

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROYANN FRANCIS RUSH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49213

FILED

SEP 25 2007

JANE TE M. BLOOM
CLERK OF SUPREME COURT
BY: 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, entered pursuant to a jury verdict, of one count each of burglary, robbery, conspiracy to commit larceny, and child abuse and neglect. Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Judge. The district court sentenced appellant Royann Francis Rush to serve various terms of imprisonment, ordered the sentence to be suspended, and placed Rush on probation for a fixed period of three years.

First, Rush contends that the evidence presented at trial was insufficient "to convict [her] on every count." However, our review of the record reveals sufficient evidence to establish Rush's guilt beyond a reasonable doubt as determined by a rational trier of fact.¹

The jury heard evidence that Henry Pressler purchased a puppy for his family and not as a gift for Rush. Rush and a male companion named James entered Pressler's residence without permission, Rush took the puppy from the 12-year-old victim and handed it to James, and then they both ran to Rush's car. The victim screamed and chased

¹See McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992) (citing Jackson v. Virginia, 443 U.S. 307, 319 (1979)).

them in an attempt to get the puppy back. The victim reached into the car and grabbed the puppy by its ear. The victim looked Rush in the eye and Rush drove off with the victim hanging onto the car. James pushed the victim off of the moving car after it had traveled 132 feet; Rush did not stop to see if the victim was okay. When the police arrived at Pressler's residence, they found the victim crying and with injuries to her forearms. When the police arrived at Rush's residence, she gave them the puppy and said that she was sorry.

We conclude that a rational juror could reasonably infer that Rush and her accomplice conspired to steal the puppy, entered the victim's residence with the intent to commit a crime, took the puppy against the victim's will and used force to retain possession of the puppy, and willfully caused the victim to be placed in a situation where she might suffer physical harm.² 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.³

Second, Rush contends that the jury instruction on child abuse was insufficient because it did not provide the statutory definition for the term "abuse or neglect."⁴ The challenged instruction provided:

²See NRS 199.480(3)(g), NRS 200.380(1), NRS 200.508(1), NRS 205.060(1).

³See Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981); see also McNair, 108 Nev. at 56, 825 P.2d at 573.

⁴See NRS 200.508(4)(a) (defining "abuse or neglect"). We reject Rush's contention that the jury instruction was deficient because it did not require the State to prove "that the defendant was responsible for the care of the victim at the time of the injury." This is not an element of child abuse based on physical injury of a nonaccidental nature.

Any person who willfully causes a child who is less than eighteen (18) years of age to suffer unjustifiable physical pain or mental suffering as a result of abuse or neglect or who willfully causes a child to be placed in a situation where the child may suffer physical pain or mental suffering as a result of abuse or neglect is guilty of the offense of Child Abuse.

Rush acknowledges that this issue was not preserved for appeal and argues that the error is plain and affected her substantial rights.⁵ "To be plain, an error must be so unmistakable that it is apparent from a casual inspection of the record."⁶ As a general rule, an appellant must demonstrate that the error was prejudicial in order to prove that it affected her substantial rights.⁷ No error occurred here because the instruction is a correct statement of the law⁸ and Rush has not demonstrated that prejudice resulted from the absence of an instruction defining "abuse or neglect."

Third, Rush contends that trial counsel was ineffective for failing to submit a timely witness list, subpoena witnesses, and make offers of proof as to how the absent witnesses would have testified. We decline to consider Rush's ineffective assistance contentions on direct

⁵Rush cites to Green v. State, 119 Nev. 542, 545, 80 P.3d 93, 94-95 (2003).

⁶Garner v. State, 116 Nev. 770, 783, 6 P.3d 1013, 1022 (2000), overruled on other grounds by Sharma v. State, 118 Nev. 648, 56 P.3d 868 (2002).

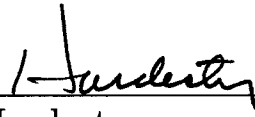
⁷See Gallego v. State, 117 Nev. 348, 365, 23 P.3d 227, 239 (2001).

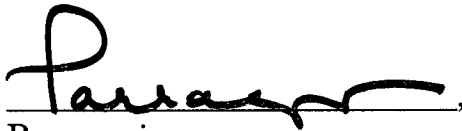
⁸NRS 200.508(1).

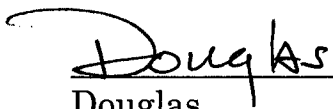
appeal.⁹ Claims of ineffective assistance of counsel are more appropriately raised in the district court in the first instance by way of a petition for post-conviction relief.¹⁰

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

ORDER the judgment of conviction AFFIRMED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Eighth Judicial District Court Dept. 6, District Judge
Ciciliano & Associates, LLC
Gregory D. Knapp
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

⁹Corbin v. State, 111 Nev. 378, 381, 892 P.2d 580, 582 (1995).

¹⁰Gibbons v. State, 97 Nev. 520, 523, 634 P.2d 1214, 1216 (1981).