


IN THE SUPREME COURT OF THE STATE OF NEVADA

LAJOS KENEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48304

FILED

JUN 06 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a judgment of conviction, entered pursuant to a jury verdict, of five counts of lewdness with a child under 14 years of age. Eighth Judicial District Court, Clark County; Nancy M. Saitta, Judge. The district court sentenced appellant Lajos Kenez to serve five concurrent prison terms of life with the possibility of parole after ten years.

Kenez contends that the district court committed plain error by twice permitting the State to elicit testimony from prosecution witnesses vouching for the credibility of other prosecution witnesses. Kenez specifically claims that the State promoted witness vouching by asking a victim's mother whether she had any reason to believe that her daughter did not tell her the truth and by asking a detective whether the victims "ultimately came clean" and told him "the truth of what happened." Kenez did not object to these questions.

Failure to raise an objection with the district court generally precludes appellate consideration of an issue.¹ This court may nevertheless address an assigned error if it was plain and affected the appellant's substantial rights.² "To be plain, an error must be so unmistakable that it is apparent from a casual inspection of the record."³

As a general rule, witnesses may not vouch for the testimony of other witnesses.⁴ However, opinion evidence as to a witness's propensity for truthfulness may be admitted in response to evidence impugning the witness's truthful character.⁵ Here, the State deliberately elicited testimony from two different witnesses as to whether the victims told the truth about the incident that gave rise to the alleged criminal offenses. The State's questions and the witnesses' responses focused on the truthfulness of the victims' allegations and not on the victims' propensity for truthfulness. The error was plain and affected Kenez's substantial rights.

¹See Rippo v. State, 113 Nev. 1239, 1259, 946 P.2d 1017, 1030 (1997).

²See NRS 178.602.

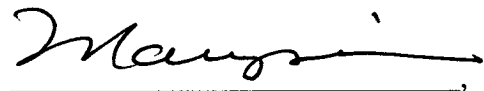
³Garner v. State, 116 Nev. 770, 783, 6 P.3d 1013, 1022 (2000), overruled on other grounds by Sharma v. State, 118 Nev. 648, 56 P.3d 868 (2002).

⁴Marvelle v. State, 114 Nev. 921, 931, 966 P.2d 151, 157 (1998), overruled on other grounds by Koerschner v. State, 116 Nev. 1111, 13 P.3d 451 (2000).

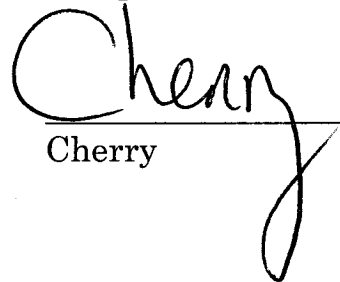
⁵NRS 50.085(1)(b); Roever v. State, 114 Nev. 867, 872, 963 P.2d 503, 506 (1998).

Because the question of Kenez's guilt or innocence hinged on the jury's determination of the victims' truthfulness and the weight of their testimony, we cannot conclude beyond a reasonable doubt that the verdict would have been the same in the absence of the error. Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.⁶

 J.

Maupin

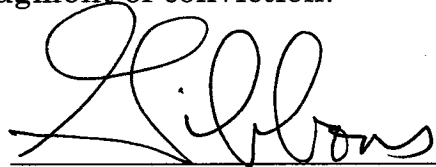
 J.

Cherry

⁶Kenez also contends that the district court (1) improperly granted the State's motion in limine to exclude evidence of prior sexual abuse of one of the alleged victims, (2) committed plain error by not declaring a mistrial sua sponte based on prosecutorial misconduct, (3) committed reversible error by allowing the State to make improper appeals to the jurors' sympathies, and (4) committed plain error by allowing the State to criticize him for exercising his Sixth Amendment rights. We have reviewed these contentions and determined that they lack merit.

GIBBONS, C.J., dissenting:

In my opinion, the two instances of witness vouching do not rise to a level of plain error that affected Kenez's substantial rights. Accordingly, I would affirm the judgment of conviction.


Gibbons, C.J.
Gibbons

cc: Eighth Judicial District Court Dept. 18, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

