IN THE SUPREME COURT OF THE STATE OF NEVADA

GREGORY JEFFERSON A/K/A GREGORY ANTONIO JEFFERSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45611

FILED

MAY 01 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of two counts of first-degree kidnapping, five counts of sexual assault of a minor under the age of 16 years, six counts of statutory sexual seduction, and one count of pandering of a child. Eighth Judicial District Court, Clark County; Sally L. Loehrer, Judge. The district court sentenced appellant Gregory Jefferson to serve two consecutive prison terms of 5-15 years for the kidnapping counts, five concurrent prison terms of 15-40 years for the sexual assault counts to run concurrently with the second kidnapping prison term, and a consecutive prison term of 48-120 months for the pandering.

First, Jefferson contends that there was insufficient corroborating evidence to sustain the pandering conviction. The State argues that the incriminating testimony of the victim and prior statements made by Jefferson's accomplice and roommate, Crystal Fuentes, were corroborated by Detectives Reese McManus and Aaron Stanton, who testified generally about the pimp/prostitute relationship, and specifically about items found in Jefferson's residence "that were indicative of [Jefferson's] long history with the pimp/prostitute

subculture." Items found in Jefferson's residence and offered into evidence by the prosecution included a daily planner, containing the handwriting of Fuentes, documenting money transactions and using terminology unique to the subculture, photographs of Jefferson, and poetry/song lyrics allegedly written by Jefferson. None of the items recovered from Jefferson's residence, however, specifically refers to the victim. We agree with Jefferson and conclude that the prosecution failed to present the requisite corroborating evidence sufficient to sustain the pandering conviction.

> Pursuant to former NRS 175.301 –
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> > Upon a trial for . . . inveigling, enticing or taking away any person for the purpose of prostitution, or aiding or assisting therein, the defendant must not be convicted upon the testimony of the person upon or with whom the offense has allegedly been committed, unless:
> >
> > 1. The testimony of that person is corroborated by other evidence.[1]

"The proper standard by which to determine whether there was adequate corroboration under [former] NRS 175.301 is the same as the standard used to test corroboration of accomplice testimony."[2] In order to determine

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[1]1981 Nev. Stat. ch. 504, § 1, at 1029, amended by 2005 Nev. Stat. ch. 113, § 1, at 308 (eliminating prostitution from the statute); see also Sheriff v. Horner, 96 Nev. 312, 608 P.2d 1106 (1980).

[2]Sheriff v. Hilliard, 96 Nev. 345, 347, 608 P.2d 1111, 1112 (1980). NRS 175.291(1) provides –

> A conviction shall not be had on the testimony of an accomplice unless he is corroborated by other evidence which in itself, and without the aid of the testimony of the accomplice, tends to connect the

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if there is sufficient corroborating evidence, this court "must eliminate from the case the evidence of the accomplice, and then examine the evidence of the remaining witness or witnesses with the view to ascertain if there be inculpatory evidence."[3] Evidence, however, "does not suffice as corroborative if it merely supports the accomplice's testimony."[4]

After a review of the record on appeal, and specifically, the evidence noted above, we conclude that there was insufficient corroborating evidence to sustain the pandering conviction. After eliminating the victim's testimony and prior statements of the accomplice, none of the evidence offered by the State specifically links Jefferson to pandering the victim.[5] In fact, none of the evidence references the victim in any way. While the evidence suggests that Jefferson had an interest in, and perhaps, knowledge of the pimp/prostitute subculture, it does not independently connect him with pandering the victim.[6] Therefore, we

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> defendant with the commission of the offense; and the corroboration shall not be sufficient if it merely shows the commission of the offense or the circumstances thereof.

[3]Austin v. State, 87 Nev. 578, 585, 491 P.2d 724, 728 (1971) (quoting People v. Shaw, 112 P.2d 241, 255 (Cal. 1941)).

[4]Evans v. State, 113 Nev. 885, 892, 944 P.2d 253, 257 (1997 (quoting Heglemeier v. State, 111 Nev. 1244, 1250, 903 P.2d 799, 803 (1995)).

[5]See NRS 201.300(1)(a) (defining "pandering," in part, as inducing, persuading, encouraging, inveigling, enticing, or compelling someone to become a prostitute or to continue being a prostitute).

[6]Evans, 113 Nev. at 892, 944 P.2d at 257 (holding that corroborating evidence must independently connect the defendant to the crime); Eckert

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reverse Jefferson's conviction for pandering of a child. Additionally, because one of the counts of first-degree kidnapping (count IX) incorporated the pandering charge, we must also reverse one of Jefferson's convictions for first-degree kidnapping.

Second, Jefferson contends that the district court erred in its application of NRS 50.090, the rape shield statute.[7] Specifically, Jefferson claims that the State, during its redirect examination of Dr. Michelle Gravley, a licensed psychologist, opened the door for the defense to question the witness about the victim's sexual history. We disagree. Dr. Gravley testified that the victim had "some issues with family conflict, some issues with self-esteem and depression related. . . . [And] the absence of her father was difficult for her, and there was the desire to have some contact." The State's line of questioning involved familial problems, not relevant sexual conduct, and did not provide an exception to the rape shield statute. Therefore, we conclude that the district court did not err in

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v. State, 91 Nev. 183, 186, 533 P.2d 468, 471 (1975) (finding that evidence casting a "grave suspicion" is not sufficient for corroboration).

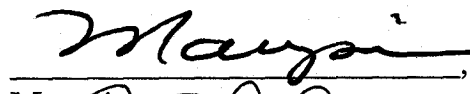
[7]NRS 50.090 provides, in part, the following:

> In any prosecution for sexual assault or statutory sexual seduction . . . the accused may not present evidence of any previous sexual conduct of the victim of the crime to challenge the victim's credibility as a witness unless the prosecutor has presented evidence or the victim has testified concerning such conduct, . . . in which case the scope of the accused's cross-examination of the victim or rebuttal must be limited to the evidence presented by the prosecutor or victim.

prohibiting Jefferson from questioning the witness about the victim's sexual history.[8]

Accordingly, we

ORDER the judgment of conviction AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.[9]



_____, J.
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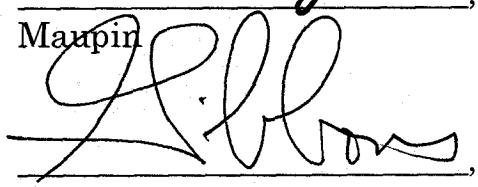

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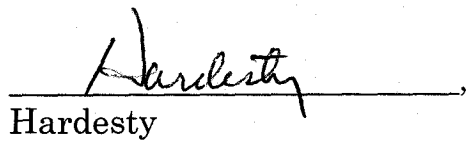

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[8]See Greene v. State, 113 Nev. 157, 166, 931 P.2d 54, 60 (1997) (stating that the decision to admit or exclude evidence rests within the discretion of the trial court), overruled on other grounds by Byford v. State, 116 Nev. 215, 994 P.2d 700 (2000).

[9]We also reject Jefferson's claim that cumulative error denied him his right to a fair trial. See generally Leonard v. State, 114 Nev. 1196, 1216, 969 P.2d 288, 301 (1998) (noting that factors relevant to a claim of cumulative error "include whether 'the issue of innocence or guilt is close, the quantity and character of the error, and the gravity of the crime charged'") (internal citation omitted).

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