IN THE SUPREME COURT OF THE STATE OF NEVADA

RONALD MAURICE PEEK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53371

FILED

FEB 03 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of open or gross lewdness. Second Judicial District Court, Washoe County; Janet J. Berry, Judge.

Appellant Ronald Peek's central claim is that there is insufficient evidence to support his conviction. However, the evidence presented at trial showed that while visiting Peek's step-daughter, the victim was watching television by herself when Peek came downstairs with his robe loosely tied so that his genitalia were exposed. Peek stood in front of the victim and handed her the family's cat, and then sat down next to her with his knee touching her leg. Peek's robe was still open and she could see his penis sticking out of his robe. We conclude that this evidence was sufficient for a rational juror to find beyond a reasonable doubt that Peek committed an act of open or gross lewdness. See Jackson v. Virginia, 443 U.S. 307, 319 (1979); McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992); NRS 201.210.

In addition, Peek argues that three trial errors, when considered cumulatively, require reversal of his convictions.

First, Peek claims that the prosecutor improperly cross-examined him about the effect a conviction might have on his country club membership. However, the prosecutor's question was not a comment on the penalty for the charged crime. See Valdez v. State, 124 Nev. 97, ___, 196 P.3d 465, 473-74 (2008). Even if it was improper, the district court offered to give a curative instruction and the defense declined. See Foster v. State, 121 Nev. 165, 177, 111 P.3d 1083, 1091-92 (2005).

Second, Peek contends that the district court erred by holding a Petrocelli[1] hearing within the earshot of the jury. Although there was some evidence that courtroom proceedings had been overheard in the jury room in the past, Peek offers no evidence that the jury in this case was exposed to inadmissible evidence. Therefore, this claim lacks merit.

Third, Peek argues that the district court improperly singled out defense counsel for rebuke. While defense counsel was admonished on several occasions for improper questioning and argument, nothing in the record suggests that the district court singled out defense counsel for rebuke, and Peek fails to show that he was not tried fairly and impartially. See Meek v. State, 112 Nev. 1288, 1296, 930 P.2d 1104, 1109 (1996).

For these reasons, we conclude that any error in this case, when considered either individually or cumulatively, does not warrant

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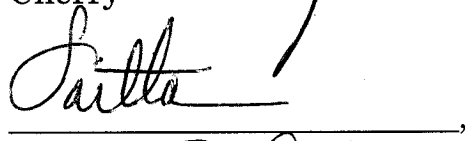
[1]Petrocelli v. State, 101 Nev. 46, 692 P.2d 503 (1985), modified by Sonner v. State, 112 Nev. 1328, 1333-34, 930 P.2d 707, 711-12 (1996), and superseded in part by statute as stated in Thomas v. State, 120 Nev. 37, 45, 83 P.3d 818, 823 (2004).

relief. See Hernandez v. State, 118 Nev. 513, 535, 50 P.3d 1100, 1115 (2002).

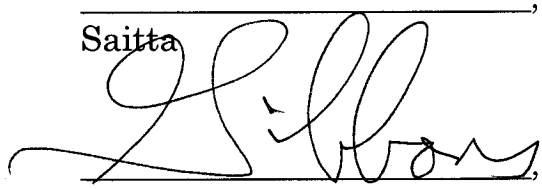
Having considered Peek's claims and concluded that no relief is warranted, we

ORDER the judgment of conviction AFFIRMED.

_____, J.
Cherry



_____, J.
Saitta



_____, J.
Gibbons

cc: Hon. Janet J. Berry, District Judge
Richard F. Cornell
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk