

IN THE SUPREME COURT OF THE STATE OF NEVADA

BILLY WAYNE PERKINS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49317

FILED

APR 04 2008

ORDER OF AFFIRMANCE

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of three counts of sexual assault with a minor under 14 years of age and four counts of lewdness with a child under the age of 14. Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Judge. The district court sentenced appellant Billy Wayne Perkins to serve a term of life in prison with the possibility of parole after 20 years for each of the sexual assault convictions and a term of life in prison with the possibility of parole after 10 years for each of the lewdness with a child convictions. The district court ordered all counts to run concurrently.

Perkins argues that jury instruction no. 22 was unduly prejudicial and requests that a new trial be granted. The challenged jury instruction reads: "There is no requirement that the testimony of a victim of sexual assault be corroborated, and her testimony standing alone, if believed beyond a reasonable doubt, is sufficient to sustain a verdict of guilty."

Perkins concedes that he did not object to instruction no. 22. Generally, the failure to object during trial will preclude appellate review of that issue.¹ However, this court may review for plain error affecting the defendant's substantial rights.² The burden rests with Perkins to show actual prejudice or a miscarriage of justice.³

First, Perkins claims that instruction no. 22 was unduly prejudicial because it referred to the complainant as a "victim." Perkins argues that it was plain error to use the word "victim." The record reveals that the word "victim" was also used in jury instructions nos. 5, 6, and 11, which Perkins has not challenged. Upon review of the challenged instruction, we find that instruction no. 22 as a whole served to remind the jurors that before they could convict Perkins based solely on the testimony of the two accusers, they must believe that the testimony was truthful beyond a reasonable doubt. Additionally, Perkins was acquitted of 13 of 20 charges, which indicates that the jury was not overwhelmed by the use of the word "victim" in the instructions. Further, there was additional evidence available to the jury to support the convictions, specifically from the interview between Perkins and Detective Shannon

¹Leonard v. State, 117 Nev. 53, 63, 17 P.3d 397, 403 (2001) (citing Cordova v. State, 116 Nev. 664, 6 P.3d 481(2000)).

²Id.

³Green v. State, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003).

Tooley. During the interview Perkins drafted an apology letter to the girls; therefore, the girls' testimony was not the only evidence against Perkins. As such, we conclude that Perkins fails to demonstrate plain error in this regard.

Second, Perkins argues that instruction no. 22 unfairly focused the jury's attention on a particular witness' testimony, that the instruction improperly employed the appellate standard of review for sufficiency-of-the-evidence claims, and the word "corroborated" may have confused the jury. This court examined these issues in Gaxiola v. State.⁴ In Gaxiola, we determined that a "no corroboration" instruction, as was given in instruction no. 22, "is a correct statement of Nevada law."⁵ Additionally, "the instruction does not unduly focus the jury's attention on the victim's testimony."⁶ Further, this court unequivocally stated that "it is appropriate for the district court to instruct the jurors that it is sufficient to base their decision on the alleged victim's uncorroborated testimony as long as the testimony establishes all of the material elements of the crime."⁷ Therefore, Perkins fails to demonstrate plain error on the grounds he asserts on appeal.

⁴Gaxiola v. State, 121 Nev. 638, 119 P.3d 1225 (2005).


⁵Id. at 649, 119 P.3d at 1233.

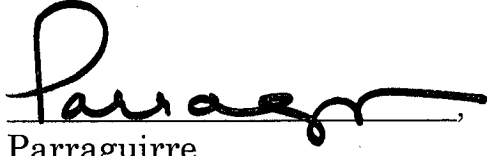
⁶Id. at 649-50, 119 P.3d at 1233.


⁷Id. at 650, 119 P.3d at 1233.

Having considered Perkins' contentions and concluded 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
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