

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTOPHER SATURNINO  
QUINTANA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 51086

**FILED**

**MAY 20 2009**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of sexual assault. Second Judicial District Court, Washoe County; Patrick Flanagan, Judge. The district court sentenced appellant Christopher Saturnino Quintana to serve a prison term of life with the possibility of parole after ten years.

On appeal, Quintana challenges his conviction on two grounds. He contends that there was insufficient evidence adduced to support his conviction and prosecutorial misconduct requires a reversal of his conviction.

First, Quintana argues that there was insufficient evidence presented at trial to sustain the conviction. Specifically, he contends that the victim's testimony was incredible in light of her lack of physical injuries consistent with being held down and dragged and her failure to call out for help or report the sexual assault to authorities.

The standard of review for a challenge to the sufficiency of the evidence is "whether, after viewing the evidence in the light most favorable to the prosecution, any rational [juror] could have found the

essential elements of the crime beyond a reasonable doubt.” McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992) (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979)). “[I]t is the function of the jury, not the appellate court, to weigh the evidence and pass upon the credibility of the witness.” Walker v. State, 91 Nev. 724, 726, 542 P.2d 438, 439 (1975). Circumstantial evidence is enough to support a conviction. Lisle v. State, 113 Nev. 679, 691-92, 941 P.2d 459, 467 (1997), holding limited on other grounds by Middleton v. State, 114 Nev. 1089, 1117 n.9, 968 P.2d 296, 315 n.9 (1998).

Our review of the record on appeal reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact. At trial, the victim testified that Quintana and Ramon Delamora dragged her across the floor, held her down, and forcefully stripped her pants and underwear. Quintana then restrained her while Delamora sexually assaulted her. The victim later broke free and went into a bathroom. However, Quintana followed her, held her down, and inserted his penis into her vagina. During the penetration, the victim grabbed Quintana’s shirt and stained it with blood that was on her hand from wounds suffered in the prior encounter. During police questioning, Quintana denied any sexual contact with the victim. However, biological evidence recovered from the victim’s genital area contained Quintana’s DNA. Further, the victim’s DNA was present in the stain on Quintana’s shirt and on a rug on the bathroom floor.

We conclude that the jury could reasonably infer from this evidence that Quintana subjected the victim to sexual penetration against her will. See NRS 200.366(1). Although some parts of the victim’s testimony might have appeared inconsistent with the victim’s lack of

physical injuries associated with being dragged and restrained and with what another person in the victim's position might have done, it was for the jury to determine the weight and credibility to give the testimony. The jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict. See Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981); see also McNair, 108 Nev. at 56, 825 P.2d at 573.

Second, Quintana argues that the State committed prosecutorial misconduct during its closing rebuttal argument. He contends that comments by the State denigrated the defense and criminal justice system, improperly diluted the reasonable doubt standard, and referred to evidence that was not introduced at trial.

Quintana failed to object to any of the challenged comments. Generally, the failure to object to prosecutorial misconduct precludes appellate review. Gaxiola v. State, 121 Nev. 638, 653-54, 119 P.3d 1225, 1236 (2005). However, we "may consider sua sponte plain error which affects the defendant's substantial rights, if the error either: (1) had a prejudicial impact on the verdict when viewed in context of the trial as a whole, or (2) seriously affects the integrity or public reputation of the judicial proceedings." Id. at 654, 119 P.3d at 1236.

In particular, Quintana challenges two portions of the State's rebuttal argument. First, Quintana argues that the following argument disparaged defense counsel and the criminal justice system.

The world definitely is not right. I agree with [codefendant's counsel] on that at least. The world isn't right when a 16-year old girl, no 17, has to come into a court of law, get up on the stand and be bullied by these two defense attorneys in every statement, every word that she said be twisted and used against her. Attempted, no. Bite on the neck, no. You need not ask yourself

again why a woman wouldn't report a rape. I think you've seen exactly why she wouldn't report a rape. To be subjected to this? That's what [sic] so interesting when they argue that this is a lie by this victim. She made this up all so she wouldn't get in trouble from her parents. And for the benefit of that, she gets to be hauled down in the middle of the night to a scene, interviewed, she then gets to take a trip to the hospital and be subjected to that SART experience, and then she gets to get another interview with another detective and go over the facts one more time. And then, to top it all off, she gets to come into court and testify in front of 12 people she doesn't know, strangers in the audience, defense attorneys that are literally salivating on every word she says to be used against her at a later point. All because she didn't want to tell her parents she was drinking.

The State further argued, "[t]he defense has offered what we commonly call a shotgun approach, meaning you just throw everything up on the wall and see what sticks," and that other aspects of the defense were disorganized and part of the shotgun approach.<sup>1</sup>

To the extent that the challenged comments were improper, we conclude that any error did not affect Quintana's substantial rights considering the evidence supporting his guilt. See Butler v. State, 120 Nev. 879, 898, 102 P.3d 71, 85 (2004) (stating that the prosecution may not disparage defense counsel or legitimate defense tactics).

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<sup>1</sup>We note that counsel for Quintana's co-defendant objected to the "shotgun" comment, which the district court overruled.

Second, Quintana challenges the following argument on the grounds that it mischaracterized the burden of proof and alluded to evidence the State did not present:

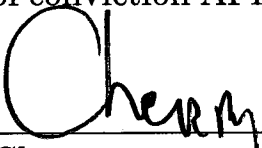
To talk about the burden. The burden isn't beyond all doubt. It is a reasonable doubt. There is doubt in every case. Every case our office prosecutes, there is doubt. Does it mean it's reasonable? No. And I wish we could have brought in all 30 or 40 witnesses on that board, we would have been here another four weeks, and then maybe there would be absolutely no doubt. Beyond a shadow. But this is the evidence that we have presented to you.


We conclude that the prosecutor's comments did not mischaracterize the burden of proof. Moreover, the jury was properly instructed that Quintana was presumed innocent and was also provided the statutory reasonable doubt instruction. See NRS 175.211. Therefore, the prosecutor's argument did not constitute plain error.

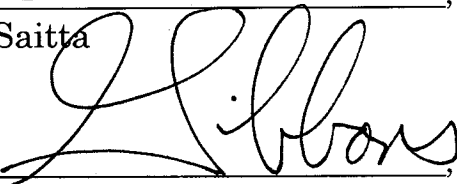
We recognize that the State's comment about other witnesses improperly alluded to facts not supported by the evidence adduced at trial. See Rippo v. State, 113 Nev. 1239, 1254-55, 946 P.2d 1017, 1027 (1997). Nevertheless, we conclude that Quintana failed to demonstrate that these comments had a prejudicial impact on the verdict in the context of the trial as a whole in light of the substantial evidence of guilt discussed above. Further, the jury was properly instructed that the statements of the attorneys were not evidence in the case and that the jury should only consider the testimony received and exhibits that are admitted during trial. Therefore, we conclude that Quintana failed to demonstrate plain error that affected his substantial rights.

Accordingly, having considered Quintana's contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Saitta

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Patrick Flanagan, District Judge  
Washoe County Public Defender  
Attorney General Catherine Cortez Masto/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk