the LVMPD officers who testified had sufficient prior independent knowledge to allow them to identify Young. The officers had either reviewed video and photographs during their investigations, or they had personal interactions with Young. Further, Officer Wheeler identified Young before the other officers identified him; thus, the officers who identified Young after Wheeler had relied upon Wheeler's identification. Therefore, Young failed to show plain error regarding the officers' identification of Young.

The Court also concluded that Young failed to demonstrate plain error regarding the issue of narrating during the State's presentation of video evidence.⁷ The videos presented during trial

⁴ See *Jeremias*, 134 Nev. At 50, 412 P.3d at 48.

⁵ *Burnside v. State*, 131 Nev. 371, 388, 352 P.3d 627, 639 (2015).

⁶ See *id.*

⁷ See *id.* at 388–89, 352 P.3d at 640 (holding that narration of surveillance video assisted jurors in understanding the evidence, given the complexities of the surveillance cameras and the piecing together of videos from hours of recordings).

consisted of footage from numerous times and from inside different stores, elevators, and casinos, and the footage varied in terms of quality and clarity. Consequently, the district court could have reasonably concluded that the officers' narration was necessary to assist jurors in understanding what was occurring. The narration was also highly relevant as to the manner in which Young and his accomplice carried out their thefts. Therefore, the Court concluded that Young had not shown error, plain or otherwise.

The District Court's Admission of Detective Jacobitz's Statement Was Not Reversible Error

Young argued that Detective Jacobitz's statement that Young and his accomplice were not registered guests of the hotel where they stole Hatcher's wallet constituted inadmissible hearsay because Jacobitz learned this information from an outside source. The State argued it was not hearsay because the evidence was not admitted to prove the truth of the matter asserted but rather to show the statement's effect on Jacobitz and his investigation.

The rule precluding the admission of hearsay does not apply to statements offered only to show the effect that the statement had on the listener.⁸ Although the statement that Young was not a registered hotel guest could have been offered for the truth of the matter asserted, Jacobitz's testimony explained why he opined that the elevator surveillance footage showed that Young was working in conjunction with an accomplice to steal Hatcher's wallet in the elevator. Because Young failed to renew his objection to the testimony after the district court permitted the State to lay a foundation for it, the Court cannot determine whether it was offered for the truth of the matter asserted, if it was not hearsay, or if a hearsay exception may have applied. Further, the Court cannot say whether the district court plainly erred in admitting the testimony.

The Court also concluded that even if the district court abused its discretion in admitting the testimony, any error would have been harmless because it was a minor piece of information related to the crime of theft of Hatcher's wallet. Further, the evidence against Young for this particular offense and as a whole was overwhelming. Accordingly, the district court's admission of Jacobitz's statement was not reversible error.

The District Court Did Not Abuse its Discretion in Denying Young's Motion for a Mistrial and in Not Excusing a Juror for His Display of Sympathy to Victims

The Court then turned to the issue of whether the district court erred in denying Young's motion for mistrial based on a juror's showing of sympathy for Young's victims. Young argued that the district court should have either granted his motion for a mistrial or at least excused the juror for bias after the juror wrote the note to the court. Young also argued that the juror's conduct undermined his impartiality and constituted inferable bias, thereby rendering the district court's decision to allow the juror to remain on the panel as reversible error.

In analyzing whether the district court abused its discretion, the Court discussed three types of juror bias: actual, implied, and inferable bias. Actual bias is the existence of "a state of mind that prevents the juror from being impartial."⁹ If a juror admits to partiality and cannot unequivocally say they would be impartial, the court should remove that juror for actual bias.¹⁰ Implied bias, or presumed bias, is "bias conclusively presumed as a matter of law," generally due to the juror's prior knowledge or relationship to the case or parties.¹¹ Finally, inferable bias is

⁸ See NEV. REV. STAT. § 51.035.

⁹ Sayedzada v. State, 134 Nev. 283, 290, 419 P.3d 184, 191–92 (Ct. App. 2018).

¹⁰ Preciado v. State, 130 Nev. 40, 44, 318 P.3d 176, 179 (2014).

¹¹ United States v. Wood, 299 U.S. 123, 133 (1936).

determined when a judge exercises “discretion to infer bias from the facts elicited during voir dire where those facts show an average person in the juror’s situation would be unable to decide the matter objectively.”¹² Importantly, inferable bias has only been found in limited circumstances, such as where the juror has engaged in activities similar to those at issue in the case such that a reasonable person in the juror’s position could not separate from their past experiences to judge the case objectively.¹³

If a juror’s statements establish implied or inferable bias, the juror must be removed regardless of whether that juror expresses impartiality.¹⁴ By contrast, if a juror’s statements suggest actual bias, the juror may still serve on the panel if the district court determines, after canvassing the juror, that they “will be impartial despite the bias.”¹⁵ Likewise, when a juror expresses actual bias, that juror may remain on the jury if they affirm that they are able to set aside their bias to judge the case solely on the evidence.¹⁶ A juror is successfully rehabilitated when they can “state without reservation that [the juror] had relinquished views previously expressed which were at odds with their duty as impartial jurors.”¹⁷ As long as the district court “sufficiently questions” the juror and determines the juror can judge the case impartially and objectively, the Court will generally defer to the trial court’s decision.¹⁸

In disagreeing with Young, the Court concluded that the statement suggested actual bias, which allowed for the district court to properly rehabilitate the juror and find him impartial. The district court questioned the juror outside the presence of the rest of the jury after he gave his note to the court. After the district court reminded the juror of the jury’s duty not to form or express any opinions until the matter was finally submitted for a decision, the juror affirmed twice that he could remain fair and impartial for the remainder of the trial. The juror also answered that he had not discussed the issue with other jurors, and he had only mentioned it to the marshal. Consequently, the Court ruled that the district court’s denial of Young’s motion for a mistrial and the decision to not remove juror no. 11 were not an abuse of discretion.

The Court also noted that while the facts of the case support an argument that the juror exhibited actual bias, Young failed to raise an argument under an actual bias theory to the Court. He also did not challenge the sufficiency of the district court’s canvass of the juror, and therefore any argument that the juror was not rehabilitated is waived.

The District Court Did Not Err by Not Immediately Stopping Young from Arguing and Challenging the Juror’s Conduct in the Presence of That Juror

Young argued that the district court failed to ensure that juror no. 11 was not present when Young challenged his partiality, claiming that the juror’s presence during the argument “put Young in an antagonistic position with the juror for the remainder of the trial.” The State countered that Young did not raise this issue below, and it is therefore waived.

The Court concluded that Young “invited any possible error that may have occurred because defense counsel caused the issue he now raises on appeal.” Young began arguing and

¹² *Sayedzada*, 134 Nev. at 291, 419 P.3d at 192.

¹³ *Id.*

¹⁴ *Id.* (“[O]nce facts are elicited that permit a finding of inferable bias, then, just as in the situation of implied bias, the juror’s statements as to his or her ability to be impartial become irrelevant.” (Quotation marks omitted)).

¹⁵ *Sanders v. Sears-Page*, 131 Nev. 500, 507, 354 P.3d 201, 206 (Ct. App. 2015).

¹⁶ *Irvin v. Dowd*, 366 U.S. 717, 723 (1961).

¹⁷ *Weber v. State*, 121 Nev. 554, 581, 119 P.3d 107, 125 (2005), *overruled on other grounds by* *Farmer v. State*, 133 Nev. 693, 698, 405 P.3d 114, 120 (2017).

¹⁸ *Sanders*, 131 Nev. at 508, 354 P.3d at 206.

challenging the juror's impartiality while the juror was present, and the district court attempted to direct his argument to the court. The court also stepped in to stop defense counsel from further arguing. The Court subsequently declined to consider Young's argument given his counsel's role in the alleged error.¹⁹

Even if the Court considered the argument, Young's failure to raise the issue below constituted a waiver of the issue, and the Court can only review for plain error. Under plain error review, the Court concluded that Young failed to offer any argument that a substantial right was affected. Accordingly, Young did not demonstrate plain error.

The District Court Misstated the Law in Jury Instruction Number 10—All Other Challenged Jury Instructions Were Accurate Statements of the Law

The Court next considered Young's arguments that five jury instructions were misstated and that this Court should reverse counts 1, 2, 7, 8, 9, and 10 under a plain error review. The State conceded that jury instruction number 10 misstated Nevada law regarding when property is deemed taken "from the person" for purposes of a conviction for larceny from the person; the State also conceded that the conviction for count 2 should be reversed.

The Court found that the erroneous larceny-from-the-person instruction given as instruction 10 allowed the jury to convict even if the property taken was not physically connected to the victim in some way. The language of the instruction was "clearly wrong," as it stated that the property is deemed taken "from the person" of the victim if it was within the victim's reach, inspection, observation, disposition or control. Further, the evidence regarding count 2 did not show that Campo's wallet was taken from her person, and Campo's testimony failed to establish exactly where her purse was located before the theft occurred. The Court consequently reversed Young's conviction for larceny from the person related to count 2 because of the improper instruction and insufficient evidence.

Notably, the Court saw no basis to reverse the remaining larceny-from-the-person convictions resulting from the erroneous instruction, due to the evidence that Young took property from either a purse held on the victim's person or worn as a backpack. The Court also reasoned that Young's conduct also invaded the victim's privacy, which is the "gravamen of the offense" of larceny from the person.²⁰ To avoid instruction error in future cases, the Court stated that district courts should consider the recently adopted Nevada Pattern Jury Instructions: Criminal in settling jury instructions. In pertinent part, the Court provided the following language from the pattern jury instruction for larceny from the person:

The crime of LARCENY FROM THE PERSON consists of the following elements:

- (1) The defendant takes the property;
- (2) From the person of another;
- (3) Without the person's consent;
- (4) With the intent to steal or appropriate the property to his or her own use.

...

¹⁹ Cf. *Belcher v. State*, 136, Nev. 261, 275, 464 P.3d 1013, 1028 (2020) (concluding that a party cannot challenge on appeal as error testimony which that same party invited, induced, or provoked).

²⁰ See *Terral v. State*, 84 Nev. 412, 414, 442 P.2d 465, 466 (1968) (holding that the essence of the crime of larceny from the person "is that the person of another has been violated and" the person's privacy directly invaded).

The crime of larceny from the person does not require violence, force, or fear, but does require an actual taking from the person of another. The crime is not committed if the property is taken only from a person’s immediate presence, or from a person’s constructive control or possession.

Property is taken “from the person of another” if it, at the time of the taking, is in some way actually upon or attached to the person, or carried or held in actual physical possession, such as clothing, apparel, or property held or carried in the hands, or by other means, upon the person, or things contained therein, or attached thereto.

....

Nevada Pattern Jury Instructions: Criminal § 15.06 (State Bar of Nevada 2023).

Consequently, the Court analyzed the remaining larceny-related convictions.

Instruction number 10 (larceny from the person)

Young contended that the larceny-from-the-person convictions related to the thefts of Hatcher’s and Frank’s wallets should be reversed based on the misstatement of law in jury instruction number 10. His argument focused on the testimonies of Hatcher and Frank that their wallets were stolen out of their purses, and that but for the error in the instruction, jurors may have concluded that the theft of their wallets was too far removed to constitute larceny from the person.

The Court disagreed, reasoning that the larceny-from-the-person convictions related to the wallet thefts of Hatcher and Frank were valid because Young took the wallets from the person of the victims. Contrary to Young’s arguments, the Nevada Supreme Court has previously held that similar type of conduct is the type of conduct Nev. Rev. Stat. § 205.270 seeks to punish.²¹ Similarly, the Nevada Supreme Court has emphasized that “pickpockets, purse snatchers . . . and the like resemble one another” because they all “take property from the person of their victim.”²² Because Young stole wallets from victims who were carrying their purses, his actions constituted an invasion of privacy and undoubtedly fall within the conduct prohibited by Nev. Rev. Stat. § 205.270. The Court therefore affirmed the convictions related to the Hatcher and Frank wallet thefts.

The Court also declined to reverse the associated burglary charges because Young failed to demonstrate plain error or present proof that the instruction was patently prejudicial. Given the testimony from multiple LVMPD officers and employees that Young entered the businesses and later attempted to use the victims’ cards, it was clear beyond a reasonable doubt Young unlawfully entered and/or remained in those businesses with the requisite intent for burglary. The officers’ testimony further supported a finding of specific intent, stating that Young had not purchased any items or gambled at the casinos when he entered the businesses, “nor did he otherwise behave like a consumer or a patron.” Accordingly, the Court concluded that the associated burglary convictions were not impacted by the erroneous jury instruction, and the Court declined to reverse those convictions.

Instruction numbers 13 and 14 (lesser offenses)

²¹ See *Terral*, 84 Nev. at 414, 442 P.2d at 466 (holding that “[i]t is important to restrict the coverage of NRS 205.270 to pickpockets, purse snatcher . . . and the like”).

²² See *Ibarra v. State*, 134 Nev. 582, 588, 426 P.3d 16, 21 (2018) (quotation marks omitted).

Young argued that the district court's instructions guiding the jury to consider lesser-included offenses improperly relieved the State of its burden of proof in violation of Young's due process rights. He argues that the language from the instruction suggested that all twelve jurors must reject greater offenses before they could consider the lesser offense.

The Court disagreed for a number of reasons. First, because Young offered or requested these instructions, any possible error was invited by him and need not be considered. Even so, the instruction on lesser offenses was not plain error because the language did not require all jurors to agree that Young was not guilty of grand larceny before they could find him guilty of petit larceny. Further, given the "overwhelming evidence of theft establishing Young's guilt," the district court's instruction on the lesser-included offenses did not result in actual prejudice.

Finally, the Court concluded that Young mischaracterized the instruction based on the Nevada Supreme Court's holding in *Green v. State*, 119 Nev. 542, 80 P.3d 93 (2003). The district court's instruction followed the "unable to agree" approach explained in *Green*, and the instruction did not expressly require the jury's unanimous agreement on acquittal. The supreme court had adopted the "unable to agree" instruction approach as the "correct transition instruction" as defined in *Green*; therefore, the instruction "comports" with *Green* and aligns with the Court's adopted approach because the instructions required that at least one juror find Young not guilty of grand larceny and that all jurors agree that Young was guilty of petit larceny. Consequently, the Court concluded that Young failed to demonstrate plain error with regard to the transition instructions, and the Court declined to reverse the conviction's related to these instructions.

The State Presented Sufficient Evidence to Sustain Young's Convictions

Young argued that the State failed to provide sufficient evidence to uphold his convictions because none of the victims or the store employees who testified had identified him as one of the men in the wallet thefts. He further argued that the burglaries occurred in commercial establishments where an individual could "have a multitude of intentions upon entry."

The sufficiency of the evidence presented considers "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."²³ The Court reasoned that the totality of the State's evidence indicated that the evidence supported the jury's verdict that Young committed the theft-related offenses; the same applied to the evidence establishing the burglary offenses. Such evidence included video evidence showing Young engaging in many wallet thefts and the testimony of several LVMPD officers who identified Young based on several factors depicted across all theft incidents. The officers testified that the videos showed Young "entering the businesses working in tandem with an accomplice to steal wallets." One person would distract the victim, neither of the two men entered the businesses as customers, the two would immediately leave after taking the wallets, and Young would enter nearby stores to fraudulently use the stolen cards. Based on this evidence, the Court reasoned that a rational juror could find the evidence sufficient to support Young's convictions. Accordingly, the Court upheld Young's convictions.

Whether Young Received Ineffective Assistance of Counsel at Sentencing

Regarding his argument for ineffective assistance of counsel at sentencing, Young claimed that his counsel failed to raise any argument regarding the sufficiency of Young's prior

²³ *Rose v. State*, 123 Nev. 194, 202, 163 P.3d 408, 414 (2007).

convictions and did not offer any argument that could have mitigated Young's sentence. The Court declined to address the issue on its merits, as Young had not satisfied any exceptions that would allow him to raise this issue on direct appeal.²⁴

Conclusion

Because Young failed to make timely objections at trial, the Court declined to conclude that the district court plainly erred in regard to several of Young's arguments. As to Young's motion for a mistrial, the district court did not err in allowing juror no. 11 to remain on the jury panel when his statement suggested actual bias because the district court undertook efforts to rehabilitate the juror and found him to be impartial, and Young did not challenge the district court's rehabilitation efforts on appeal.

On the other hand, the district court gave an incorrect jury instruction regarding the larceny-from-the-person charges, and Young's conviction under count 2 must be reversed. Based on the Nevada Pattern Jury Instructions: Criminal, the correct wording for an instruction for larceny from the person deems property as taken "from the person of another" if it is in some way actually upon or attached to the person or carried or held in actual physical possession. Nevertheless, the erroneous jury instruction did not affect the guilty verdicts for other similar charges in which Young actually stole property either from purses or backpacks carried by the victims. The Court further found no reversible error as to any of Young's other convictions or his sentence based upon his arguments. Thus, the Court affirmed the judgment of conviction as to all counts except count 2 and reversed and remanded to strike count 2 from the judgment and to enter an amended judgment.

²⁴ See *Archanian v. State*, 122 Nev. 1019, 1036, 145 P.3d 1008, 1020–21 (2006).