

IN THE SUPREME COURT OF THE STATE OF NEVADA

MANUEL BOJORQUEZ-DOMINGUEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45485

FILED

JAN 24 2006

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 guilty plea, of one count of statutory sexual seduction. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge. The district court sentenced Bojorquez-Dominguez to a prison term of 12 to 32 months.

Bojorquez-Dominguez contends the district court improperly refused to swear in a victim witness for the State at sentencing. He also asserts that it was error for the court not to allow cross-examination because the witness had not been sworn. Finally, Bojorquez-Dominguez alleges the district court erred in allowing the witness advocate to read an unauthenticated written statement not previously provided to counsel. Bojorquez-Dominguez claims this was in violation of the Fifth and Sixth Amendments to the United States Constitution, as well as running afoul of this Court's holding in Buschauer v. State.¹

At the sentencing hearing, the victim's father provided a victim-impact statement that was read by a translator detailing the difficulties the family has had since the incident. The translator was sworn as a witness, the victim's father was not. The statements read by

¹106 Nev. 890, 804 P.2d 1046 (1990).

the translator involved the impact on the family, the concern that the events with their daughter may have been videotaped and the request for restitution. Nothing in the statement made reference to prior bad acts of Bojorquez-Dominguez.

NRS 176.015(3) allows victims to appear by personal representative at sentencing and to express any views concerning the crime, the person responsible, the impact of the crime on the victim and the need for restitution. NRS 176.015(5)(b)(3) states a victim of a crime can also be a relative of the person against whom a crime was permitted. NRS 176.015 does not require a victim be placed under oath, notice be provided to the defense or cross-examination. Additionally, this court's opinion in Buschauer specifically indicates that "where a victim cannot or does not wish to appear in court, the statement may be placed in written form in the presentence report pursuant to NRS 176.145."² Furthermore, when a witness is testifying before the court, "[he] must be sworn before testifying," unless the witness testifies about specific prior acts, however, cross-examination and prior notice of the contents of the impact statement normally are not required."³


Although the victim's father should have been placed under oath, any error was harmless. Our review of the transcript of the sentencing proceeding reveals that the district court's failure to swear in the witness prior to testifying was harmless error because there is no indication that the district court based its sentencing decision on that unsworn testimony. Bojorquez-Dominguez was sentenced according to the

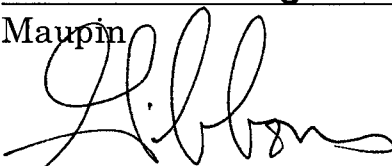
²Id. at 893, 804 P.2d at 1048.

³Id. at 893-94, 804 P.2d at 1048.

district court, because the victim is a girl "who is the victim of sexual seduction [who] does not function at a level appropriate for her age . . . therefore, I would regard her as an especially vulnerable victim." This court will abstain from interfering with the sentence "[s]o long as the record does not demonstrate prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence."⁴ Accordingly, we conclude that Bojorquez-Dominguez is not entitled to a new sentencing hearing, therefore we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Maupin


_____, J.
Gibbons


_____, J.
Hardesty

cc: Hon. Steven P. Elliott, District Judge
Washoe County Public Defender
Attorney General George Chanos/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

⁴Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).