

IN THE SUPREME COURT OF THE STATE OF NEVADA

JEROME URBAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47883

FILED

JAN 10 2008

ORDER OF AFFIRMANCE

TRACE K. LINDEMAN
CLERK OF SUPREME COURT
BY: 
DEPUTY CLERK

This is an appeal from a judgment of conviction, entered pursuant to a jury verdict, of one count of sexual assault. Second Judicial District Court, Washoe County; Janet J. Berry, Judge. The district court sentenced appellant Jerome Urban to serve a prison term of life with the possibility of parole.

Urban contends that the district court improperly instructed the jury that

If you find that before this trial the defendant made false or deliberate misleading statements concerning the charge upon which he or she is now being tried, you may consider such statements as a circumstance tending to prove a consciousness of guilt but it is not sufficient of itself to prove guilt. The weight to be given to such circumstances and its significance, if any, are matters for your determination.

Urban claims that this instruction has not been expressly approved by this court, placed undue emphasis on his pretrial statements, and allowed the prosecutor to vouch for the credibility of the victim and characterize him as a liar.

"The district court has broad discretion to settle jury instructions, and this court reviews the district court's decision for an abuse of that discretion or judicial error."¹

Here, the jury instruction was based on a California model jury instruction. The district court reviewed the California cases addressing the model jury instruction, a Ninth Circuit Court of Appeals decision affirming the use of the instruction, and our opinions on "consciousness of guilt" evidence before determining that the proposed instruction was permissible and presented an accurate statement of law. Based on our review of the district court's actions, the jury instruction, and relevant authority, we conclude that the district court did not abuse its discretion or err in instructing the jury that it could consider Urban's pretrial statements as evidence of consciousness of guilt.²

To the extent that Urban also contends that the prosecutor engaged in misconduct, we note that he did not object to the prosecutor's comments during closing and rebuttal argument. As a general rule, the failure to object to prosecutorial misconduct precludes appellate review absent plain error.³ We have considered the prosecutor's comments in context and we conclude that they do not constitute plain error.

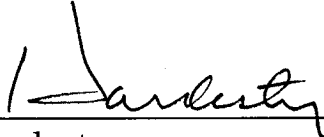
¹Crawford v. State, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005); see also Jackson v. State, 117 Nev. 116, 120, 17 P.3d 998, 1000 (2001) (holding that "[a]n abuse of discretion occurs if the district court's decision is arbitrary or capricious or if it exceeds the bounds of law or reason").

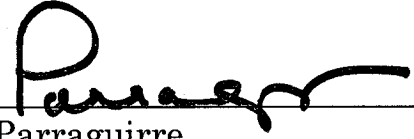
²Cf. Owens v. State, 96 Nev. 880, 620 P.2d 1236 (1980); Abram v. State, 95 Nev. 352, 594 P.2d 1143 (1979).

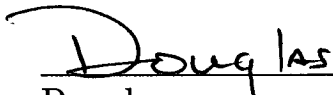
³Williams v. State, 103 Nev. 106, 110-11, 734 P.2d 700, 703 (1987).

Having considered Urban's contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Janet J. Berry, District Judge
Scott W. Edwards
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk