

IN THE SUPREME COURT OF THE STATE OF NEVADA

GEORGE C. COCCHIA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47959

FILED

MAR 07 2007

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of two counts of sexual assault of a child under the age of 16 years. Eighth Judicial District Court, Clark County; Mark R. Denton, Judge. The district court sentenced appellant to serve two concurrent prison terms of 5-20 years.

First, appellant contends that the prosecutor committed misconduct when he asked Randall Patrick Cocchia, a defense witness and appellant's brother, if the victim ever claimed that Randall also sexually assaulted him. Defense counsel objected and moved for a mistrial. Outside the presence of the jury, defense counsel argued that the question was irrelevant and that "[t]he suggestion is enough to taint this trial." The prosecutor explained that the question was relevant because the witness lived in the same apartment and "spent time alone" with the victim, yet the only allegations of sexual assault were made against appellant. The district court found the State's question to be "legitimate" and denied the motion for a mistrial. When the jury returned and the cross-examination resumed, the prosecutor made it clear that no

allegations of sexual assault were made against the witness. On appeal, appellant again claims that the prosecutor's question "tainted the jury," and for the first time, argues that it shifted the burden of proof to the defense because the "inflammatory question infers Appellant's guilt by the lack of guilt of this witness." Appellant contends that his conviction should be reversed and the case remanded for a new trial. We disagree.

"To determine if prejudicial prosecutorial misconduct occurred, the relevant inquiry is whether a prosecutor's statements so infected the proceedings with unfairness as to result in a denial of due process."¹ Additionally, "[a] prosecutor's comments should be viewed in context, and 'a criminal conviction is not to be lightly overturned on the basis of a prosecutor's comments standing alone.'"²

We conclude that appellant cannot demonstrate that the prosecutor's question shifted the burden of proof, tainted the jury, or prejudiced him in any way amounting to reversible error. The defense theory was that the young victim fabricated the allegations against appellant. Considered in context, the prosecutor's question was a valid inquiry directed at the other adult male living in the apartment. As noted above, the district court heard an offer of proof from the prosecutor and determined that the question was relevant. Additionally, the jury was

¹Anderson v. State, 121 Nev. 511, 516, 118 P.3d 184, 187 (2005).

²Knight v. State, 116 Nev. 140, 144-45, 993 P.2d 67, 71 (2000) (quoting United States v. Young, 470 U.S. 1, 11 (1985)).


instructed prior to deliberations about the presumption of innocence and the State's burden to prove "beyond a reasonable doubt every material element of the crime charged and that the Defendant is the person who committed the offense." Therefore, we conclude that the State did not commit prosecutorial misconduct.

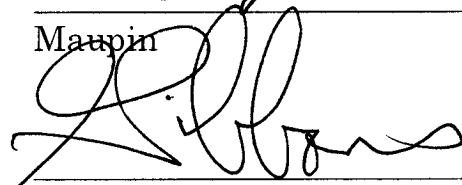
Second, appellant contends that his right to due process and a fair trial was violated. Specifically, appellant claims that the district court "should have allowed [him] to present evidence of his recorded statement of his denial of charges to investigating officer [sic]." We conclude that appellant's allegation is bare, unsubstantiated, and lacks the requisite factual specificity. Further, appellant does not provide any citations to the record in support of his claim.³ And finally, there is no indication in the record that the district court prohibited appellant from questioning Officer Lorraine Newman about his recorded statement. In fact, the district court informed counsel, "Well, let me reserve the ruling on whether or not that would be appropriate questioning of the detective." Appellant subsequently did not present Officer Newman as a defense witness, and when given the opportunity to cross-examine the officer, defense counsel did not inquire into appellant's recorded statement. As a result, the district court never ruled on the matter. Therefore, appellant cannot demonstrate that the district court erred.

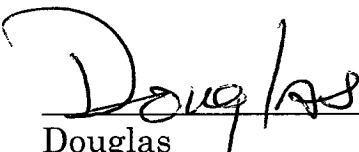
³See NRAP 3C(e)(2) (every reference in the fast track statement to matters of record must be supported by a citation to the page of the transcript or record on appeal where the matter is found).

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

ORDER the judgment of conviction AFFIRMED.⁴


_____, C.J.
Maupin


_____, J.
Gibbons


_____, J.
Douglas

cc: Hon. Mark R. Denton, District Judge
Steven B. Wolfson, Chtd.
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

⁴The Honorable Michael A. Cherry, Justice, voluntarily recused himself from the decision of this matter.