

IN THE SUPREME COURT OF THE STATE OF NEVADA

NEAL MILLER SALES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47848

FILED

OCT 16 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction. Eighth Judicial District Court, Clark County; Sally L. Loehrer, Judge.

The district court convicted appellant Neal Sales, pursuant to a jury verdict, of one count of sexual assault of a minor under 14 years old, his seven-year-old step-daughter. The district court sentenced Sales to serve a term of life in prison with the possibility of parole in 20 years. He raises two issues on appeal.

First, Sales argues that the district court violated his constitutional right to a fair trial when it excluded from trial evidence that the victim's mother once alleged during a custody dispute that the victim's father had abused the victim. He contends that this evidence had exculpatory and impeachment value and would have shown that the victim learned to make false abuse allegations from her mother. He also maintains that the district court erroneously applied this court's holding in Miller v. State¹ as a basis to exclude this evidence. We disagree.

¹105 Nev. 497, 779 P.2d 87 (1989).

This court defers to a district court's decision to admit or exclude evidence and will not reverse that decision on appeal absent manifest error.² Here, the record reveals that Miller was only one among several grounds the district court considered before excluding the prior abuse allegation from evidence.³ The district court also denied Sales' request to introduce the evidence on the ground that it was not relevant. To be relevant, evidence must have the "tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence."⁴ The prior abuse allegation was lodged by the victim's mother against the victim's father. It was not made by the victim. It did not involve Sales. And no evidence was presented that the victim had ever made a prior abuse allegation against Sales or anyone else. We conclude that Sales has failed to demonstrate that the district court committed manifest error by excluding the evidence at issue.⁵ Thus, we reject this contention.

Second, Sales argues that insufficient evidence supports his conviction. We disagree.

²See Ledbetter v. State, 122 Nev. 252, 259, 129 P.3d 671, 676 (2006).

³Miller holds that "defense counsel may cross-examine a complaining witness about previous fabricated accusations, and if the witness denies making the allegations, counsel may introduce extrinsic evidence to prove that, in the past, fabricated charges were made." Miller, 105 Nev. at 501, 779 P.2d at 89. Because the victim's mother was not "a complaining witness," Miller does not apply.

⁴NRS 48.015.

⁵See NRS 48.025(2) (stating that irrelevant evidence is inadmissible).

When reviewing the evidence supporting a conviction, this court considers “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 Here, the victim testified that when she was seven years old she was alone in an apartment with her step-father, Sales. She described circumstances that were consistent with Sales having sexually assaulted her while she slept. She also testified that Sales admitted to her that he had sexually assaulted her.

Sales complains that the victim testified that she often lied, she waited nearly eight months to report the assault, and there was little independent evidence corroborating her testimony. However, these considerations alone do not demonstrate that the evidence was insufficient to support Sales’ conviction. It is for the jury to assess the victim’s credibility and determine the weight to give her testimony,⁷ and this court has held that “the uncorroborated testimony of a victim, without more, is sufficient to uphold a rape conviction.”⁸

Although much of the evidence against Sales was circumstantial⁹ and consisted primarily of the victim’s testimony, the jury

⁶McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992) (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979) (emphasis in original)).

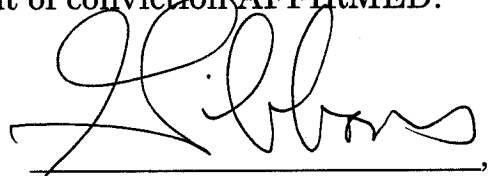
⁷Id.

⁸Hutchins v. State, 110 Nev. 103, 109, 867 P.2d 1136, 1140 (1994); see LaPierre v. State, 108 Nev. 528, 531, 836 P.2d 56, 58 (1992).


⁹McNair, 108 Nev. at 61, 825 P.2d at 576 (“Circumstantial evidence alone may sustain a conviction.”).

apparently found the victim credible, and we defer to that determination. We conclude that the evidence was sufficient to support Sales' conviction.¹⁰ Accordingly, we


ORDER the judgment of conviction AFFIRMED.


_____ J.

Gibbons


_____ J.

Cherry


_____ J.

Saitta

cc: Hon. Sally L. Loehrer, District Judge
Keith C. Brower
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

¹⁰See NRS 200.366; see also NRS 200.364.