IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CASSANDRA WILLIAMS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 85296-COA

ORDER OF AFFIRMANCE AND REMANDING TO CORRECT JUDGMENT OF CONVICTION

Cassandra Williams appeals from a judgment of conviction entered pursuant to a jury verdict of open or gross lewdness in the presence of a child. Eighth Judicial District Court, Clark County; Tierra Danielle Jones, Judge.

First, Williams argues that there was insufficient evidence produced at trial to support the jury's finding of guilt. The State alleged that Williams committed open or gross lewdness in the presence of a child by dancing and touching herself in a sexual manner while she was near a young child in the pool area of an apartment complex. Williams contends the evidence produced at trial was insufficient to demonstrate her guilt for that offense because she was convicted based on the opinions of two adult witnesses concerning the nature of her behavior. Williams also contends that the surveillance videos produced at the trial do not support the women's opinions concerning the sexual nature of Williams' actions. Williams therefore asserts that the State failed to prove her guilty beyond a reasonable doubt. When reviewing a challenge to the sufficiency of the

evidence, we review the evidence in the light most favorable to the prosecution and determine whether "*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *accord Origel-Candido v. State*, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998).

At trial, two eyewitnesses stated that Williams and a young child were in the pool area and near each other when the relevant incident occurred. The witnesses stated that Williams danced erotically and touched her genitals and breasts in a manner that was both sexual and directed at the child. In addition, surveillance video recordings depicting Williams' actions were admitted at trial, and witnesses described the video as depicting Williams engaging in conduct consistent with that described by the eyewitnesses.[1] Any rational juror could have found, based on the evidence presented, that Williams committed open or gross lewdness in the presence of a child. *See* NRS 201.210(1)(c). While Williams challenges the veracity of the witnesses' testimonies, it was for the jury to determine the weight and credibility to give to conflicting testimony, and the jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict. *See Bolden v. State*, 97 Nev. 71, 73, 624 P.2d 20, 20

---

[1]We note Williams did not provide this court with copies of the surveillance video recordings. Accordingly, we presume the recordings support the jury's verdict. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007); *see also* NRAP 30(b)(3) (requiring an appellant to include in her appendix "any . . . portions of the record essential to determination of issues raised in [the] appeal"); NRAP 30(d) (providing for when exhibits cannot be reproduced in the appendix).

(1981). Therefore, we conclude that Williams is not entitled to relief based on this claim.[2]

Second, Williams contends that the district court committed plain error by failing to provide an instruction to the jury defining the terms "gross," "open," "lewdness," "obscene," and "vulgar." Because Williams did not move for the district court to provide additional instruction to the jury regarding the relevant terms, she is not entitled to relief absent a demonstration of plain error. *See Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48-49 (2018). To demonstrate plain error, Williams must show "(1) there was error; (2) the error is plain, meaning that it is clear under the current law from a casual inspection of the record; and (3) the error affected [her] substantial rights." *Id.* at 50, 412 P.3d at 48 (internal quotation marks omitted). "[A] plain error affects a defendant's substantial rights when it causes actual prejudice or a miscarriage of justice (defined as a 'grossly unfair' outcome)." *Id.* at 51, 412 P.3d at 49.

The district court instructed the jury on the definition of open or gross lewdness:

> Open or gross lewdness is defined as any indecent, obscene or vulgar act of a sexual nature that:
>
> (1) is intentionally committed in a public place, even if the act is not observed; or

---

[2]In her reply brief, Williams appears to contend that the State failed to prove the age of the relevant child. This is a new argument and we decline to consider an argument raised for the first time in a reply brief. *See* NRAP 28(c); *Browning v. State*, 120 Nev. 347, 368 n.53, 91 P.3d 39, 54 n.53 (2004). Nevertheless, the record reveals that the victim was five years old.

> (2) is committed in a private place, but in an open manner, as opposed to a secret manner, and with the intent to be offensive to the observer.

The district court also instructed the jury to determine whether Williams committed the act in the presence of a child under the age of 18 years.

The instruction provided to the jury complied with the relevant statute, *see* NRS 201.210, and the words contained within that instruction utilized their common definitions. Williams does not demonstrate that any failure of the district court to provide definitions of the individual terms apart from those words' common definitions amounted to error that is plain from the record. Moreover, even assuming error, Williams fails to demonstrate error affecting her substantial rights in light of the evidence presented at trial concerning the sexual nature of her behavior in the presence of a young child. Therefore, Williams has not met her burden to demonstrate plain error, and she thus is not entitled to relief based on this claim.

Third, Williams contends that the district court committed plain error by failing to instruct the jury on the "offensive" intent required for commission of open or gross lewdness. Williams acknowledges that the district court instructed the jury that she had to intend to commit lewd acts, but she contends that the district court should have also instructed the jury that she had to intend to offend others.

Because Williams did not move for the district court to provide additional instruction to the jury regarding intent, she is not entitled to relief absent a demonstration of plain error. *See Jeremias*, 134 Nev. at 50, 412 P.3d at 48-49. "A conviction under . . . NRS 201.210 . . . does not

require proof of intent to offend an observer . . . . It is sufficient that the public sexual conduct . . . was intentional." *Young v. State*, 109 Nev. 205, 215, 849 P.2d 336, 343 (1993) (internal citations omitted).[3]

The district court instructed the jury that it had to find that the sexual act was intentionally committed in a public place in order for it to convict Williams of open or gross lewdness in the presence of a child. The evidence demonstrated that Williams committed the sexual acts in the presence of a young child in a pool area of an apartment complex. The district court therefore properly instructed the jury regarding intent for open or gross lewdness. Accordingly, Williams did not meet her burden to demonstrate plain error, and she thus is not entitled to relief based on this claim.

---

[3]Williams appears to argue in her reply brief that the *Young* decision was modified by *Cruz v. State*, No. 49247, 2008 WL6062125 (Nev. Aug. 13, 2008) (Order of Affirmance). However, the *Cruz* decision was an unpublished order, and it did not modify the *Young* court's conclusion that a lewdness conviction does not require proof of intent to offend others. Rather, the *Cruz* decision states,

> [O]pen or gross lewdness encompasses an act intended to arouse or appeal to a person's passions or sexual desires, and proscribes conduct that is sexually gratifying to the actor or the victim. Therefore, we further conclude that lewdness with a minor does not include an intent element not reflected in the crime of open or gross lewdness—both require sexual motivation.

Cruz, No. 49247, 2008 WL6062125, *4. Therefore, Williams is not entitled to relief based on this claim.

Fourth, Williams argues the State committed prosecutorial misconduct amounting to plain error by improperly offering its opinion that someone watching the videos admitted at trial could see the pleasure on Williams' face. Williams also contends that the prosecutor's argument amounted to the introduction of facts not in evidence. Williams did not object to the challenged comment, and thus, she is not entitled to relief absent a demonstration of plain error. *See Jeremias*, 134 Nev. at 50, 412 P.3d at 48-49.

"While the evidence must support a prosecutor's statements relating to the facts of the case, the prosecutor may also assert inferences from the evidence and argue conclusions on disputed issues." *Truesdell v. State*, 129 Nev. 194, 203, 304 P.3d 396, 402 (2013). Moreover, a prosecutor's arguments, "when made as a deduction or a conclusion from the evidence introduced in the trial, are permissible and unobjectionable." *Parker v. State*, 109 Nev. 383, 392, 849 P.2d 1062, 1068 (1993).

The witnesses described Williams' behavior while in the presence of a young child and expressed their conclusions that Williams' behavior was sexual in nature. In addition, witnesses described the videos admitted into evidence and stated that the videos depicted Williams' behavior during the relevant incident. During closing argument, the prosecutor stated that the video recordings depicted Williams and that her expression displayed pleasure. The prosecutor's argument was based on the evidence admitted at trial, and the challenged statement was a reasonable conclusion based on the evidence presented at trial. Accordingly, Williams does not demonstrate that the challenged comment amounted to misconduct. *See Valdez v. State*, 124 Nev. 1172, 1188, 196 P.3d 465, 476

(2008) (explaining standard of review for claims of prosecutorial misconduct). Therefore, Williams did not meet her burden to demonstrate plain error, and she thus is not entitled to relief based on this claim.

Fifth, Williams argues that the State committed prosecutorial misconduct amounting to plain error by disparaging the defense's case during its rebuttal argument. Williams contends that the prosecutor disparaged her defense by referring to her theory of defense as ridiculous or silly. Williams also asserts that the prosecutor improperly argued that Williams wished for the jury to ignore the trial testimony and committed misconduct by urging the jury not "to go down the path that the defense is trying to lead you down." Williams did not object to the challenged comments, and thus, she is not entitled to relief absent a demonstration of plain error. *See Jeremias*, 134 Nev. at 50, 412 P.3d at 48-49.

Statements alleged to be prosecutorial misconduct should be considered in context. *Byars v. State*, 130 Nev. 848, 865, 336 P.3d 939, 950-51 (2014). In addition, rebuttal arguments may permissibly respond to issues raised by the defense's closing, and "[t]he strongest factor against reversal on the grounds that the prosecutor made an objectionable remark is that it was provoked by defense counsel." *Greene v. State*, 113 Nev. 157, 178, 931 P.2d 54, 67 (1997), *receded from on other grounds by Byford v. State*, 116 Nev. 215, 235, 994 P.2d 700, 713 (2000).

During the defense closing argument, Williams' counsel asserted that it was "ridiculous" that Williams faced a felony charge for her behavior, noted that an officer's statements regarding Williams' actions in the aftermath of her encounter with the young child did not match the

additional evidence presented at trial, and urged the jury to find that the videos were the most reliable evidence.

The prosecutor responded to Williams' arguments and acknowledged that Williams' counsel appropriately characterized the nature of the officer's statements. The prosecutor also argued that it was "silly" or "ridiculous" for the jury to disregard the additional testimony concerning Williams' behavior in the presence of the child simply because an officer's statements concerning the aftermath of Williams encounter with the child were inaccurate. The prosecutor ultimately urged the jury to review the testimony and video evidence presented at trial when it deliberated.

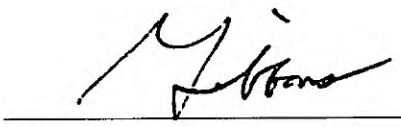
Considered in context, the prosecutor's comments were a response to the nature of Williams' closing argument. And the response was within the bounds of permissible rebuttal argument. Moreover, even assuming the prosecutor's remarks were improper, *see Butler v. State*, 120 Nev. 879, 898, 102 P.3d 71, 84 (2004) (stating that it is improper for the State to "disparage legitimate defense tactics"), Williams does not demonstrate error affecting her substantial rights because significant evidence of Williams' guilt of open or gross lewdness in the presence of a child was presented at trial. Therefore, Williams did not meet her burden to demonstrate plain error, and she thus is not entitled to relief based on this claim.

Sixth, Williams argues that cumulative error entitles her to relief. "The relevant factors to consider when deciding whether cumulative error requires reversal are (1) whether the issue of guilt is close, (2) the quantity and character of the error, and (3) the gravity of the crime

charged." *Rose v. State*, 123 Nev. 194, 211, 163 P.3d 408, 419 (2007) (quotation marks omitted). The charge of open or gross lewdness in the presence of a child is a serious offense. However, the issue of Williams' guilt was not close, and any alleged trial errors were minor. Therefore, we conclude that Williams is not entitled to relief based on cumulative error.

Finally, our review of the judgment of conviction reveals a clerical error: It states that Williams was convicted pursuant to a guilty plea, but Williams was convicted pursuant to a jury verdict. Because the district court has the authority to correct a clerical error at any time, *see* NRS 176.565, we direct the district court, upon remand, to enter a corrected judgment of conviction clarifying that Williams was convicted pursuant to a jury verdict. Accordingly, we

ORDER the judgment of conviction AFFIRMED and REMAND to the district court to correct the judgment of conviction.[4]



_____, C.J.
Gibbons

_____, J.
Bulla

[4]The Honorable Deborah L. Westbrook did not participate in the decision in this matter.

cc: Hon. Tierra Danielle Jones, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk