

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARC PERRY YOUNG,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56364

FILED

MAR 17 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF REVERSAL

This is an appeal from of judgment of conviction entered pursuant to a jury verdict of one count of child abuse and neglect. Eighth Judicial District Court, Clark County; Valorie Vega, Judge.

Appellant Marc Perry Young contends that insufficient evidence supports his conviction because the State failed to prove that the victim suffered either permanent or temporary disfigurement, or was impaired of any bodily function or organ. We agree.

To prove child abuse or neglect, the State must show that the defendant willfully caused “a child who is less than 18 years of age to suffer unjustifiable physical pain or mental suffering as a result of abuse or neglect or to be placed in a situation where the child may suffer physical pain or mental suffering as the result of abuse or neglect.” NRS 200.508(1). To prove the “abuse or neglect” element of this crime the State must show there was a “physical or mental injury of a nonaccidental nature, sexual abuse, sexual exploitation, negligent treatment or maltreatment.” NRS 200.508(4)(a). To prove there was a “physical injury,” the State must show that the victim suffered either “[p]ermanent or temporary disfigurement” or “[i]mpairment of any bodily function or organ of the body.” NRS 200.508(4)(d). Although the jury was instructed


on the elements of child abuse or neglect and the definition of “abuse or neglect,” it was not instructed on the definition of “physical injury.”


The State presented evidence that Young intentionally kicked the 12-year-old victim in the groin and inflicted enough pain to cause the victim to fall to the ground. The evidence further indicated that this was an isolated incident, neither the victim nor his mother thought medical attention was necessary, and Child Protective Services investigated the incident and determined that no action was necessary. No evidence was presented that the victim sustained permanent or temporary disfigurement, impairment of any bodily function or organ, or mental injury. No evidence was presented that the victim was sexually abused or exploited. And no evidence was presented that the victim was subjected to negligent treatment or maltreatment as defined by NRS 432B.140, or excessive corporal punishment as defined by NRS 432B.020; NRS 432B.090; NRS 432B.150.

Based on the evidence presented, we conclude that, even when viewed in the light most favorable to the State, no rational juror could have found the elements essential to proving child abuse or neglect, see McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992), and therefore Young’s conviction cannot stand, see Batin v. State, 118 Nev. 61, 64-65, 38 P.3d 880, 883 (2002). Accordingly, we

ORDER the judgment of conviction REVERSED.


_____, J.
Saitta


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. Valorie Vega, District Judge
Sanft Law, P.C.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk