IN THE SUPREME COURT OF THE STATE OF NEVADA

BRYSON TYLER LOKKEN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 60308

FILED

JUL 25 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Malone
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a motion for new trial. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

In 2007, a jury found appellant Bryson Tyler Lokken guilty of sexual assault, lewdness, and false imprisonment. This court affirmed Lokken's conviction. State v. Lokken, Docket No. 49147 (Order of Affirmance, June 4, 2008). Lokken filed a post-conviction petition for a writ of habeas corpus, which the district court denied following an evidentiary hearing. In the evidentiary hearing, Dr. Joyce Adams testified that the nurse who conducted the sexual assault examination testified incorrectly. After the hearing, Lokken moved for a new trial.

A motion for a new trial based on newly discovered evidence "may be made only within 2 years after the verdict or finding of guilt." NRS 176.515(3). This rule is jurisdictional and cannot be excused by a showing of good cause. See NRS 178.476 (providing that court cannot extend time provided under NRS 176.515 "except to the extent and under

the conditions stated in those sections"). A jury convicted Lokken on January 31, 2007. He filed his motion for a new trial nearly five years later on January 28, 2012, and therefore the motion was untimely and should have been dismissed on that basis.

Even if Lokken's motion for a new trial had been timely, his claim would still fail. In order to grant a motion based on newly discovered evidence, the district court must find that the evidence was, in fact,

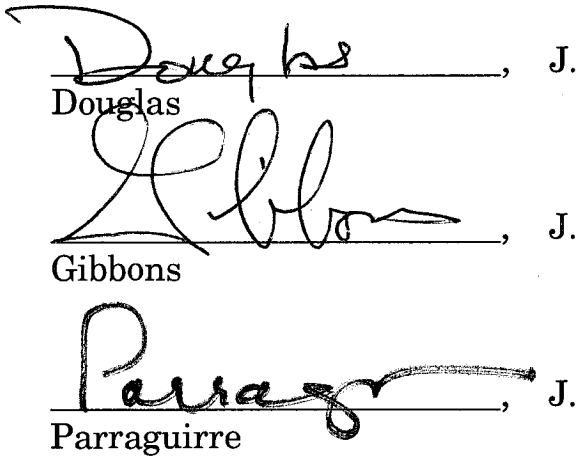
> newly discovered; material to the defense; such that even with the exercise of reasonable diligence it could not have been discovered and produced for trial; non-cumulative; such as to render a different result probable upon retrial; not only an attempt to contradict, impeach, or discredit a former witness, unless the witness is so important that a different result would be reasonably probable; and the best evidence the case admits.

Sanborn v. State, 107 Nev. 399, 406, 812 P.2d 1279, 1284-85 (1991) (internal footnote omitted).

Here, Lokken's "newly discovered evidence" was the testimony of a doctor who reviewed the results of the victim's medical exam. We conclude that Lokken could have discovered this evidence with "reasonable diligence." Further, Lokken admitted to having "forceful" sexual intercourse with the victim and knew that the victim was only thirteen. Lokken v. State, Docket No. 49147 (Order of Affirmance, June 4, 2008). And the "new" evidence is used solely to discredit the nurse who performed the sexual assault exam. In light of these circumstances, we

are unconvinced that Dr. Adams' testimony was likely to have caused a different result. Accordingly, we

ORDER the judgment of the district court AFFIRMED.



_____, J.
Douglas

_____, J.
Gibbons

_____, J.
Parraguirre

cc: Hon. Connie J. Steinheimer, District Judge
Mary Lou Wilson
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk