

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES EDMOND BERTHIAUME,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43700

FILED

AUG 02 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
DEPUTY CLERK

ORDER OF AFFIRMANCE AND LIMITED REMAND TO CORRECT
THE JUDGMENT OF CONVICTION

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of three counts of sexual assault, two counts of attempted sexual assault, and one count of battery with intent to commit a crime. Eighth Judicial District Court, Clark County; Valerie Adair, Judge. The district court sentenced appellant James Berthiaume to three terms of life imprisonment with the possibility of parole, two prison terms of 24 to 60 months, and one prison term of 24 to 84 months. The prison terms were imposed to run concurrently.

Berthiaume first claims that the State failed to prove that he was guilty beyond a reasonable doubt. He concedes that the victim's testimony, if believed, provided the factual basis for his conviction on all six counts. However, he contends that the story she told to the police, the sexual assault nurse examiner, and the jury did not make sense and was obviously contrived. He argues that because the victim's testimony was not reliable, the guilty verdicts are not reliable and should be reversed. However, the victim's testimony, if believed by the jury, is enough to establish a sexual assault, and it "need not be corroborated in order for the

conviction to stand."¹ Moreover, inconsistencies in the victim's testimony are not a basis for reversal, as "[i]t was the jury function to resolve these matters and the manner in which it did so and the weight it gave to the evidence will not be questioned upon appeal."² Here, the jury apparently believed the victim's testimony, and that is enough to affirm Berthiaume's convictions.

Berthiaume also claims that the sexual assault nurse examiner's testimony about statements made by the victim constituted inadmissible hearsay and impermissible bolstering. However, Berthiaume failed to preserve this issue for appeal. Failure to raise an objection with the district court generally precludes appellate consideration of an issue.³ This court may nevertheless address an assigned error if it was plain and affected the appellant's substantial rights.⁴ "To be plain, an error must be so unmistakable that it is apparent from a casual inspection of the record."⁵ Here, it appears that the victim's out-of-court statements are admissible as excited utterances and the purpose of the nurse examiner's testimony was to explain how and why she examined the victim.⁶

¹Nordine v. State, 95 Nev. 425, 426, 596 P.2d 245, 246 (1979).

²Garden v. State, 73 Nev. 312, 315, 318 P.2d 652, 653 (1957).

³See Rippo v. State, 113 Nev. 1239, 1259, 946 P.2d 1017, 1030 (1997).

⁴See NRS 178.602.


⁵Garner v. State, 116 Nev. 770, 783, 6 P.3d 1013, 1022 (2000), overruled on other grounds by Sharma v. State, 118 Nev. 648, 56 P.3d 868 (2002).

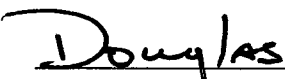
⁶See NRS 51.095; Dearing v. State, 100 Nev. 590, 592, 691 P.2d 419, 421 (1984) (victim's description of sexual assault during police interview fell within excited utterance exception).

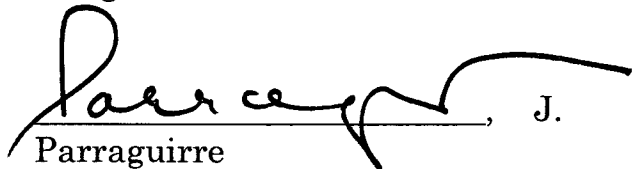
Consequently, our review of the record does not reveal an "unmistakable" error.

Having considered Berthiaume's contentions and concluded that they lack merit, we affirm the judgment of conviction. However, our review of the record reveals a clerical error. The judgment of conviction states that Berthiaume was convicted pursuant to a guilty plea when, in fact, he was convicted pursuant to a jury verdict. Accordingly, we

ORDER the judgment of the district court AFFIRMED and REMAND this matter to the district court for the limited purpose of correcting the judgment of conviction.

 J.
Maupin

 J.
Douglas

 J.
Parraguirre

cc: Hon. Valerie Adair, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk