

IN THE SUPREME COURT OF THE STATE OF NEVADA

JASON DUANE PARKER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 42913

**FILED**

SEP 23 2005

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. R. Hale*  
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of sexual assault and two counts of voluntary sexual conduct between a prisoner and another person. Fifth Judicial District Court, Esmeralda County; John P. Davis, Judge. The district court sentenced appellant Jason Duane Parker to serve a prison term of 10 to 25 years for the sexual assault and two concurrent prison terms of 12 to 32 months for the voluntary sexual conduct.

Parker first contends that the district court erred in denying his motion to preclude expert testimony from witness Dr. Vincent Scoccia, the emergency room doctor who treated the victim. Specifically, Parker contends that the State did not comply with NRS 174.234 by failing to provide Parker with: (1) notice of Dr. Scoccia's testimony, (2) a copy of Dr. Scoccia's curriculum vitae, and (3) a statement concerning the subject matter of Dr. Scoccia's testimony. We conclude that Parker's contention lacks merit.

NRS 174.295(2) sets forth the remedy for violation of a discovery order under NRS 174.234. Specifically, where a discovery order has been violated, the district court: "may order the party to permit the discovery or inspection of materials not previously disclosed, grant a continuance, or prohibit the party from introducing in evidence the material not disclosed, or it may enter such other order as it deems just

under the circumstances.”<sup>1</sup> “However, where the State’s non-compliance with a discovery order is inadvertent and the court takes appropriate action to protect the defendant against prejudice, there is no error justifying dismissal of the case.”<sup>2</sup>

Here, we conclude that the district court did not abuse its discretion in admitting the expert testimony of Dr. Scoccia. There is no indication in the record that the State’s untimely disclosure was intentional, and the district court took adequate measures to ensure that Parker was not prejudiced in allowing him additional time to prepare his cross-examination of Dr. Scoccia.<sup>3</sup> Accordingly, the district court did not abuse its discretion in allowing the testimony.

Parker also contends that the district court erred in admitting Dr. Scoccia's testimony that the victim's behavior was consistent with that of a victim of sexual assault because there was no evidence that Dr. Scoccia had specialized training or experience working with sexual assault victims. We conclude that Parker's contention lacks merit.

NRS 50.275 provides that a qualified expert may testify to matters within his specialized scope of knowledge in order to aid the trier of fact. Moreover, NRS 50.345 provides that an expert may testify whether a "victim's behavior or mental or physical condition is consistent

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<sup>1</sup>NRS 174.295(2).

<sup>2</sup>State v. Tapia, 108 Nev. 494, 497, 835 P.2d 22, 24 (1992); Langford v. State, 95 Nev. 631, 635-36, 600 P.2d 231, 234-35 (1979).

<sup>3</sup>Although on appeal Parker alleges that the district court did not allow the defense sufficient time to obtain its own expert to rebut Dr. Scoccia’s testimony, in the proceedings below, counsel for Parker neither informed the district court that the one-day continuance was inadequate nor requested additional time in order to retain an expert witness.

with the behavior or condition of a victim of sexual assault." The admissibility of expert testimony is within the sound discretion of the district court.<sup>4</sup>

Preliminarily, we note that, at trial, defense counsel failed to object on the grounds that Dr. Scoccia lacked sufficient specialized training or experience to form an opinion on whether the victim had been sexually assaulted. Nonetheless, even assuming defense counsel had properly objected, we conclude that the district court did not abuse its discretion in allowing Dr. Scoccia to testify because he was qualified to provide expert testimony on the issue.

Finally, Parker contends that his sexual assault conviction should be reversed because there was insufficient evidence to sustain the conviction and because the guilty verdicts for both sexual assault and voluntary sexual conduct for the same act were legally inconsistent. More specifically, Parker argues that the jurors could not have found that the sexual conduct was against the victim's will, while at the same time find that Parker engaged in "voluntary" sex with a prisoner. We conclude that Parker's contention lacks merit. Even assuming the verdicts are inconsistent, this court has held that inconsistent verdicts are permissible under Nevada law.<sup>5</sup> Additionally, our review of the record on appeal

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<sup>4</sup>Smith v. State, 100 Nev. 570, 572, 688 P.2d 326, 327 (1984).


<sup>5</sup>See, e.g., Bollinger v. State, 111 Nev. 1110, 1116-17, 901 P.2d 671, 675-76 (1995); Brinkman v. State, 95 Nev. 220, 224, 592 P.2d 163, 165 (1979); accord United States v. Powell, 469 U.S. 57 (1984) (holding that inconsistent verdicts may be the result of mistake, compromise, or lenity and that reversal is not required simply because the verdicts are inconsistent).

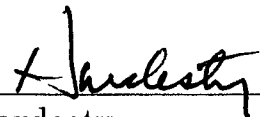
reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact.<sup>6</sup>

Having considered Parker's contentions and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.

Maupin  
  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Hardesty

cc: Hon. John P. Davis, District Judge  
Andrew S. Fritz  
Attorney General Brian Sandoval/Carson City  
Esmeralda County District Attorney  
Esmeralda County Clerk

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<sup>6</sup>See Wilkins v. State, 96 Nev. 367, 609 P.2d 309 (1980); see also Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998).