

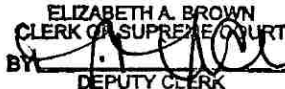
IN THE SUPREME COURT OF THE STATE OF NEVADA

FERNANDO CONDE A/K/A
FERNANDO CONDE ULLOA,
Appellants,
vs.
THE STATE OF NEVADA,
Respondent.

No. 89584

FILED

FEB 20 2026

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of 5 counts of lewdness with a child under the age of 14, conspiracy to commit sexual assault, 5 counts of administration of a drug to aid the commission of a felony, 4 counts of child abuse, neglect, or endangerment, 2 counts of sexual assault of a minor under 14 years of age, 11 counts of sexual assault of a minor under 16 years of age, and battery by strangulation with the intent to commit sexual assault. Eighth Judicial District Court, Clark County; Erika D. Ballou, Judge.

Appellant Fernando Conde was convicted by a jury of 29 counts related to the sexual abuse of his twelve-year-old stepdaughter, L.B., over a three-year period in which she was provided methamphetamine and cocaine prior to the abusive acts. Conde was sentenced to serve an aggregate prison term of 100 years to life. He argues on appeal that the State failed to present sufficient evidence of guilt at trial, his child abuse convictions are redundant, and the district court abused its discretion at sentencing. We disagree with Conde's contentions and affirm the judgment of conviction.

Sufficient evidence of guilt was presented at trial

Conde argues the State failed to present sufficient evidence of guilt on the count of battery by strangulation with the intent to commit

sexual assault and 11 counts of sexual assault of a minor under 16 years of age. This court will reject a defendant's sufficiency of evidence challenge when, "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." *McNair v. State*, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992) (internal quotation marks omitted). It is the jury's function to weigh the evidence and credibility of the witnesses, not this court. *Id.*

Battery by strangulation with the intent to commit sexual assault

Conde argues that his conviction should be vacated because there was no temporal disconnect between the strangulation L.B. suffered and the sexual assault. Conde claims that choking was part of his and L.B.'s sexual experience, thus, he could not be convicted of battery by strangulation with the intent to commit sexual assault since the sexual assault was already ongoing when the strangulation began. We reject Conde's argument that lack of a temporal disconnect between the two crimes necessarily required him to be convicted of only one.

In *Estes v. State*, we rejected the appellant's argument that the battery with intent crime must merge with his sexual assault charge since he committed the battery during the sexual assault. 122 Nev. 1123, 146 P.3d 1114 (2006), *overruled on other grounds by*, *Pundyk v. State*, 136 Nev. 373, 467 P.3d 605 (2020). The argument was rejected because each charge was aimed at a different act. *Id.* at 1143, 146 P.3d at 1127-28. In another decision, we rejected a nearly identical argument—this time under a sufficiency of the evidence challenge like the instant case. *See Lauer v. State*, No. 50032, 2008 WL 6124744, at *1 (Nev., Dec. 19, 2008) (Order of Affirmance) (recognizing that sufficient evidence of guilt was presented for

a battery with intent charge when the defendant battered the victim while sexually touching her).

Reviewing the facts adduced at trial, sufficient evidence of guilt was presented to support a conviction. Specific to sexual assault cases, “the victim must testify with *some* particularity regarding the incident in order to uphold the charge.” *LaPierre v. State*, 108 Nev. 528, 531, 836 P.2d 56, 58 (1992). In the instant case, L.B. testified that choking was a common part of the sexual encounters, but in this particular instance, “[Conde] did it like he was going [to] kill me” L.B. recalled the event with sufficient particularity and the injuries she suffered lingered for days after. When reviewing the evidence in the light most favorable to the prosecution, we conclude that any rational trier of fact could have found L.B.’s testimony sufficient to convict Conde beyond a reasonable doubt.

Sexual assault of a minor under 16 years of age

Conde argues that facts adduced at trial could not support his conviction on the 11 counts in violation of NRS 200.364(9) and NRS 200.366(1)(a). In particular, he points to L.B.’s testimony that indicates she consented to sex with Conde, enjoyed having sex with him, and believed to be in a relationship with him, and therefore, the evidence supported convictions for statutory sexual seduction rather than sexual assault.

NRS 200.366 provides in part as follows:

1. A person is guilty of sexual assault if the person:

(a) Subjects another person to sexual penetration, or forces another person to make a sexual penetration on themselves or another, or on a beast, against the will of the victim or under conditions in which *the perpetrator knows or should know that the victim is mentally or physically*

incapable of resisting or understanding the nature
of the perpetrator's conduct

(Emphasis added.) Reviewing the record in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of NRS 200.366(1)(a) beyond a reasonable doubt. While it is true that L.B. testified to facts consistent with Conde's argument, she also testified to instances where sexual encounters were nonconsensual. Specifically, L.B. occasionally rejected Conde, but was then given drugs to ensure her compliance. Moreover, L.B. was physically tormented any time she reported any sexual activity to others.

We reiterate that the jury's job is to assess any inconsistencies in the record and resolve them by weighing the credibility of witnesses and the evidence before it. *McNair*, 108 Nev. at 56, 825 P.2d at 573. Our only concern on appeal is whether sufficient evidence was presented to support a conviction. In this case, L.B. provided sufficient testimony for a jury to reasonably infer that Conde knew or should have known that L.B. was mentally or physically incapable of resisting sex—especially during instances in which she refused sex but was then given drugs to become compliant with Conde's demands. Therefore, in reviewing L.B.'s testimony in the light most favorable to the prosecution, we conclude that sufficient evidence of guilt was presented to secure a conviction.

Conde's child abuse convictions were not redundant

Conde was convicted on four counts of child abuse, neglect, or endangerment in violation of NRS 200.508(1)(b). He argues his child abuse convictions are redundant and should be considered as one offense under *Rimer v. State*, and its progeny. 131 Nev. 307, 319, 351 P.3d 697, 707 (2015).

Conde did not object to the charges below, thus we review this issue for plain error. *Sena v. State*, 138 Nev. 310, 326, 510 P.3d 731, 748

(2022). (applying plain error to an unobjected-to redundancy challenge). “Plain error exists when the error was clear and it affects a defendant’s substantial rights.” *LaChance v. State*, 130 Nev. 263, 273, 321 P.3d 919, 926 (2014).

“[A] claim that convictions are redundant stems from the legislation itself and the conclusion that it was not the legislative intent to separately punish multiple acts that occur close in time and make up one course of criminal conduct.” *Wilson v. State*, 121 Nev. 345, 355, 114 P.3d 285, 292 (2005). Thus, a unit of prosecution inquiry involves a matter of statutory interpretation subject to de novo review. *Washington v. State*, 132 Nev. 655, 660, 376 P.3d 802, 806 (2016). While we usually start our analysis with the statute’s text, *see Wilson*, 121 Nev. at 356, 114 P.3d at 293, we instead consult *Rimer* since we have already addressed this specific issue in that case, 131 Nev. at 319, 351 P.3d at 707.

In *Rimer*, we concluded “that the Legislature intended for child-abuse-and-neglect violations, when based upon the cumulative effect of many acts over a period of time, to be treated as continuing offenses for purposes of the statute of limitations.” *Id.* at 320, 351 P.3d at 707. In reaching our holding, we recognized that a child’s injuries may not rise to a level of abuse based on a single instance of conduct but may accumulate over time to warrant abuse under NRS 200.508. *Id.* at 319-20, 351 P.3d at 707. Notably, we concluded that while the child abuse “statute *may be violated through a single act*[,] [it] is more commonly violated through the cumulative effect of many acts over a period of time.” *Id.* at 320, 351 P.3d at 707 (emphasis added). Conde relies on *Rimer* and its progeny to conclude that NRS 200.508 violations are per se continuing offenses. Whether a child abuse conviction is treated as a continuing offense, however, is dependent

on the prosecution's theory. The prosecution may bring one charge when its theory is based on an accumulation of events that contributed to one harm. Conversely, the prosecution may bring multiple charges based on individual acts in which individual injuries occurred.

In the instant case, a separate prosecution theory existed for each count of child abuse distinguishable by time, place of abuse, and nature of abuse. The first three child abuse counts all occurred at separate times and would, standing alone, support a child abuse conviction. The fourth child abuse count sought to convict Conde for physical abusing L.B. when she tried telling others about the sexual assaults. Therefore, we conclude that Conde's child abuse convictions are not redundant.

The district court did not abuse its discretion at sentencing

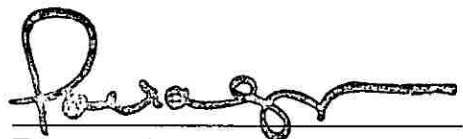
Conde argues the district court abused its discretion when it relied on the State's submitted notes to impose a 100-year sentence instead of exercising independent judgment and considering mitigating evidence.


District courts have wide discretion in rendering sentencing decisions; thus, we review such determinations for an abuse of discretion. *Chavez v. State*, 125 Nev. 328, 348, 213 P.3d 476, 490 (2009). An abuse of discretion is found when the record demonstrates "prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence." *Silks v. State*, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976). Absent an abuse of discretion, "this court has repeatedly declined to interfere with sentencing when the sentence is legal and within the statutory limits." *Cameron v. State*, 114 Nev. 1281, 1283, 968 P.2d 1169, 1171 (1998).

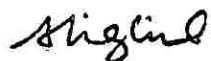
In reviewing the record, the district court appropriately exercised independent judgment in rendering its decision. The court questioned the State about its own calculations and discrepancies in the

presentence investigation report at the beginning of the hearing and during sentencing. Such conduct suggests, contrary to Conde's argument, that the district court did in fact exercise independent judgment before rendering its decision. Because the sentence was within statutory limits and not based on impalpable or highly suspect evidence, we conclude that the district court did not abuse its discretion at sentencing. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Parraguirre


_____, J.
Bell


_____, J.
Stiglich

cc: Hon. Erika D. Ballou, District Judge
Attorney General/Carson City
Clark County District Attorney
Wright Marsh & Levy
Eighth District Court Clerk