

IN THE SUPREME COURT OF THE STATE OF NEVADA

CARLOS RAMOS-LOPEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49927

FILED

DEC 16 2008

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of eight counts of sexual assault of a child under the age of 14 years and three counts of lewdness with a minor under the age of 14 years. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge. Appellant Carlos Ramos-Lopez raises three challenges to his conviction. For the following reasons, we conclude that Ramos' arguments fail and therefore affirm the district court's judgment of conviction. The parties are familiar with the facts and we do not recount them here except as necessary to our disposition.

Prior bad act evidence

At trial, Ramos' defense theory was that his daughter, two nieces, and younger sister had fabricated the allegations of sexual abuse because his daughter was upset that Ramos had decided to move the family to Utah. To rebut Ramos' defense theory, as well as to prove his motive for sexually abusing his daughter and nieces, the State put forth evidence that Ramos had sexually assaulted his sister when she was a child. On appeal, Ramos argues that his sister's testimony should not have been admitted because its prejudicial effect far outweighed its probative value. We disagree.

“A district court’s decision to admit or exclude evidence under NRS 48.045(2) rests within its sound discretion and will not be reversed on appeal absent manifest error.”¹ In this case, the district court conducted a hearing outside the presence of the jury and found that the evidence was (1) relevant to Ramos’ motive because all of the alleged victims were young, female family members; (2) proven by clear and convincing evidence due to Ramos’ sister’s ability to independently verify, with specificity, the details of the abuse and the lack of motive to fabricate her story; and (3) although prejudicial, the prejudice did not substantially outweigh its probative value.² Here, due to the strength of the State’s case and the overwhelming direct evidence that supported Ramos’ conviction, any danger of unfair prejudice was minimal.³ Accordingly, we conclude that the district court did not abuse its discretion in admitting evidence of Ramos’ uncharged sexual abuse of his sister to show his motive for sexually assaulting his daughter and nieces.

Motion to sever

Ramos alleges that the district court erred by refusing to sever his charges with regard to each individual victim because the evidence pertaining to each crime did not constitute a common scheme or plan, it was not cross-admissible, and was unduly prejudicial. We disagree.

¹Ledbetter v. State, 122 Nev. 252, 259, 129 P.3d 671, 677 (2006).

²See Rymes v. State, 121 Nev. 17, 21, 107 P.3d 1278, 1281 (2005) (quoting Tinch v. State, 113 Nev. 1170, 1176, 946 P.2d 1061, 1064-65 (1997)).

³Ledbetter v. State, 122 Nev. at 263, 129 P.3d at 679.

“[J]oinder decisions are within the sound discretion of the trial court and will not be reversed absent an abuse of discretion.”⁴ NRS 173.115 provides that joinder of charges based on separate acts or transactions is proper when the acts or transactions are “connected together or constituting parts of a common scheme or plan.”

Here, the State charged Ramos with sexual assault and lewdness with three female family members. In denying Ramos’ motion to sever, the district court explained that the each alleged victim, under similar circumstances and in close temporal proximity with each other, was subjected to Ramos’ similar unlawful acts. Accordingly, the district court concluded that Ramos’ acts were sufficiently connected together. As a result, we conclude that joinder of the sexual assault and lewdness charges that pertained to each individual victim was proper.

Prosecutorial misconduct

Lastly, Ramos contends that the prosecutor’s comments during closing argument rebuttal, referring to the defense theory as “ridiculous,” warrants reversal. A prosecutor must refrain from ridiculing or belittling remarks; however, a conviction will not be overturned unless the prosecutor’s comments deprived the defendant of a fair trial.⁵ Here, due to the overwhelming evidence of Ramos’ guilt, we conclude that the

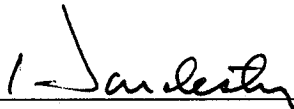
⁴Robins v. State, 106 Nev. 611, 619, 798 P.2d 558, 563 (1990).

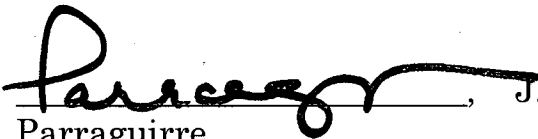
⁵See Pascua v. State, 122 Nev. 1001, 1008, 145 P.3d 1031, 1035 (2006) (concluding that, in its rebuttal to the defendant’s closing argument, the State’s characterization of the defense’s theory as “ludicrous” did not deprive the defendant of a fair trial).

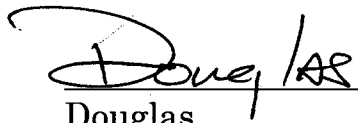
prosecutor's comment was not prejudicial and did not deprive Ramos of a fair trial, therefore, reversal is not required.⁶

For the reasons set forth above, we conclude that Ramos' arguments on appeal lack merit. Accordingly, we

ORDER the judgment of conviction AFFIRMED. :


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Donald M. Mosley, 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

⁶Runion v. State, 116 Nev. 1041, 1053, 13 P.3d 52, 60 (2000) (stating that a criminal conviction is not lightly overturned on the basis of prosecutorial misconduct, but where the issue of guilt or innocence is close, the misconduct may be prejudicial).