

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSE DOMINGO ALVARADO, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48514

FILED

JUN 12 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, pursuant to a jury verdict, of one count of indecent exposure. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge. The district court sentenced appellant Jose Domingo Alvarado, Jr., to serve a prison term of 19-48 months.

First, Alvarado contends that the district court erred by providing the jury with the following instruction:

Indecent exposure is the willful exhibition of those private parts of the person which instinctive modesty, human decency or natural self-respect requires to be customarily kept covered in the presence of others. It may occur in any public place or private place where another person may be offended, annoyed or embarrassed thereby.

Alvarado claims the definition above “does not track the language of NRS 201.220” and is misleading.¹ Alvarado also argues that the jury instruction defining “willfully” was improper. Alvarado concedes that he did not object, but contends that the giving of the two jury instructions amounted to reversible plain error.² We disagree.

“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.”³ When conducting a review for plain error, however, “the burden is on the defendant to show actual prejudice or a miscarriage of justice.”⁴ As noted above, Alvarado failed to object to either of the challenged jury instructions. Additionally, Alvarado has failed to show that the challenged instructions were contrary to

¹See NRS 201.220(1) (“A person who makes any open and indecent or obscene exposure of his person . . . is guilty [of indecent exposure].”).

²See NRS 178.602 (“Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.”); see also Green v. State, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003) (“Generally, the failure to clearly object on the record to a jury instruction precludes appellate review.”).

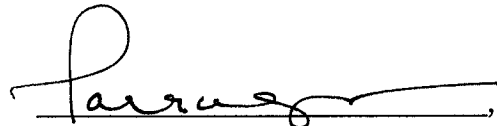
³Crawford v. State, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005); see also Jackson v. State, 117 Nev. 116, 120, 17 P.3d 998, 1000 (2001) (“[a]n abuse of discretion occurs if the district court’s decision is arbitrary or capricious or if it exceeds the bounds of law or reason”).

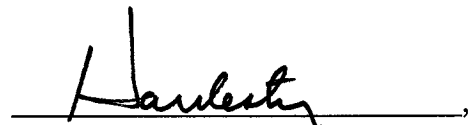
⁴Green, 119 Nev. at 545, 80 P.3d at 95.

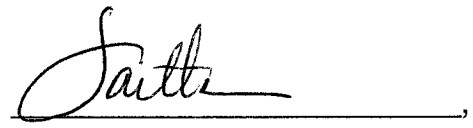
Nevada law. Therefore, we conclude that Alvarado has failed to demonstrate that he suffered a miscarriage of justice or was prejudiced.

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

ORDER the judgment of conviction AFFIRMED.


_____, J.
Parraguirre


_____, J.
Hardesty


_____, J.
Saitta

cc: Hon. Steven P. Elliott, District Judge
Washoe County Public Defender
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk