

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL RICHARDSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45490

FILED

JAN 23 2006

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. E. [Signature]*
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of battery by a prisoner. Seventh Judicial District Court, White Pine County; Dan L. Papez, Judge. The district court sentenced Richardson to serve a maximum term of 60 months with minimum parole eligibility after 24 months, consecutive to all prior terms of incarceration against Richardson.

Richardson first contends that hearsay testimony was improperly introduced into evidence. Specifically, Richardson asserts that the victim was allowed to testify that he heard his attackers, including Richardson, earned their "bolts" by attacking him.¹ Richardson concedes that there was no objection to this testimony at any stage of the trial.

¹"Bolts" are prison tattoos of lightning bolts that represent membership in the prison gang the Aryan Warriors or Aryan Brotherhood.

"Failure to object during trial generally precludes appellate consideration of an issue," but "this court has the discretion to address an error if it was plain and affected the defendant's substantial rights."²

In this case, numerous witnesses gave corroborated, eyewitness testimony that Richardson and his co-defendants beat the victim. In light of the overwhelming evidence against Richardson, we conclude that Richardson has not demonstrated plain error. Moreover, Richardson raised the gang affiliation issue first, during cross-examination of the victim. A party who participates in an alleged error is stopped from raising any objection on appeal.³

Richardson also contends that he did not validly waive his constitutional right not to testify. The defense rested immediately after the State rested, without a colloquy between the court and Richardson regarding his right to testify. No objection was made at trial. A criminal defendant has a constitutional right to testify in his or her own defense.⁴ Notwithstanding, we have specifically declined to adopt a rule "that mandates the reversal of any criminal conviction if the defendant has not been expressly advised by the court of his right to testify."⁵ While, we do

²Gallego v. State, 117 Nev. 348, 365, 23 P.3d 227, 239 (2001) (citing Rippo v. State, 113 Nev. 1239, 1259, 946 P.2d 1017, 1030 (1997); see NRS 178.602 ("Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court."))

³Jones v. State, 95 Nev. 613, 618, 600 P.2d 247, 250 (1979).

⁴Rock v. Arkansas, 483 U.S. 44, 49 (1987).

⁵Phillips v. State, 105 Nev. 631, 633, 782 P.2d 381, 382 (1989).

believe that defendants should be advised of their right to testify, on the record and outside the presence of a jury, failure to do so does not mandate reversal.⁶ Therefore, we

ORDER the judgment of the conviction AFFIRMED.

Douglas, J.
Douglas

Becker, J.
Becker

Parraguirre, J.
Parraguirre

cc: Hon. Dan L. Papez, District Judge
State Public Defender/Carson City
State Public Defender/Ely
Attorney General George Chanos/Ely
White Pine County Clerk

⁶Id.