

IN THE SUPREME COURT OF THE STATE OF NEVADA

GARY BRUCE BROOKS A/K/A HARRY
BRUCE BROOKS A/K/A GARRY B.
BROOKS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52333

FILED

MAR 09 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *T. Herp*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of two counts of lewdness with a child under the age of 14 years, three counts of sexual assault of a minor child under 14 years of age, two counts of sexual assault of a minor under 16 years of age, one count of child abuse and neglect, and one count of possession of a dangerous weapon. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

Appellant Gary Brooks contends that (1) the district court erred by excluding evidence that the victim, D.B., falsely accused one of her peers of sexual misconduct; and (2) the State failed to provide sufficient evidence that the victim suffered mental anguish in order to sustain his child-abuse-and-neglect conviction.¹ For the following reasons, we conclude that Brooks' arguments fail, and we therefore affirm.²

¹Although he did not object at trial, Brooks argues on appeal that the State's charging document did not provide him with sufficient notice of the charges against him. We conclude that the charging document was sufficient. Larsen v. State, 86 Nev. 451, 456, 470 P.2d 417, 420 (1970) (stating that when a charging document is challenged for the first time on

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The district court did not err by prohibiting inquiry into the Child Haven incident

Brooks contends that the district court erred when it denied him the opportunity to impeach D.B.'s credibility by questioning her about an allegedly false accusation of sexual misconduct that she made after Brooks' arrest. We disagree.

We have recognized that a victim's prior false allegations of sexual abuse or sexual assault are admissible to impeach the victim's trial testimony. See Abbott v. State, 122 Nev. 715, 732-33, 138 P.3d 462, 473-74 (2006). Before admitting such evidence, however, defense counsel must prove by a preponderance of the evidence that "(1) the accusations were made; (2) the accusations were false; and (3) the extrinsic evidence is more probative than prejudicial." Id. at 733, 138 P.3d at 474 (quoting Efrain M., a Minor v. State, 107 Nev. 947, 950, 823 P.2d 264, 265 (1991)). Moreover, "[t]he trial court has sound discretion to admit or exclude" such evidence. Id. at 732, 138 P.3d at 473.

Here, Brooks sought to introduce evidence that D.B. had written a letter in which she falsely accused another female Child Haven

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appeal, a reduced standard will be applied to test its sufficiency). Brooks also argues for the first time on appeal that the district court failed to sua sponte instruct the jurors that they needed to unanimously agree as to the underlying criminal acts supporting each charge. Failure to object at trial generally precludes appellate consideration of an issue. Gallego v. State, 117 Nev. 348, 365, 23 P.3d 227, 239 (2001). Nevertheless, after a review of the record, we conclude that this argument lacks merit.

²The parties are familiar with the facts, and we do not recount them here except as necessary to our disposition.

resident of touching her in a sexual manner. Upon reviewing the rather limited record and entertaining both parties' arguments, however, the district court was unable to conclude whether or not the underlying conduct occurred, who had written the letter, or what exactly the letter said. Without any clarity as to whether D.B. was the one who made the accusations and whether they were false, the district court excluded the evidence. Based upon our review of the record, we conclude that the district court did not abuse its discretion in prohibiting Brooks from using the letter to impeach D.B.'s credibility.³

Sufficient evidence supported Brooks' child-abuse-and-neglect conviction

Brooks alleges that there was insufficient evidence to convict him of child abuse and neglect because there was no evidence presented to suggest that the victim suffered any physical pain or mental suffering. "The standard of review when analyzing the sufficiency of evidence in a criminal case 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." Nolan v. State, 122 Nev. 363, 377, 132 P.3d 564, 573 (2006) (internal quotations and alterations omitted).

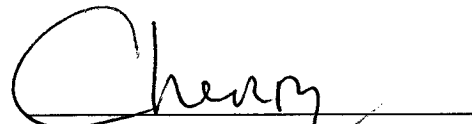
NRS 200.508 states that a person can be found guilty of child abuse and neglect in one of two ways: by "willfully caus[ing] a child . . . to suffer unjustifiable physical pain or mental suffering" or by willfully


³We note that Brooks was not prohibited altogether from impeaching D.B.'s credibility, as she was thoroughly cross-examined regarding why she did not report Brooks' abuse earlier in spite of numerous potential opportunities to do so.


causing the child “to be placed in a situation where the child may suffer physical pain or mental suffering.” NRS 200.508(1), (2) (emphases added).

Given the plain language of the statute, the State needed only to prove that Brooks placed D.B. in a situation where she may have suffered physical pain or mental suffering. By presenting evidence that Brooks forced D.B. to ingest illegal drugs, watch him engage in sexual acts with prostitutes, and accompany him to solicit prostitutes, we conclude that rational jurors could have found Brooks guilty of child abuse and neglect beyond a reasonable doubt. Nolan, 122 Nev. at 377, 132 P.3d at 573. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Douglas W. Herndon, District Judge
Ellsworth Moody & Bennion Chtd.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk