

IN THE SUPREME COURT OF THE STATE OF NEVADA

EVERETT WALKER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42222

FILED

NOV 04 2004

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

ORDER AFFIRMING AND REMANDING FOR CORRECTION OF
JUDGMENT OF CONVICTION

This is a direct appeal from a judgment of conviction. Eighth Judicial District Court, Clark County; Kathy A. Hardcastle, Judge.

On September 17, 2003, appellant Everett Walker was convicted, pursuant to a jury verdict, of one count of burglary, one count of battery with the intent to commit a crime, one count of robbery with the use of a deadly weapon, and five counts of sexual assault with the use of a deadly weapon. Walker was sentenced to serve various consecutive and concurrent prison terms amounting to life in the Nevada State Prison with the possibility of parole in 44 years and nine months, plus a special sentence of lifetime supervision if ever paroled.

The issues Walker raises on appeal concern a portion of the testimony of the State's expert witness Linda Ebbert, a registered nurse who performed an examination of the victim. During Ebbert's testimony, the State asked her whether the victim's behavior during the examination was "consistent with somebody that's a victim of sexual assault?" Walker objected, but he was overruled by the district court. Ebbert then replied, "The—she was very upset and weepy and, yes, that was her means of handling what had happened to her." Walker now contends that reversible error occurred during this exchange.

Walker contends that Ebbert was not sufficiently qualified to render an expert opinion on whether the victim in the instant case was the victim of a sexual assault. He also contends that Ebbert's testimony constituted improper vouching for the victim's veracity and improperly identified him as the victim's assailant. We disagree.

What qualifications are necessary to render a witness an expert in a given field and the decision to admit his or her testimony is within the sound discretion of the district court.¹ This court has recognized that a qualified expert witness may render an opinion on whether a particular person has been the victim of a sexual assault, so long as the evidence is relevant and more probative than prejudicial.² Such testimony is admissible even when it goes to an ultimate issue in the case.³ However, in the giving of such testimony, it is improper for an expert witness to bolster the victim's credibility, veracity, or otherwise identify a particular person as the assailant.⁴

Here, Ebbert's qualifications as a sexual assault expert included being registered nurse for 40 years, practicing as a trained Sexual Assault Nurse Examiner for eight years, examining over 1,700 alleged sexual assault victims, and testifying as a sexual assault expert

¹See Childers v. State, 100 Nev. 280, 283, 680 P.2d 598, 600 (1984); see also NRS 50.275; NRS 50.285.

²See Shannon v. State, 105 Nev. 782, 787-88, 783 P.2d 942, 945 (1989); Townsend v. State, 103 Nev. 113, 116-18, 734 P.2d 705, 707-08 (1987); see also NRS 48.035; NRS 50.345.

³Id.; NRS 50.295.

⁴See Lickey v. State, 108 Nev. 191, 196, 827 P.2d 824, 826-27 (1992); Townsend, 103 Nev. at 118, 734 P.2d at 708.

witness in various other court cases. Ebbert described the methods and procedures for examining an alleged sexual assault victim and collecting evidence. Ebbert also performed the sexual assault examination on the victim in the instant case.

Although the district court did not formally state on the record that Ebbert was testifying as a sexual assault expert, the district court, the State, and even Walker, treated her as an expert witness throughout the course of her direct and cross examinations. Walker has shown no abuse of discretion by the district court in permitting Ebbert to testify as an expert on sexual assaults. And Ebbert's opinion on whether the victim in the instant case displayed behaviors consistent with other sexual assault victims was well within the proper scope of her testimony, especially considering that Ebbert performed the sexual assault examination of the victim.

Additionally, nothing in Ebbert's statement that the victim in this case "was very upset and weepy and, yes, that was her means of handling what had happened to her" can be reasonably construed as bolstering the victim's credibility, veracity, or identifying Walker as the assailant. Rather, Ebbert's testimony is most reasonably construed as her observations of the victim's behavior and that being "upset" and "weepy" are behaviors consistent with those of a sexual assault victim. Therefore, we conclude that the issues Walker raises on appeal with respect to Ebbert's testimony are without merit.

Our review of the record, however, reveals that Walker's judgment of conviction erroneously states that his conviction was the result of a guilty plea, not a jury trial. This error must be corrected. Accordingly, we

ORDER the judgment of the district court AFFIRMED, but we
REMAND with instructions to correct the judgment of conviction.

Becker, J.
Becker

Agosti, J.
Agosti

Gibbons, J.
Gibbons

cc: Hon. Kathy A. Hardcastle, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk