

IN THE SUPREME COURT OF THE STATE OF NEVADA

TODD BEVERLY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 42767

**FILED**

**FEB 16 2006**

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

ORDER OF AFFIRMANCE AND LIMITED REMAND TO CORRECT  
JUDGMENT OF CONVICTION

This is an appeal from a judgment of conviction, entered upon jury verdicts, of four counts of sexual assault of a minor under fourteen, two counts of sexual assault of a minor under sixteen, one count of sexual assault, one count of attempted sexual assault, and one count of coercion. Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Judge. The district court sentenced appellant Todd Beverly to serve: six terms of life in the Nevada State Prison with the possibility of parole after twenty years; one term of life with the possibility of parole after ten years, one term of five to twenty years; and one term of twelve to thirty months. All of the terms are to be served concurrently. In addition, Beverly was sentenced to a special sentence of lifetime supervision.

Beverly first contends that the evidence presented at trial was insufficient to support the jury's finding of guilt. Our review of the record on appeal, however, reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact.<sup>1</sup>

In particular, we note that the victim reported that Beverly sexually abused her from the time she was in second grade until she was

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<sup>1</sup>See Wilkins v. State, 96 Nev. 367, 609 P.2d 309 (1980); see also Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998).

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16 years old. In her initial police report, her interview with a detective, and her interview with the prosecutor prior to the preliminary hearing, she enumerated at least eight instances when Beverly sexually assaulted her. The victim's accounts were detailed and in re-telling them, the details were never inconsistent. Two expert witnesses testified that it was not uncommon for child sexual abuse victims to recant. In this case, the victim recanted after she learned that her mother was going to be charged with child abuse or neglect for failing to report the alleged abuse.

The jury was fully informed as to the circumstances of the victim's initial accusations and her subsequent recantations. It is for the jury to determine the weight and credibility to give conflicting testimony, and we conclude that the jury could reasonably infer from the evidence presented that Beverly committed the crimes charged.<sup>2</sup>

Moreover, inconsistencies in the victim's testimony are not a basis for reversal, as "[i]t was the jury function to resolve these matters and the manner in which it did so and the weight it gave to the evidence will not be questioned upon appeal."<sup>3</sup>

Beverly next contends that the victim's inconsistent statements should not have been admitted as substantive evidence, but should have been limited to impeachment. Beverly concedes that currently, the law allows for the use of prior inconsistent statements as substantive evidence.<sup>4</sup> Beverly asks this court to modify the rule and hold

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<sup>2</sup>See Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981); see also McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

<sup>3</sup>Garden v. State, 73 Nev. 312, 315, 318 P.2d 652, 653 (1957).

<sup>4</sup>See NRS 51.035(2)(a), (d); see also LaPierre v. State, 108 Nev. 528, 532, 836 P.2d 56, 58 (1992); Levi v. State, 95 Nev. 746, 749, 602 P.2d 189, 190 (1979).

that prior inconsistent statements are inadmissible as substantive evidence, or if they are to be admissible, require "factors of reliability." We decline to revisit this area of the law.<sup>5</sup>

Beverly next contends that the State engaged in "reverse vouching" for the victim's testimony. Specifically, Beverly argues that it was improper for the State to grant the victim immunity from prosecution for perjury and then point out that because of the immunity, the victim was not constrained to tell the truth. We conclude, however, that the State's argument was not improper, but was a valid effort to impeach the victim.<sup>6</sup>

Beverly next contends that the district court erred by admitting the transcript of the statement made by the victim to Detective Meegan because the audiotape of the statement had been destroyed. A conviction may be reversed when the state loses evidence if the defendant is prejudiced by the loss or the state acted in bad faith in losing it.<sup>7</sup> In this case, there is no evidence that the State acted in bad faith, and Beverly has failed to demonstrate that the loss of the original tape was prejudicial. Detective Meegan testified that she reviewed the transcript before the

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<sup>5</sup>The victim's prior inconsistent statements and testimony were admissible both as substantive and impeachment evidence. The statements were in direct conflict with her trial testimony and she was subject to cross-examination at trial. See NRS 51.035(2)(a), (d); see also LaPierre v. State, 108 Nev. at 532, 836 P.2d at 58; Levi v. State, 95 Nev. at 749, 602 P.2d at 190 (where testimony of two witnesses at the preliminary hearing was inconsistent with their testimony at trial, preliminary hearing testimony was admissible for all purposes pursuant to NRS 51.035).

<sup>6</sup>See NRS 50.075 (providing that a witness' credibility may be attacked by any party).

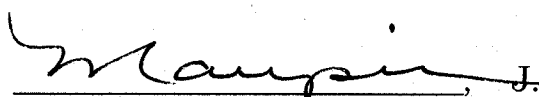
<sup>7</sup>Sparks v. State, 104 Nev. 316, 319, 759 P.2d 180, 182 (1988).

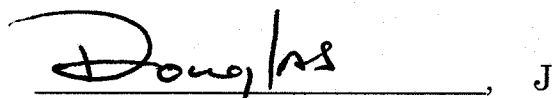
tape was destroyed and that any blanks in the transcript were the result of portions of the tape being inaudible. Beverly fails to show that the tape would have been exculpatory or material to his defense.<sup>8</sup>

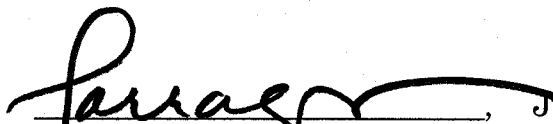
Finally, Beverly contends that his conviction should be reversed because of prosecutorial misconduct. Specifically, Beverly argues that the prosecutor lied to the victim, held the victim hostage to get her to testify before the grand jury, and intimidated the victim into testifying that her initial accusations were true. Our review of the record, however, reveals no credible evidence supporting these allegations, which were refuted below.

Having considered Beverly's contentions and concluded that they lack merit, we affirm the judgment of conviction. However, our review of the record reveals a clerical error. The judgment of conviction states that Beverly was convicted pursuant to a guilty plea when, in fact, he was convicted pursuant to a jury verdict. Accordingly, we

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

  
Maupin

  
Douglas

  
Parraguirre

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<sup>8</sup>See id.

cc: Hon. Joseph T. Bonaventure, District Judge  
David M. Schieck  
Attorney General George Chanos/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk