IN THE SUPREME COURT OF THE STATE OF NEVADA

OLIVER LEE HARNESS A/K/A OLIVER LEE HARNESS, SR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51890

FILED

JUN 04 2009

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 failure to keep registration of sex offender current. Sixth Judicial District Court, Humboldt County; Richard Wagner, Judge.

The district court sentenced appellant Oliver Lee Harness to serve a minimum of 12 months and a maximum of 34 months in Nevada State Prison. He raises five arguments on appeal. Harness contends that (1) the evidence does not support his conviction, (2) the statutes requiring sex offender registration be kept current are void for vagueness, (3) the district court did not give proper jury instructions, (4) there was an instance of prosecutorial misconduct, and (5) the district court erred when it advised him that he could not maintain his innocence at allocution. We disagree with Harness on each contention and affirm the judgment of conviction.

In March 2002, Harness was convicted of statutory sexual seduction. Upon his release from prison, Harness was required to register as a sex offender and to keep that registration current. Harness fulfilled the first requirement. He registered as a sex offender, listed an address and stated that he did not have employment.

In September 2007, Harness went to the Humboldt County Detention Center to register for indigent services. While there, Harness told a sheriff's employee, Shauna Del Soldato, that he was living in the "willows" and working at Jack in the Box. Soldato testified that at the time Harness told her that he had updated his sex offender registration, when in fact he had not.

Subsequently, the police arrested Harness for failure to keep his registration as a sex offender current, in violation of NRS 179D.350 through 179D.550. The criminal information stated that Harness knowingly, willfully, and unlawfully failed to update his sex offender registration with his new place of employment and/or his new address. At trial, the State presented evidence that Harness knew he must keep his sex offender registration current, that he did not do so, and that he violated NRS 179D.350 through NRS 179D.550. The jury returned a verdict of guilty. This appeal followed.

There was sufficient evidence presented at trial, independent of Harness' extrajudicial statement, to support the jury verdict

First, Harness argues that the evidence presented at trial was insufficient to support his conviction because the State failed to prove the corpus delicti of the crime independent of his extrajudicial admission that he lived "in the willows."

"It has long been black letter law in Nevada that the corpus delicti of a crime must be proven independently of the defendant's extrajudicial admissions." Edwards v. State, 122 Nev. 378, 384, 132 P.3d 581, 585 (2006). In Doyle v. State, this court explained the scope of the independent evidence necessary to corroborate a defendant's admissions:

> "The independent proof may be circumstantial evidence . . . , and it need not be beyond a

> reasonable doubt. A slight or prima facie showing, permitting the reasonable inference that a crime was committed, is sufficient. If the independent proof meets this threshold requirement, the accused's admissions may then be considered to strengthen the case on all issues."

112 Nev. 879, 892, 921 P.2d 901, 910 (1996) (quoting People v. Alcala, 685 P.2d 1126, 1136 (Cal. 1984), superseded by statute on other grounds as recognized by People v. Falsetta, 986 P.2d 182, 186 (Cal. 1999)), overruled on other grounds by Kaczmarek v. State, 120 Nev. 314, 333, 91 P.3d 16, 29 (2004). "In determining the sufficiency of the evidence on appeal, 'the critical question is "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt."'" Diomampo v. State, 124 Nev. ___, ___, 185 P.3d 1031, 1043 (quoting Mejia v. State, 122 Nev. 487, 492, 134 P.3d 722, 725 (2006) (quoting Koza v. State, 100 Nev. 245, 250, 681 P.2d 44, 47 (1984))).

We conclude that the evidence, independent of Harness's extrajudicial admission, satisfies the minimal showing required to permit a rational inference that the crime charged was committed.

At trial, the State presented a certified copy of Harness's conviction for statutory sexual seduction—a crime for which registration is required. The State then presented a copy of Harness's registration with the Winnemucca Police Department in 2007, which expressly warned Harness that if he changed any of the information contained in his registration as a sex offender, he was required to update the registration within 48 hours (the registration also contained the admissions of Harness that he knew about his registration requirements). Next, the State presented the testimony of Seyco Flores, the manager of the Jack in the

Box in Winnemucca. Flores testified that Harness had been working at the restaurant and presented documentation verifying Harness's start date. In addition, the State presented the testimony of Lieutenant Richard Waldie. He testified that Del Soldato contacted him to verify that Harness had updated his sex offender registration. After reviewing Harness's registration and finding no entry for employment, Waldie testified that he went to the Jack in the Box to verify that Harness had secured employment. He testified that Flores told him that Harness had been working there for more than a week.

The record shows that Harness knew of the registry requirement and, in fact, was given documentation that ordered him to update his sex offender registration with any change of address and/or employment when he registered as a sex offender with the Winnemucca Police Department in 2007. The evidence further proved that when Harness registered as a sex offender initially, he did not list any employment. When he secured employment at Jack in the Box, it is undisputed that Harness failed to update his sex offender registration as he was legally obligated to do. We find that the evidence presented, independent of Harness's extrajudicial admission, satisfies the minimal showing required to permit a rational inference that the crime charged was committed. Therefore, we conclude that the State sufficiently established the corpus delicti of the crimes charged.

NRS 179D.350 through NRS 179D.550 do not implicate the void-for-vagueness doctrine

Harness also contends that NRS 179D.350 through NRS 179D.550 are void for vagueness. This claim lacks merit. These statutes make up Nevada's statutory scheme for sex offender registration. The

statutes set forth the rules for when and how a convicted sex offender should keep his or her registration current. Specifically, Harness argues that the requirement that a sex offender notify law enforcement of a change of address within 48 hours is vague.

The void-for-vagueness doctrine permits the facial invalidation of a law that is "so imprecise, and vagueness so permeates its text, that persons of ordinary intelligence cannot understand what conduct is prohibited, and the enactment authorizes or encourages arbitrary and discriminatory enforcement." City of Las Vegas v. Dist. Ct., 118 Nev. 859, 863, 59 P.3d 477, 480 (2002).

We conclude that NRS 179D.350 through NRS 179D.550 do not implicate the void-for-vagueness doctrine because the statutes are not so unclear that vagueness pervades the statute's content, thereby lending itself to arbitrary enforcement. Moreover, as applied here, the statutes give more than fair notice to people of ordinary intelligence that failure to update one's residence or employment within 48 hours of a change will result in a violation. Because we determine that a person of ordinary intelligence would understand the 48 hour requirement, we conclude that the statute does not lend itself to arbitrary enforcement, and therefore, Harness's contention fails.

The district court did not misstate the elements of the crime in the jury instructions

Next, Harness asserts that the district court erred by misstating the elements of the offense in the jury instructions. The district court provided a jury instruction that replaced the words "changed the address at which he was a worker" to "changed addresses and employment." Harness misstates the jury instruction.

Jury Instruction No. 11 listed the elements of the crime as such:

> 1. That the Defendant;
>
> 2. Was previously convicted of a sexual offense, and
>
> 3. He changed his address and/or employment in Winnemucca, Humboldt County, Nevada; and
>
> 4. That he willfully failed to notify either the Humboldt County Sheriff's Office or the Winnemucca Police Department of such change of address and/or employment within 48 hours of such change.

We review de novo whether particular jury instructions are correct statements of the law. Cortinas v. State, 124 Nev. ___, ___, 195 P.3d 315 (2008). NRS 179D.470 states, in pertinent part,

> If a sex offender changes the address at which he resides, . . . or changes the primary address at which he is a student or worker, not later than 48 hours after changing such an address, the sex offender shall provide the new address, in person, to the local law enforcement . . . and shall provide all other information that is relevant to updating his record of registration, including, but not limited to, any change in his name, occupation, employment, work, volunteer service or driver's license.

The statute requires a sex offender to update law enforcement of any change of address—whether residential or work. The district court's jury instruction does not add any element to the crime, nor does it misstate the law. Therefore, we conclude the district court did not err by misstating the elements of the offense in the jury instructions.

The State did not engage in prosecutorial misconduct

Harness also contends that the State engaged in prosecutorial misconduct during sentencing by informing the court that Harness failed to register as a sex offender and thus deserved to serve time in prison. Harness's argument is without merit.

"When considering claims of prosecutorial misconduct, this court engages in a two-step analysis." Valdez v. State, 124 Nev. ___, ___, 196 P.3d 465, 476 (2008). "First, we must determine whether the prosecutor's conduct was improper. Second, if the conduct was improper, we must determine whether the improper conduct warrants reversal." Id.

We have reviewed the record and conclude that the prosecutor's conduct was not improper. The prosecutor stated that Harness had failed to register as a sex offender while speaking in the context of staying current with his sex offender registration. The prosecutor did not state that Harness deserved to be imprisoned. The prosecutor and the judge engaged in proper discussion regarding sentencing guidelines and what sentence would be appropriate in this case. Therefore, we conclude there was no prosecutorial misconduct.

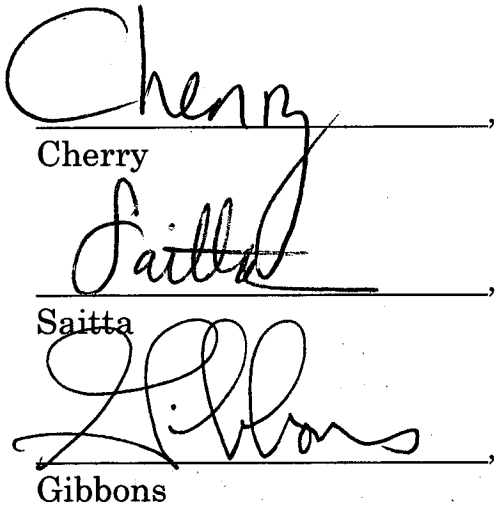
The district court did not err when it advised Harness that he could not maintain his innocence at allocution

Finally, Harness argues that the district court committed error by advising Harness that he could not maintain his innocence at allocution during sentencing. However, in Echavarria v. State, we held that a defendant has no right to introduce unsworn, self-serving statements of innocence at allocution because his guilt has already been determined. 108 Nev. 734, 744, 839 P.2d 589, 596 (1992). Clearly, then,

the court did not err when it advised Harness that he could not maintain his innocence at sentencing.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.



_____, J.
Cherry

_____, J.
Saitta

_____, J.
Gibbons

cc: Hon. Richard Wagner, District Judge
Humboldt-Pershing County Public Defender
Attorney General Catherine Cortez Masto/Carson City
Humboldt County District Attorney
Humboldt County Clerk