

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAYMOND JAMES MASCARENAS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 54576

FILED

SEP 29 2010

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *A. Ingerson*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of sexual assault. Second Judicial District Court, Washoe County; Patrick Flanagan, Judge. Appellant Raymond Mascarenas raises five issues.

First, Mascarenas claims that insufficient evidence supports his conviction. The victim testified that Mascarenas anally penetrated her while she attempted to physically resist, and this testimony alone is sufficient to uphold the conviction. Rose v. State, 123 Nev. 194, 203, 163 P.3d 408, 414 (2007). Nonetheless, significant corroborating evidence supports the conviction, including a nurse who testified that the victim's injuries were most likely the result of nonconsensual sex. We thus conclude that a rational juror could have found each element of sexual assault beyond a reasonable doubt. See Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998); NRS 200.366.

Second, Mascarenas claims that the jury instruction on mistaken belief of consent was inadequate, as it did not properly convey the defense theory of consent and did not restate the burden of proof. The instruction given on this issue was the instruction Mascarenas submitted

and he therefore cannot now complain that the district court erred in accepting it. Additionally, the jury was instructed that the State had the burden to prove every element of the crime beyond a reasonable doubt, and we presume it followed that instruction. Allred v. State, 120 Nev. 410, 415, 92 P.3d 1246, 1250 (2004).


Third, Mascarenas argues that his confession was involuntary and its admission was plain error. Mascarenas was dropped off by a family member for an interview with a detective at a Social Services building, where he admitted to sexual contact with the victim. Mascarenas was seventeen at the time of the two-hour interview and was told that his parents could be present and that he could leave at any time. The interview was conversational and Mascarenas left freely at its conclusion. Mascarenas asserts that his age and the detective's suggestion that he could "smooth things over" for Mascarenas rendered the interview coercive. In the totality of the circumstances reflected in the record, we cannot agree that his will was overborne, see Passama v. State, 103 Nev. 212, 214, 735 P.2d 321, 323 (1987), and conclude that none of his substantial rights were affected, see Kaczmarek v. State, 120 Nev. 314, 328, 91 P.3d 16, 26 (2004).


Fourth, Mascarenas claims that the juvenile court abused its discretion when it certified him to stand trial as an adult. Adult certification by the juvenile court is an independently appealable final judgment, see NRS 62D.500(2), and failure to pursue that appeal constitutes waiver of this claim. See Castillo v. State, 106 Nev. 349, 351, 792 P.2d 1133, 1134 (1990). Nonetheless, we note that the claim is wholly meritless as Mascarenas stipulated to adult certification.


Fifth, Mascarenas argues that the victim's spontaneous statement during her trial testimony that she was a virgin before the assault deprived him of a fair trial. We disagree. Recognizing that the statement was unsolicited, Mascarenas declined to ask for a hearing to present evidence that the victim was not a virgin and instead suggested that the district court specifically instruct the jury to disregard the comment. The court gave that instruction and we conclude that it was adequate to cure any resulting prejudice.

Having considered Mascarenas' arguments and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Saitta

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Patrick Flanagan, District Judge  
Washoe District Court Clerk  
Karla K. Butko  
Attorney General/Carson City  
Washoe County District Attorney