

IN THE SUPREME COURT OF THE STATE OF NEVADA

MAGDALENO GALLEGOS A/K/A TONY  
GALLEGOS A/K/A ANTHONY  
GALLEGOS A/K/A POPS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 41872

FILED

JUN 14 2004

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of two counts of lewdness with a child under the age of 14 and two counts of sexual assault on a child under the age of 14. On the first two counts, appellant Magdaleno Gallegos was sentenced to two concurrent terms of life in prison with the possibility of parole after 10 years. On the third and fourth counts, he was sentenced to two terms of life in prison with the possibility of parole after 20 years, to be served concurrently to one another but consecutively to the terms imposed on the first two counts.


Gallegos claims that the jury instruction on reasonable doubt given at his trial was unconstitutional. He concedes that the instruction was the one prescribed by NRS 175.211 and that the statute does not permit any other definition of reasonable doubt to be given to a jury. As Gallegos notes, this court would prefer that the Legislature adopt a different definition which does not describe reasonable doubt as the kind that governs a person in life's "more weighty affairs."<sup>1</sup> Because the


---


<sup>1</sup>Bollinger v. State, 111 Nev. 1110, 1115 n.2, 901 P.2d 671, 674 n.2 (1995).

Legislature has not changed the statute, Gallegos argues that this court should declare the "more weighty affairs" language unconstitutional. We disagree. We have held that there is no reasonable likelihood that a jury applied this language unconstitutionally where the jury was also instructed concerning the presumption of innocence and the State's burden of proof.<sup>2</sup> The jury in this case was so instructed. We therefore conclude that the instruction did not violate due process.<sup>3</sup> Accordingly, we

ORDER the judgment of the district court AFFIRMED.

 \_\_\_\_\_, J.  
Becker

 \_\_\_\_\_, J.  
Agosti

 \_\_\_\_\_, J.  
Gibbons

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

---

<sup>2</sup>Id. at 1115, 901 P.2d at 674.

<sup>3</sup>Cf. Ramirez v. Hatcher, 136 F.3d 1209, 1211, 1215 (9th Cir. 1998).