

IN THE SUPREME COURT OF THE STATE OF NEVADA

LEROY RAMON GREER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42420

FILED

JUN 25 2004

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of attempted pandering. Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Judge. The district court sentenced appellant Leroy Ramon Greer to serve a prison term of 12 to 30 months.

Greer contends that reversal of his conviction is warranted because his constitutional rights to a fair trial and due process of law were violated when the district court gave jury instruction number 10, which provided:

In a pandering trial, the defendant may be convicted on the testimony of the person with whom the offense allegedly was committed without other corroborating evidence where that person was, at the time the offense is alleged to have taken place, a police officer who was performing his/her duties as such.

In particular, Greer contends that the jury instruction makes a police officer's testimony more credible than that of an ordinary citizen. Additionally, Greer contends that the jury instruction is unconstitutional

because it is essentially a judicial comment on the evidence presented at trial.¹ We conclude that Greer did not preserve this issue for appeal because he failed to object or challenge the constitutionality of the jury instruction in the proceedings below.

Failure to raise an objection in the district court generally precludes appellate consideration of an issue absent plain or constitutional error.² In this case, we conclude that the giving of jury instruction number 10 did not amount to plain error because it was a correct statement of Nevada law.³ Additionally, we conclude that constitutional error did not occur in Greer's case because any error involving the jury instruction was harmless beyond a reasonable doubt.⁴ Accordingly, reversal of Greer's conviction is not warranted.

¹See Nev. Const. art. 6, § 12; Graves v. State, 82 Nev. 137, 140-41 413 P.2d 503, 505 (1966) ("it is permissible to instruct generally that the jury is the sole judge of the credibility of all witnesses, but impermissible to single out the testimony of one and comment upon its quality and character").

²See Etcheverry v. State, 107 Nev. 782, 784-85, 821 P.2d 350, 351 (1991); McCall v. State, 91 Nev. 556, 540 P.2d 95 (1975).

³See NRS 175.301(2); Green v. State, 119 Nev. ___, 80 P.3d 93 (2003) (discussing plain error); United States v. Olano, 507 U.S. 725, 734 (1993).

⁴See Neder v. United States, 527 U.S. 1, 18 (1999); Chapman v. California, 386 U.S. 18, 24 (1966).

Having considered Greer's contention and concluded that it lacks merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Becker


_____, J.
Agosti


_____, J.
Gibbons

cc: Hon. Joseph T. Bonaventure, 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