

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSE ALBERTO CANDELAS A/K/A
JOSE CANDELAS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45546

FILED

MAY 24 2006

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of aggravated stalking. Eighth Judicial District Court, Clark County; Sally L. Loehrer, Judge. The district court sentenced appellant Jose Candelas to a prison term of 26-120 months.

On appeal, Candelas first claims that the district court denied him the right to testify, by making the decision for him. We disagree.

After the State's case in chief, counsel informed the district court that none of the subpoenaed defense witnesses appeared for trial. The district court then informed Candelas he needed to decide whether he would testify, and that he had the right to testify if he wanted to. The district court gave Candelas ample time to discuss the matter with counsel. When the district court inquired again with Candelas whether he would be testifying, Candelas replied that he still did not know. The district court, aware that Candelas could not be compelled to testify against himself, concluded that Candelas would not be testifying.

The district court is required to "exercise reasonable control over the mode and order of interrogating witnesses and presenting

evidence" and "[t]o avoid needless consumption of time."¹ We conclude that the district court did not prevent Candelas from testifying.

Additionally, Candelas contends the jury was improperly instructed regarding the elements of aggravated stalking. Specifically, Candelas asserts that the jury instruction failed to include the subjective element of the "aggravated stalking" definition and was therefore incomplete.² Candelas argues that the jury should have been instructed that the course of conduct related to aggravated stalking must actually cause the victim to feel terrorized, frightened, intimidated or harassed. Candelas failed to lodge a timely objection at trial. "Failure to object to an issue at trial will generally preclude appellate review of that issue unless there is plain error."³

NRS 200.575(2) and the instruction read to the jury are nearly identical.⁴ Even assuming the instruction was erroneous, the error did not affect the reliability of the verdict because there was overwhelming

¹NRS 50.115(1)(a)-(b).

²NRS 200.575(2); See Rossana v. State, 113 Nev. 375, 934 P.2d 1045 (1997)(finding the district court erred when it failed to instruct the jury that a necessary element of aggravated stalking is that the defendant must have threatened the victim).

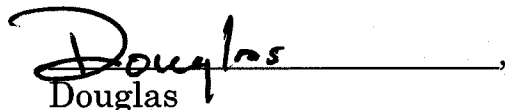
³Allred v. State, 120 Nev. 410, 418, 92 P.3d 1246, 1252 (2004).

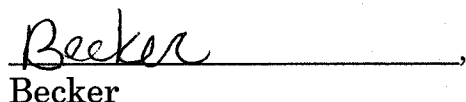
⁴NRS 178.598 defines harmless error and requires that "[a]n error, defect, irregularity or variance which does not affect substantial rights shall be disregarded."

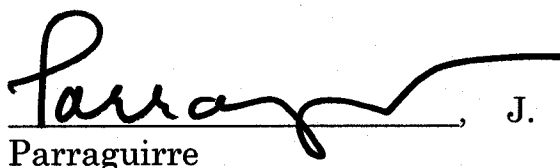
evidence confirming the guilt of Candelas, independent of the alleged error.⁵

The victim and her mother testified describing numerous times when Candelas would break into the victim's home or was found sleeping in her garage. The victim also testified that she feared for her safety because of numerous threats Candelas made against her life. She further testified that she attempted to call 911 after Candelas entered her home, unplugged the phone and tied her up. In light of the overwhelming evidence of Candelas' guilt, any error the district court may have committed in charging the jury does not arise to plain error. Therefore we,

ORDER the judgment of conviction AFFIRMED.

 _____, J.
Douglas

 _____, J.
Becker

 _____, J.
Parraguirre

⁵"An error is harmless when it is 'clear beyond a reasonable doubt that a rational jury would have found the defendant guilty absent the error.'" Allred, at 415, 92 P.3d at 1250 (quoting Neder v. United States, 527 U.S. 1, 18 (1999)).

cc: Hon. Sally L. Loehrer, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk