

IN THE SUPREME COURT OF THE STATE OF NEVADA

JULIO CESAR SALAS-PEREZ,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 44387

FILED

JUN 01 2005

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count each of sexual assault upon a child and gross misdemeanor open and gross lewdness with a child. Second Judicial District Court, Washoe County; Jerome Polaha, Judge. The district court sentenced appellant Julio Cesar Salas-Perez to serve a prison term of 5 to 20 years for the sexual assault count and a concurrent jail term of 295 days for the lewdness count.

Salas-Perez first contends that the State adduced insufficient evidence in support of the convictions. In particular, Salas-Perez argues that the State's case rested "solely upon the [victim's] testimony, the Detectives' belief that [he] should have acted differently in the face of the [victim's] accusations, and the testimony of [a clinical psychologist] not specifically involved in the case." We conclude that Salas-Perez's contention lacks merit.

Our review of the record on appeal reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational

trier of fact.<sup>1</sup> In particular, we note that the victim testified that on July 23, 2000, when she was fifteen-years old, Salas-Perez, her stepfather, pulled her into his room, playfully hugged her, and then forced her onto her mom's bed. The victim described how Salas-Perez then got on top of her, held her down, touched her bare breasts, and inserted his finger into her vagina. The victim testified that she attempted to kick free; as she did so, Salas-Perez pulled out his penis and attempted to force it into the victim's mouth. The victim, however, managed to struggle free, locked herself in her room, and cried herself to sleep. The victim did not tell anybody about the assault for approximately three years. Afterward, the victim described how she felt angry, frustrated, and hurt, and even contemplated suicide. At trial, the State presented expert testimony from a clinical psychologist that such reactions are common in victims of sexual assault.

In November 2003, the victim eventually confided to a close friend about the attack. The friend encouraged her to report it to her grandmother and mother and, later, the police. When she did so, a police detective requested that the victim telephone Salas-Perez to set up a meeting with him to confront him about the assault. The victim did as requested, and the meeting between Salas-Perez and the victim was recorded by Reno Police. During the meeting, the victim asked Salas-Perez: "Why did you put your finger in me," and he responded, "I don't know" and looked as if he was about to cry. Salas-Perez then told the victim that he would explain it to her in writing, but never did.

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<sup>1</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).

Reno Police Detective Jack Wilsey also testified at trial. Detective Wilsey explained that he listened to the telephone conversation between the victim and Salas-Perez. During that conversation, the victim told Salas-Perez that she felt bad about what happened, and he responded that he was bothered and felt bad as well. The victim then asked him why he did "it," without specifically referring to the assault, and he responded: "I don't know." Detective Wilsey also testified regarding his interview with Salas-Perez conducted subsequent to the surveillance. Detective Wilsey asked Salas-Perez about the allegations, and he responded: "I don't believe that's true." The Detective then asked him about his statement made during the telephone conversation with the victim that the incident bothered him and he felt bad. Salas-Perez responded: "I didn't admit to anything."

Reno City Police Officer Steve Reed also testified at trial, explaining that he monitored the meeting between the victim and Salas-Perez and that Salas-Perez deflected the questions and never denied attacking the victim.<sup>2</sup> Officer Reed recounted the conversation as follows:

There was -- a series of conversations. But it went something like, "Why did you do this to me," and then a short period later, "Was it just me?" And there is some inaudibles. But then I picked up, "I know it wasn't right."

For the defense, Salas-Perez's niece, Erica Torres, testified that she lived with Salas-Perez and the victim during the time of the alleged assault, until April 2001 when she stopped working at Washoe

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<sup>2</sup>The tape recordings of the meeting between the victim and Salas-Perez were also admitted into evidence at trial. Because of background noise, portions of the tapes were inaudible.

Medical Center and moved to California. Torres specifically recalled the night at issue and explained that she, the victim, and the victim's sister watched television and then fell asleep. Torres was certain that the victim never left the room that evening, and that Salas-Perez never entered.

To rebut Torres's testimony, the victim's mother testified that Torres did not live with her and the victim during the time of the assault and that she had moved out several months prior to July 2000. Additionally, the State presented documentary evidence, as well as testimony from a human resources employee that Torres was terminated from her job at Washoe Medical Center in April 2000. Although Torres notes that the victim waited three years to report the alleged assault and argues that testimony describing his reactions to the allegation was speculative, the jury could reasonably infer from the testimony presented that Salas-Perez committed sexual assault and acts of gross lewdness on the victim.<sup>3</sup> It is for the jury to determine the weight and credibility to give conflicting testimony, and the jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict.

Salas-Perez next contends that the district court erred in denying his oral motion for a continuance made on the first day of trial. Salas-Perez contends that the district court should have continued the trial because: (1) a week prior, the State identified a new witness; (2) one of the defense witnesses had provided additional information, requiring further investigation; and (3) Salas-Perez had indicated a desire to retain new counsel. We conclude that the district court did not abuse its discretion in refusing the request for the continuance.

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<sup>3</sup>See NRS 200.366; NRS 201.210.

This court has held that the granting of a continuance is addressed to the discretion of the district court.<sup>4</sup> In considering whether a denial of a request for more time violates due process, "[e]ach case must turn on its own circumstances, with emphasis upon the reasons presented to the trial judge at the time the request is made."<sup>5</sup> The denial of a motion for a reasonable continuance may be an abuse of discretion "where the purpose of the motion is to procure important witnesses and the delay is not the particular fault of counsel or the parties."<sup>6</sup> In considering whether an abuse of discretion occurred, this court considers the prejudice to the defendant if the continuance is denied.<sup>7</sup>

In this case, we conclude that the district court did not abuse its discretion in denying the motion for a continuance. First, the request for a continuance was untimely in that it was made on the first day of trial. Second, there was no indication that Salas-Perez was prejudiced by the denial of his request for a continuance or that the motion was made to procure an important witness. In arguing for a continuance, defense counsel refused to make an offer of proof, describing the new, allegedly exculpatory information provided by the defense witness. Likewise, the witness identified by the State a week prior had limited information to offer. She was a rebuttal witness, who did not observe the sexual assault and, ultimately, was not even called to testify at trial. Finally, we note

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<sup>4</sup>Zessman v. State, 94 Nev. 28, 31, 573 P. 2d 1174, 1177 (1978).

<sup>5</sup>Id.


<sup>6</sup>Lord v. State, 107 Nev. 28, 42, 806 P.2d 548, 557 (1991).

<sup>7</sup>See Mulder v. State, 116 Nev. 1, 9, 992 P.2d 845, 850 (2000) (citing Lord, 107 Nev. at 42, 806 P.2d at 556-57).

that Salas-Perez failed to alleged adequate cause in support of his request for new counsel that would warrant delaying the trial.<sup>8</sup> In moving for a continuance, defense counsel conceded that she had witnesses to call, had expended investigative resources, and was prepared for trial. Accordingly, we conclude that the district court did not abuse its discretion in denying the motion for a continuance.

Having considered Salas-Perez's arguments and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.

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

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

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

cc: Hon. Jerome Polaha, District Judge  
Washoe County Public Defender  
Attorney General Brian Sandoval/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk

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<sup>8</sup>See generally Thomas v. State, 94 Nev. 605, 607-08, 584 P.2d 674, 676 (1978) (discussing adequate cause necessary for change of counsel).