IN THE UTAH COURT OF APPEALS

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State of Utah, Plaintiff and Appellee, v. Brandon Lee Sandoval, Defendant and Appellant.	MEMORANDUM DECISION (Not For Official Publication) Case No. 20080419-CA F I L E D (January 14, 2010) 2010 UT App 3

Third District, Salt Lake Department, 061907636
The Honorable Randall N. Skanchy

Attorneys: Lori J. Seppi and John K. West, Salt Lake City, for Appellant
Mark L. Shurtleff and Karen A. Klucznik, Salt Lake City, for Appellee

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Before Judges Davis, McHugh, and Thorne.

THORNE, Judge:

Brandon Lee Sandoval appeals from his convictions of aggravated burglary, a first degree felony, see Utah Code Ann. § 76-6-203 (2008); theft, a second degree felony, see id. §§ 76-6-404, -412; and criminal mischief, a third degree felony, see id. § 76-6-106. Sandoval argues that the district court improperly commented on the evidence when it instructed the jury that "[a] conviction can be based on the uncorroborated testimony of a single eyewitness." We affirm.

"Whether a jury instruction correctly states the law presents a question of law which we review for correctness." State v. Houskeeper, 2002 UT 118, ¶ 11, 62 P.3d 444. However, "beyond the substantive scope, correctness, and clarity of the jury instructions, their precise wording and specificity is left to the sound discretion of the trial court." State v. Frausto, 2002 UT App 259, ¶ 18, 53 P.3d 486 (internal quotation marks omitted); see also State v. Reyes, 2005 UT 33, ¶ 45, 116 P.3d 305 (acknowledging that trial court judges have "the discretion to determine the appropriate instructions to deliver to the jury at the close of evidence"). Additionally, "jury instructions must be viewed as a whole rather than in isolated segments." State v. Taylor, 2005 UT 40, ¶ 24, 116 P.3d 360 (internal quotation marks omitted).

Here, there is no dispute that the contested instruction was an accurate statement of the law. See State v. Mills, 530 P.2d 1272, 1273 (Utah 1975) (holding that a single witness's "identification [testimony] was sufficient to connect defendant with the offense"); State v. Spencer, 28 Utah 2d 12, 497 P.2d 636, 637 (1972) ("While the legislature has seen fit to require corroboration in [certain circumstances] . . . , we do not deem it advisable . . . to extend that principle to eyewitness identification." (footnotes omitted)). Nevertheless, Sandoval asserts that, because the State's only direct evidence of his guilt was the identification testimony of an eyewitness, the instruction constituted an impermissible comment by the district court on the credibility of the eyewitness testimony. According to Sandoval, the instruction both highlighted and unduly bolstered the eyewitness testimony because it "focused its statement of the law on one particular witness." We disagree.

Sandoval is correct that "a trial court may not comment on the evidence or the credibility of a witness's testimony." Taylor, 2005 UT 40, ¶ 22; see also, e.g., State v. Rosenbaum, 22 Utah 2d 159, 449 P.2d 999, 1000, 1002 (1969) (reversing conviction because of trial court's instruction that "[d]ue to the very nature of the defense of alibi, in that it is easily fabricated and difficult to disprove, you should consider it with caution"). But that is not what happened here. Rather, the district court's instruction that eyewitness testimony did not require corroboration was "stated in abstract generality; and [did] not purport to tell the jury either what the evidence is or what the facts are." See State v. Schoenfeld, 545 P.2d 193, 197 (Utah 1976). The instruction merely told the jury that, if it chose to believe the eyewitness, it could convict Sandoval without concern that the eyewitness testimony was not corroborated. As noted by the district court, such an instruction "seems proper in the context" of two other jury instructions, one addressing the accuracy of witness testimony generally and one particularly addressing issues relating to eyewitness identification testimony--a so-called Long instruction, see State v. Long, 721 P.2d 483, 492 (Utah 1986) (holding that eyewitness identification instructions are mandatory "whenever eyewitness identification is a central issue in a case and such an instruction is requested by the defense").

Further, we do not consider individual jury instructions in isolation: "[J]ury instructions must be evaluated as a whole to determine their adequacy." State v. Hobbs, 2003 UT App 27, ¶ 31, 64 P.3d 1218 (internal quotation marks omitted). Taken as a whole, the jury instructions here adequately explained the State's burden of proof and the jury's role in evaluating the evidence. In addition to the specific instructions on eyewitness testimony identified above, the general instruction on witness testimony concluded that "[y]ou're not required to believe all that a witness says. You are entitled to believe one witness as against many or many as against one, in accordance with your

honest convictions." Other instructions stated that the jury should consider "each instruction in the context of all the others," that "[i]t is your role as the jury to . . . decide the factual issues" (emphasis omitted), and that "[o]nce evidence is admitted, you must decide three things about it: Whether it should be believed, how important it is, and what you can infer from it." Clearly, taken as a whole, the instructions here did not comment on the evidence or unduly highlight or bolster the credibility of the eyewitness testimony.

Sandoval has demonstrated no error in the district court's instruction to the jury that "[a] conviction can be based on the uncorroborated testimony of a single eyewitness." The district court's instruction accurately stated the law and, in the context of the instructions as a whole, the district court did not exceed its "discretion to determine the appropriate instructions to deliver to the jury at the close of evidence," Reyes, 2005 UT 33, ¶ 45. Accordingly, we affirm Sandoval's convictions.[1]

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William A. Thorne Jr., Judge

WE CONCUR:

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James Z. Davis,
Presiding Judge

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Carolyn B. McHugh,
Associate Presiding Judge

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[1]Pursuant to rule 24(j) of the Utah Rules of Appellate Procedure, see Utah R. App. P. 24(j), Sandoval has submitted a letter of supplemental authority citing State v. Clopten, 2009 UT 84, 645 Utah Adv. Rep. 51, to demonstrate additional error with the jury instructions. In Clopten, the supreme court held that, in certain circumstances, criminal defendants must be allowed to routinely present expert testimony on the reliability of eyewitness identifications. See id. ¶ 49. Here, Sandoval did not seek to admit expert testimony on the reliability of the eyewitness testimony. Accordingly, Sandoval has not preserved the Clopten issue for appeal, and Clopten has no bearing on the outcome of this case. See id. ¶ 34 ("In cases where the defense does not call an eyewitness expert, the holding in [State v. Long, 721 P.2d 483 (Utah 1986)] still applies.").