

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVEN J. LANDONICOLAS,

No. 38365

Appellant,

vs.

FILED

DEC 12 2001

THE STATE OF NEVADA,

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

Respondent.

ORDER AFFIRMING IN PART AND REMANDING TO CORRECT
JUDGMENT OF CONVICTION

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of attempted second-degree kidnapping. The district court sentenced appellant Steven J. Landonicolas to serve a term of twelve to forty-eight months in prison.

Landonicolas first contends that the State presented insufficient evidence to support the jury's verdict. In particular, Landonicolas argues that the victim's account of the incident was so fraught with inconsistencies that it could not support a finding, beyond a reasonable doubt, that Landonicolas attempted to kidnap her. We disagree.

When reviewing a claim of insufficient evidence, the relevant inquiry is "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt."¹ Furthermore, "it is the jury's function, not that of the court, to assess the weight of the evidence and determine the credibility of witnesses."²

Our review of the record on appeal reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact. In particular, we note that the victim testified that while she

¹Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998) (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979)) (emphasis in original omitted).

²McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

was walking northbound on the sidewalk next to Pecos Street, a man wearing black shorts and a white shirt cut down the front passed her travelling southbound on a motorcycle, honked his horn, and patted the back of his motorcycle seat. The man on the motorcycle made a U-turn and pulled up beside the victim and told her to get on the motorcycle. The man told her to get on the back of the bike or he would put her on it. According to the victim, the man grabbed her left arm underneath her elbow when she told him "no." The victim then screamed, jerked her arm away, and ran home. The victim identified Landonicolas as the man on the motorcycle and identified a helmet and motorcycle belonging to Landonicolas as those used during the incident. Clothes obtained from Landonicolas' person upon his arrest were consistent with those described by the victim. The jury could reasonably infer from the evidence presented that Landonicolas attempted to seize the victim for the purpose of detaining her against her will.³ It is for the jury to determine the weight and credibility to give conflicting testimony, and the jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict.⁴

Landonicolas next contends that the district court committed reversible error by refusing to define terms contained in the kidnapping instructions when the jury requested such definitions. Specifically, Landonicolas argues that the district court should have defined the terms "entice," "seize," and "inveigle."⁵ Landonicolas suggests that absent a definition of those terms, the jury convicted him without reasonably understanding the elements of the charged offense.

As an initial matter, we note that Landonicolas failed to lodge a contemporaneous objection to the district court's refusal to define the

³See NRS 200.310(2).

⁴See Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981).

⁵The State charged Landonicolas with attempted first-degree kidnapping and coercion. The jury was also instructed on second-degree kidnapping as a lesser-included offense. The words "entice," "seize," and "inveigle" appeared in the jury instruction on first-degree kidnapping. See NRS 200.310(1). The words "seize" and "inveigle" appeared in the jury instruction on attempted second-degree kidnapping. See NRS 200.310(2).

terms. As a general rule, the failure to object precludes appellate review.⁶ There is a narrow exception to the contemporaneous objection rule: an appellate court may review plain errors that affect the defendant's substantial rights.⁷ In most cases, to establish that the error affected the defendant's substantial rights, the defendant must demonstrate prejudice.⁸ In other words, the error "must have affected the outcome of the district court proceedings."⁹

Based on our review of the record, we conclude that Landonicolas cannot demonstrate plain error. We have explained that "[t]rial courts have broad discretion in deciding whether terms within an instruction should be further defined."¹⁰ When the words in an instruction are used in their "ordinary sense" and "are commonly understood," no further defining instructions are necessary.¹¹ But "when a phrase has a technical legal meaning, that phrase should be defined so that a jury is not misled or confused into applying the plain language as commonly understood."¹² In this case, we conclude that the words "entice," "seize," and "inveigle" do not have a technical legal meaning. These words are used in their ordinary sense in the jury instructions and the kidnapping statute and need no further definition. Moreover, the jury's request specifically asked if there were "NRS definitions" of the three words. There are no such definitions. Under the circumstances, we conclude that the district court did not commit plain error in responding to the jury's inquiry by instructing the jury to refer to the instruction that advises the jurors to use their everyday common sense in their deliberations.

Having considered Landonicolas' contentions and concluded that they lack merit, we affirm the judgment of conviction. However, our

⁶Garner v. State, 78 Nev. 366, 373, 374 P.2d 525, 529 (1962).

⁷NRS 178.602.

⁸United States v. Olano, 507 U.S. 725, 734 (1993).

⁹Id.; see also Libby v. State, 109 Nev. 905, 911, 859 P.2d 1050, 1054 (1993), vacated on other grounds, 516 U.S. 1037 (1996).

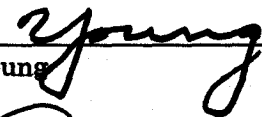
¹⁰Dawes v. State, 110 Nev. 1141, 1145, 881 P.2d 670, 673 (1994).

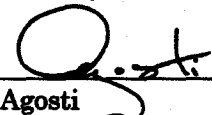
¹¹Id. at 1146, 881 P.2d at 673.


¹²Id.

review of the record revealed a clerical error in the judgment of conviction. The judgment of conviction states that Landonicolas pleaded guilty when he actually went to trial and was convicted pursuant to a jury verdict. We conclude that this matter should be remanded to the district court for the limited purpose of correcting this error in the judgment of conviction. Based on the foregoing, we

ORDER the judgment of conviction AFFIRMED and REMAND this matter to the district court for proceedings consistent with this order.


_____. J.
Young


_____. J.
Agosti


_____. J.
Leavitt

cc: Hon. John S. McGroarty, District Judge
Attorney General/Carson City
Clark County District Attorney
Clark County Public Defender
Clark County Clerk