IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES ROSCOE BANKS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48040

FILED

JUN 08 2007

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of gross misdemeanor indecent exposure. Eighth Judicial District Court, Clark County; Sally L. Loehrer, Judge. The district court sentenced appellant Charles Roscoe Banks to serve a jail term of 12 months and ordered him to register as a sex offender.

First, Banks contends that the district court erred in admitting at trial the testimony of the three child victims. In particular, Banks contends that the three boys were incompetent to testify because: (1) their testimony was inconsistent and contrary to other evidence; (2) they were repeatedly questioned by their parents and asked leading questions by the prosecutor; (3) they were too young to be subjected to perjury charges;[1] (4) they were part of the mob that attacked Banks before the police arrived; and (5) one of the witnesses had a possible motive to fabricate allegations against Banks. Additionally, citing to NRS 51.385, Banks alleges that the district court should have conducted a

[1]See NRS 194.010(1)-(2).

trustworthiness hearing before admitting the boys' testimony. We conclude that Banks' contentions lack merit.

Preliminarily, we note that the pretrial hearing requirement set forth in NRS 51.385 applies to the admission of child victims' hearsay statements, not testimony from children in general. With respect to admission of child testimony, this court held that "[a] child is competent to testify if he or she is able to receive just impressions and relate them truthfully."[2] "This court will not disturb a finding of competency absent a clear abuse of discretion."[3]

In this case, the child witnesses were sworn to tell the truth and canvassed for competency before giving testimony. Each child was examined on the difference between a truth and a lie, and the boys' descriptions of events were generally consistent. There is no indication in the record that the boys were coached, were unable to differentiate between fact and fantasy, or had problems recalling events. Accordingly, we conclude that the district court did not abuse its discretion in ruling that the child victims were competent to testify.

Second, Banks argues that there is insufficient evidence supporting his conviction. Specifically, Banks argues that there is no evidence that he acted intentionally and knowingly given his bizarre behavior and the evidence documenting his anger at being falsely accused.

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

[3]Id.

Our review of the record on appeal reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact.[4]

In particular, we note that the three boys testified that Banks acknowledged them, pulled down his pants and underwear, and exposed his genitals. The jury could reasonably infer from the evidence presented that Banks engaged in intentional public sexual conduct.[5] It is for the jury to determine the weight and credibility to give conflicting testimony, and the jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict.[6]

Second, citing to Smith v. Doe,[7] Banks contends that the imposition of the sex offender registration requirement constitutes cruel and unusual punishment because it is grossly disproportionate to the crime of first offense indecent exposure. Additionally, Banks argues that the imposition of the sex offender registration requirement, without first holding a hearing to determine future dangerousness and chance of re-offending, violates his constitutional due process and privacy rights because "the State has no rational basis to label a person as a sex offender when the crime is a first offense misdemeanor indecent exposure, which

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[4]See Wilkins v. State, 96 Nev. 367, 609 P.2d 309 (1980); see also Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998).

[5]See NRS 201.220; Young v. State, 109 Nev. 205, 849 P.2d 336 (1993).

[6]See Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981); see also McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

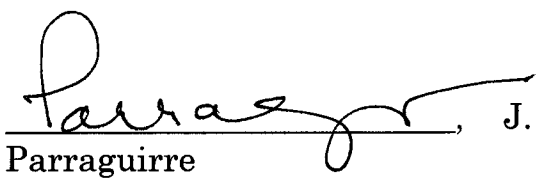
[7]538 U.S. 84 (2003).

does not require a victim, any type of specific intent and is almost a strict liability crime." We conclude that Banks' contentions lack merit.

This court has previously held that Nevada's sex offender registration statute is predominantly regulatory, rather than punitive,[8] and we conclude that it does not constitute cruel and unusual punishment.[9] Additionally, Banks has failed to cite relevant case authority supporting his claim that the imposition of the sex offender registration requirement violates his constitutional right to privacy and due process.[10]

Having considered Banks' contentions and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.



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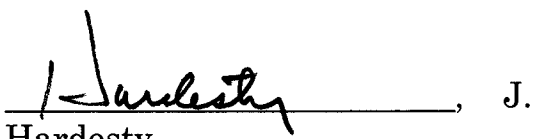
Parraguirre



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[8]See Nollette v. State, 118 Nev. 341, 46 P.3d 87 (2002). We decline Banks' invitation to overrule Nollette.

[9]See Allred v. State, 120 Nev. 410, 420, 92 P.3d 1246, 1253 (2004).

[10]See generally Maresca v. State, 103 Nev. 669, 748 P.2d 3 (1987).

cc: Hon. Sally L. Loehrer, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk