

IN THE SUPREME COURT OF THE STATE OF NEVADA

RANDY MERWIN STONE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42738

FILED

DEC 20 2005

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

ORDER OF AFFIRMANCE AND LIMITED REMAND TO CORRECT
THE JUDGMENT OF CONVICTION

This is an appeal from a judgment of conviction, upon a jury verdict, of seven counts of sexual assault with a minor under the age of fourteen. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

Appellant Randy Stone was convicted of sexually assaulting his girlfriend's minor child over a three-year period in Las Vegas. Stone appeals, arguing that the district court improperly admitted bad act evidence and hearsay statements. Stone also contends the district court erred by permitting the State to ask the victim leading questions on re-direct examination and that sufficient evidence does not support his conviction.

We conclude that Stone failed to show any prejudice to his substantial rights and that sufficient evidence supports the jury verdict; therefore, we affirm the judgment of conviction. Due to a clerical error, however, the judgment incorrectly states that Stone was convicted upon a guilty plea instead of by jury verdict. Therefore, we remand the matter for correction of the judgment of conviction.

Bad act evidence

Stone argues that the district court abused its discretion by allowing testimony about other bad acts committed by Stone. The minor victim and other family members testified that Stone drank excessively and physically abused the children. Testimony from the victim's mother indicated that when the victim saw Stone in jail she appeared scared. The mother also testified that Stone was an alcoholic and did not want to work.

Stone failed to object to this testimony at trial. Generally, unless the defendant objects at trial to the admission of evidence, he fails to preserve the issue for review.¹ We may, however, address plain error affecting the defendant's substantial rights.²

Our review of the record reveals no plain error. The victim's statements appeared in the juvenile hearing and the preliminary hearing transcripts that the jury received by stipulation. In addition, the testimony was of little focus during the trial. Instead, the focal point of the four-day trial was the victim's extensive testimony concerning the sexual assaults. Therefore, Stone's argument lacks merit.

Hearsay

A police officer and a CPS officer testified regarding statements the victim made to them. Stone argues these statements were inadmissible hearsay, duplicative and unfairly prejudicial. Stone failed to object to the hearsay at trial, thus we may only consider the issue to

¹Gallego v. State, 117 Nev. 348, 365, 23 P.3d 227, 239 (2001).

²Id.

address plain or constitutional error affecting his substantial rights.³ We conclude there was no plain error.⁴

Leading questions on re-direct examination

Stone asserts the district court erred in allowing the State to ask the victim leading questions on re-direct. Stone argues that the victim's testimony was extremely inconsistent on cross-examination and that the State asked impermissibly leading questions on re-direct in an attempt to rehabilitate the witness.

The decision on whether to allow leading questions on re-direct examination is within the discretion of the district court and usually not grounds for reversal.⁵ Under NRS 50.115(1)(b), the court may control the mode of testimony in order to avoid wasting time. The statute is silent as to the propriety of leading questions on re-direct examination, thus leaving that determination to the discretion of the district court.

The State sought to rehabilitate the victim on re-direct examination after aggressive cross-examination. The victim was fifteen years old at trial and testified regarding incidents that occurred when she was between nine to twelve years old. The State noted that the jury had the transcript to review, thus the leading questions saved time. The court agreed. The record reflects no abuse of discretion. Accordingly, Stone's argument lacks merit.

³Id.

⁴See Dearing v. State, 100 Nev. 590, 691 P.2d 419 (1984).

⁵Anderson v. Berrum, 36 Nev. 463, 470, 136 P. 973, 976 (1913); see also Leonard v. State, 117 Nev. 53, 70, 17 P.3d 397, 408 (2001).

Sufficiency of the evidence

Stone contends that the district court erred in not granting his motion for a new trial based on insufficient evidence to support the conviction. “The question for the reviewing court ‘is whether, 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.’”⁶ “The jury determines the weight and credibility to give conflicting testimony.”⁷ Moreover, “[w]e have repeatedly held that the testimony of a sexual assault victim alone is sufficient to uphold a conviction.”⁸

We conclude sufficient evidence supported Stone’s conviction. Stone’s reliance on LaPierre v. State⁹ is unavailing. We acknowledged in LaPierre that child victims often have difficulty articulating the details of abuse and recalling exact instances. Further, “[w]e do not require that the victim specify exact numbers of incidents, but there must be some reliable indicia that the number of acts charged actually occurred.”¹⁰

Although the victim had some difficulty recalling the specific number of incidents occurring at each residence and other details, she described many incidents with particularity, consistently detailing the

⁶Mason v. State, 118 Nev. 554, 559, 51 P.3d 521, 524 (2002) (emphasis in original) (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979)).

⁷Id.

⁸LaPierre v. State, 108 Nev. 528, 531, 836 P.2d 56, 58 (1992).

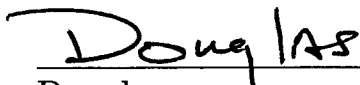
⁹Id.


¹⁰Id.

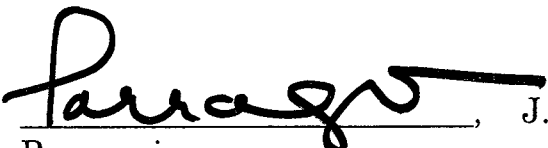
acts Stone performed. The CPS officer testified that child victims have difficulty recounting details from abuse occurring over long periods. Also supporting the jury's determination was the testimony of a nurse practitioner who testified that the victim's exam was consistent with the victim's description of the sexual assaults.

A reasonable jury could have determined the victim credibly described the incidents of sexual assault. Therefore, we conclude that sufficient evidence supports the verdict and the district court did not err in denying Stone's motion for a new trial. We note, however, that the judgment of conviction incorrectly states that Stone was convicted upon a guilty plea. Accordingly, we

ORDER the judgment of the district court AFFIRMED and REMAND this matter to the district court for the limited purpose of correcting the clerical error in the judgment of conviction.


_____, J.
Douglas


_____, J.
Rose


_____, J.
Parraguirre

cc: Honorable Jackie Glass, District Judge
Christopher R. Oram
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk