

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSEPH DYWAYNE COWART,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47030

FILED

JAN 30 2007

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 and sentence. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge.

On March 28, 2006, the district court convicted appellant Joseph Dywayne Cowart, pursuant to a jury verdict, of sexual assault of a minor under the age of 14. The district court sentenced Cowart to serve a term of life in prison with the possibility of parole after 20 years.

First, Cowart argues that the evidence was insufficient to support his conviction because the victim was incompetent to testify and her testimony was incoherent. We disagree.

"In reviewing evidence supporting a jury's verdict, this court must determine whether the jury, acting reasonably, could have been convinced beyond a reasonable doubt of the defendant's guilt by the competent evidence."¹ Evidence is sufficient to sustain a conviction if, viewed in the light most favorable to the prosecution, "any rational trier of

¹Braunstein v. State, 118 Nev. 68, 79, 40 P.3d 413, 421 (2002) (citing Wilkins v. State, 96 Nev. 367, 374, 609 P.2d 309, 313 (1980)).

fact could have found the essential elements of the crime beyond a reasonable doubt."²

At the time of her testimony, the victim in this case was four-and-one-half years old. She identified Cowart in court and said in age-appropriate language of her own choosing that Cowart had put his penis in her vagina while they were at his house. Her grandmother testified that the victim had made a prior statement that was consistent with her testimony in court. The jury also heard a tape of Cowart's statement to a Las Vegas Metropolitan Police detective, in which he admitted vaginally penetrating the victim. This evidence was sufficient to sustain a conviction for sexual assault of a minor under the age of 14.

Second, Cowart argues the district court erred in denying his pretrial petition for a writ of habeas corpus, in which he claimed the justice court erred in ruling that the victim was competent to testify at the preliminary hearing. We disagree. Our review of the record reveals that the justice court did not so rule. Rather, because the three-year-old victim had some difficulty answering the State's preliminary questions designed to establish her competency, the justice court suggested that the victim take a break and the State proceed with other testimony. After the victim's grandmother and the detective who investigated the case testified, the State elected not to put the victim back on the stand. Thus, the justice court was not called upon to rule on the victim's competence to testify and did not make any ruling on that issue. Thus, we conclude the district court did not err in denying the petition.

²Koza v. State, 100 Nev. 245, 250, 681 P.2d 44, 47 (1984) (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979) (emphasis in original)).

Third, Cowart argues that the district court erred in finding the victim competent to testify at trial. "A child is competent to testify if he or she is able to receive just impressions and relate them truthfully."³ "This court will not disturb a finding of competency absent a clear abuse of discretion."⁴ During her testimony, the victim related her name and age and correctly identified colors and animals. She identified the difference between the truth and a lie and testified that it was bad to tell a lie. While she may have been distracted and slow to answer questions, her testimony was coherent.⁵ Cowart claims she was unable to tell fact from fantasy and had been coached and improperly interviewed, but he provides us with no facts or citations to the record to support this claim. We therefore conclude that the district court did not abuse its discretion in ruling that the victim was competent to testify.

Fourth, Cowart argues that a jury venire member's statements that he was formerly employed in law enforcement and that a person on trial for a crime is probably guilty tainted the entire venire and denied him a fair trial. Cowart fails to point to any facts in the record to establish that his jury was not impartial. All the jurors who were seated indicated they would be fair and impartial. In fact, the jury acquitted Cowart of a second charge of sexual assault of the victim.

Fifth, Cowart argues the district court failed to hold a hearing pursuant to NRS 51.385 before allowing the victim's grandmother to

³Evans v. State, 117 Nev. 609, 624, 28 P.3d 498, 509 (2001).

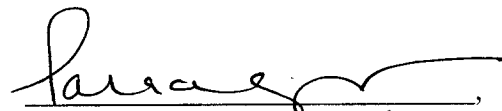
⁴Id.


⁵See id.


testify about the victim's out-of-court statements to her. We disagree. Before the grandmother testified, the district court heard testimony from her outside the jury's presence. The State specifically noted that her testimony was an offer of proof for the purposes of NRS 51.385. After her testimony, the parties and the court talked about the factors enumerated in NRS 51.385(2), and the district court discussed its reasoning on each. Thus, the district court did hold the required hearing.

Having reviewed Cowart's claims and concluded he is not entitled to relief, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Parraguirre


_____, J.
Hardesty


_____, J.
Saitta

cc: Hon. Stewart L. Bell, District Judge
Paul E. Wommer
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk