

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAY KIOGIMA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 40741

**FILED**

AUG 27 2003

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count each of felony coercion and battery constituting domestic violence. The district court sentenced appellant Jay Kiogima to serve a prison term of 12-32 months for the coercion and to time served for the battery, a total credit of 348 days.

Kiogima contends that the district court erred in not instructing the jury that he was not charged with any crime relating to sexual misconduct. The victim testified at trial that at one point during the four days in which Kiogima refused to let her leave the apartment they shared, Kiogima forced her to perform fellatio and have sexual intercourse with him against her will. There was no objection by the defense during any of this testimony. The following day before the start of trial, defense counsel informed the district court that he had no knowledge of the alleged rape, and therefore wished to question the victim outside the presence of the jury in order to determine when she informed the State. The district court instead offered to provide the jury with a curative instruction after the completion of her testimony. The district court also stated that Kiogima was not prejudiced by the testimony:

It is not like as if these two people didn't know each other. They were boyfriend/girlfriend. They

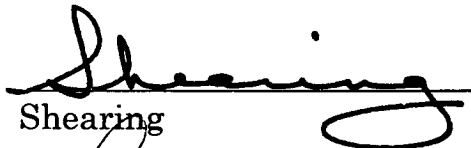
were living together, and I wouldn't think . . . that it would be a huge surprise to anybody with more than two brain cells that if they are living together in a motel room . . . and he is beating the crap out of her, and he's held her hostage over there, that over a four-day period they are not going to have sexual intercourse, whether it was with or without her permission.

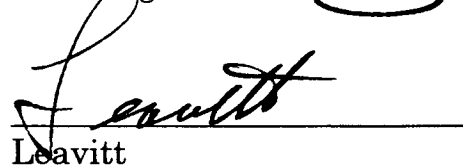
Later, the district court provided the promised curative instruction:

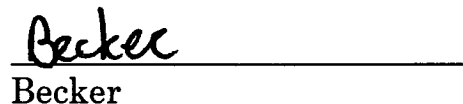
[L]adies and gentlemen, I would like you to know that there are no charges against Mr. Kiogima regarding sexual offenses, and I think you have heard [the victim's] testimony and you have heard everybody's testimony and there are no charges and you are to disregard any inference that may have given to you.

Therefore, we conclude that Kiogima's contention that the district court failed to instruct the jury is belied by the record. Accordingly, we

ORDER the judgment of conviction AFFIRMED.<sup>1</sup>

  
Shearing, J.

  
Leavitt, J.

  
Becker, J.

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<sup>1</sup>To the extent that Kiogima implies that a hearing should have been held pursuant to Petrocelli v. State, 101 Nev. 46, 692 P.2d 503 (1985), prior to the admission of the victim's testimony, he is mistaken. Petrocelli is not implicated because the State never sought to introduce evidence of prior uncharged conduct.

cc: Hon. Michael L. Douglas, District Judge  
Clark County Public Defender  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk