

IN THE SUPREME COURT OF THE STATE OF NEVADA

RANDY RICHMOND,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 38408

FILED

SEP 10 2002

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

This is an appeal from judgment of conviction of one count of lewdness with a child under the age of fourteen. Appellant Randy Richmond challenges a jury instruction, given without objection, concerning witness credibility. We conclude that the instruction was not plain error. We also conclude that sufficient evidence supported the jury's verdict, and affirm the judgment of conviction.

Facts

Richmond met the victim, A.A., in the summer of 1999, when they lived in the same apartment complex. A.A. turned eleven-years-old that summer. A.A. regularly visited Richmond's apartment and watched television with him, and occasionally spent the night there. A.A. testified that on one occasion Richmond touched her genitals over her clothing.

The State called Reed Thomas, a detective with the Reno Police Department. Thomas interviewed A.A. after she contacted the police. A.A. told Thomas that Richmond had attempted to have sex with her. Thomas then interviewed Richmond, who said that A.A. had asked him about sex, but that he had told her to talk to her mother. On cross-

examination, Thomas testified that A.A. did not indicate that Richmond had touched her.

The State called Detective Adam Wagnanski. Wagnanski contacted Richmond to request that he come to the police station for an interview. Wagnanski identified himself to Richmond, and before he said anything else, Richmond stated, "I know what that is all about. I'm not a child molester."

The State also called Detective Rebecca Clark. Clark conducted a videotaped interview after Richmond waived his Miranda rights. This tape was admitted into evidence and played for the jury. On the tape, Richmond said that he had drawn a picture of the female genitals for A.A. Richmond drew a copy of this picture, which was admitted into evidence. Richmond also admitted to poking A.A.'s genitals, but denied penetrating inside her vagina. Richmond said he felt horrible about touching A.A.

A jury convicted Richmond of lewdness with a child under the age of fourteen. The district court sentenced Richmond to life imprisonment with the possibility of parole in ten years. Richmond appeals the judgment of conviction.

Jury instruction concerning witness testimony

Richmond argues that Jury Instruction Fifteen, which stated that discrepancies in a witness's testimony do not necessarily mean that the jury should discredit that witness, was superfluous and confusing. Because Richmond did not object to this instruction, a plain error analysis

applies.¹ Plain error is an error that is “so unmistakable that it is apparent from a casual inspection of the record,”² and which affects the defendant’s substantial rights.³

A district court has broad discretion to settle jury instructions.⁴ Richmond argues that Jury Instructions Fourteen and Twenty-five, which respectively instructed the jury that it should determine witness credibility, and that it should use common sense in drawing inferences based on the evidence, substantially covered Jury Instruction Fifteen. Yet, while a district court may refuse to give an instruction substantially covered by other instructions,⁵ it is not necessarily an abuse of discretion to give a redundant instruction.

Additionally, any error did not affect Richmond’s substantial rights. Although Richmond argues that the instruction confused the jury by excusing inconsistencies in A.A.’s testimony, the instruction merely stated that discrepancies “do not necessarily mean that any witness should be discredited.” The instruction also told the jury to consider whether a discrepancy “pertains to a matter or only to something trivial.” This instruction left open to the jury the option of rejecting A.A.’s testimony based on its inconsistencies. The district court did not commit plain error in giving this instruction.

¹Garner v. State, 116 Nev. 770, 783, 6 P.3d 1013, 1022 (2000), cert. denied, 532 U.S. 929 (2001).

²Id.

³Leonard v. State, 117 Nev. 53, 63, 17 P.3d 397, 403-04 (2001).

⁴Jackson v. State, 117 Nev. 116, 120, 17 P.3d 998, 1000 (2001).

⁵See Runion v. State, 116 Nev. 1041, 1050, 13 P.3d 52, 58 (2000).

Sufficiency of the evidence

Richmond contends that the State presented insufficient evidence to sustain a conviction. When reviewing the evidence supporting a conviction, this court must determine whether the jury, acting reasonably, could have been convinced of the defendant's guilt beyond a reasonable doubt based on the evidence.⁶ Richmond points out that A.A. offered numerous different accounts of what happened, and testified that she could not remember the details. Richmond argues that these inconsistencies render A.A.'s testimony insufficient to prove the crime charged beyond a reasonable doubt.

The jurors, not the courts, determine whether a witness is credible.⁷ Even though A.A. changed her description of what Richmond did to her, the jury could still believe her testimony that Richmond had touched her genitals in a sexual manner.

Richmond also points out that, when asked if the truth was that Richmond had touched her once on the genitals, A.A. responded, "Not that I can remember." Richmond argues that A.A.'s answer "acquitted" him. Yet, this testimony is ambiguous, and could reasonably be interpreted to mean that A.A. could not remember the number of times Richmond had touched her. The jury could reasonably have adopted this interpretation and found Richmond guilty.

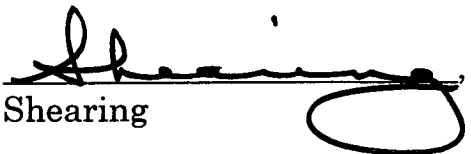
⁶Bridges v. State, 116 Nev. 752, 764, 6 P.3d 1000, 1009 (2000).

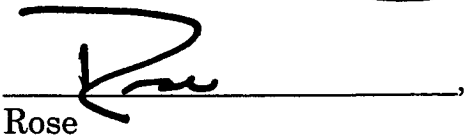
⁷Jackson, 117 Nev. at 123, 17 P.3d at 1002.

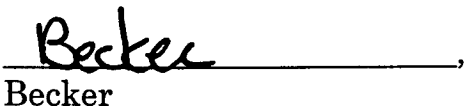
Finally, Richmond notes that the State did not present medical evidence concerning A.A.⁸ Yet, such evidence was not necessary in order to sustain a conviction. The victim's testimony alone is sufficient evidence to convict in a sex-crime prosecution.⁹ Here, not only did A.A. testify that Richmond had touched her, but Richmond also admitted to drawing a picture of the female genitals for A.A. and then poking her genitals. The jury had sufficient evidence to convict.

Having considered Richmond's arguments and finding them without merit, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Shearing


_____, J.
Rose


_____, J.
Becker

cc: Hon. James W. Hardesty, District Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

⁸Detective Clark testified that "[t]he time frame was not good" for a medical examination.

⁹See Hutchins v. State, 110 Nev. 103, 109, 867 P.2d 1136, 1140 (1994).