

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAYMOND HEALEY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 49786

**FILED**

SEP 09 2008

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
DEPUTY CLERK

ORDER OF AFFIRMANCE BY

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of two counts of sexual assault and one count of lewdness with a minor under the age of fourteen. Eighth Judicial District Court, Clark County; Jennifer Togliatti, Judge.

On June 7, 2007, the district court sentenced appellant Raymond J. Healey to serve two consecutive terms of life in prison with parole eligibility after twenty years for each of the sexual assault convictions, and a concurrent term of life in prison with parole eligibility after ten years for lewdness.

Healey raises four issues on appeal. First, Healey contends that the district court denied him a fair trial when, pursuant to the rape shield statute, it denied him the opportunity to introduce evidence of the victim's prior claims of abuse. The rape shield statute prohibits the presentation of "evidence of any previous sexual conduct of the victim of the crime to challenge the victim's credibility as a witness unless the

prosecutor has presented evidence or the victim has testified concerning such conduct, or the absence of such conduct.”<sup>1</sup> We have previously held that prior false accusations of sexual abuse or sexual assault are excepted from the statute provided that the defense first files written notice of intent to cross-examine the complaining witness regarding the prior accusations.<sup>2</sup> Further, the defense must also establish by a preponderance of the evidence, outside the presence of the jury, that (1) the accusation or accusations were in fact made; (2) that the accusation or accusations were in fact false; and (3) that the evidence is more probative than prejudicial.<sup>3</sup> “The trial court has sound discretion to admit or exclude evidence of a victim's prior false allegations or prior sexual experiences.”<sup>4</sup>

On the morning of trial, the State pointed out to the district court that the defense had not filed a written notice of intent to cross-examine the victim regarding her other allegations of abuse and asked the judge to limit any such questioning. In response, Healey made an oral motion for the admission of the victim's claims of prior sexual abuse. After conducting a hearing pursuant to Miller v. State, the district court determined that Healey had not shown by a preponderance of the evidence that the victim's claims of prior sexual abuse were false, and excluded the evidence. Healey never filed written notice, pursuant to Miller, of intent

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<sup>1</sup>NRS 50.090.

<sup>2</sup>Miller v. State, 105 Nev. 497, 501-02, 779 P.2d 87, 89-90 (1989).

<sup>3</sup>Id.

<sup>4</sup>Abbott v. State, 122 Nev. 715, 732, 138 P.3d 462, 473 (2006).

to cross-examine the victim in this regard, and thus never properly moved for admission of evidence of the victim's prior claims.<sup>5</sup> In any case, based on the evidence set forth below, we conclude that the district court did not abuse its discretion when it excluded the victim's prior claims of abuse because appellant failed to meet his burden of showing that the claims were false.

Originally, the victim's foster mother noticed that the victim was behaving strangely. After being questioned about it, the victim disclosed that she had been abused. On April 8, 2004, pediatrician Dr. Diane Sue Gobel examined the victim. Dr. Gobel testified that after talking with the victim and her foster mother she believed that there had been multiple abusers, but that she had not been given any names. The victim was then taken to a hospital and interviewed by Detective John Baltas. The victim told Baltas about three people who had abused her: (1) Healey, who had anally raped her twice, (2) a boy named Tommy who had paid her \$5 to pull her pants down and had bumped her private area with his knee, and (3) another boy who had pulled her down one time and started "humping her" with his clothes off while she had hers on. Based on the interview, Baltas scheduled an examination with SAINT nurse Phyllis Suiter.

Suiter examined the victim a week later, on April 15, 2004. The victim told Suiter that she had been abused by some of her dad's friends. She stated that a man named Jamie had put his "private" in her

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<sup>5</sup>Id.

“bottom,” and that one other man had put his “private” in her “front private.” She disclosed that other people had put their foot, knee, or hand on her “private,” had put their fingers in her “private,” or made her touch “their privates.” She did not name anyone other than stating that Jamie was the one who put his “private” in her “bottom.”

At trial, Healey desired to cross-examine the victim about these other allegations of abuse. In order to establish that these statements were false, and thus excepted from the rape shield statute, Healey presented the testimony of two expert witnesses. First, Dr. Goebel testified that she found a tear in the victim’s hymen. Then, Suiter, who had examined the victim a week after Dr. Goebel, testified that the victim’s vagina appeared normal. Healey argued that this evidence established, by a preponderance of the evidence, the falsity of the victim’s statements of abuse involving her “front private.” We agree with the district court that Healey did not satisfy the second prong of the Miller test. The fact that one medical professional found that the victim’s vagina appeared normal did not make it more likely than not that the victim was lying about these other instances of abuse. Therefore, we conclude that Healey failed to demonstrate that the district court abused its discretion in this regard.

Healey next argues that based on this court’s decisions in Summit v. State<sup>6</sup> and Johnson v. State,<sup>7</sup> the challenged evidence should

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<sup>6</sup>101 Nev. 159, 697 P.2d 1374 (1985).

<sup>7</sup>113 Nev. 772, 942 P.2d 167 (1997).

have been admitted. In Johnson, a sexual assault nurse testified that her examination of the victim revealed evidence of vaginal penetration. The victim testified that she had never had sexual intercourse prior to the alleged rape. We determined that the defendant had a right to cross-examine her regarding that statement pursuant to the express exception in NRS 50.090, because the victim had testified to the absence of prior sexual conduct.<sup>8</sup> The defendant sought to introduce evidence of the victim's prior claims of sexual abuse to explain the physical evidence presented by the nurse. We stated that because there was no evidence in the record that the prior abuse had included vaginal penetration, the act for which the defendant was being tried, evidence of those allegations "was of no probative value in challenging [the victim's] claims that she had never had sexual intercourse prior to [the alleged rape]."<sup>9</sup> We concluded that the evidence "should have been properly excluded under NRS 50.090."<sup>10</sup>

In Summit, we held that although evidence of prior abuse fell within the rape shield statute, the district court erred in barring the evidence because it was offered to show that the accuser had other experiences which could explain the source of her knowledge of the sexual activity she described in her testimony.<sup>11</sup> The young victim in that case

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<sup>8</sup>Johnson, 113 Nev. at 777, 942 P.2d at 171.

<sup>9</sup>Id. at 777, 942 P.2d at 170.

<sup>10</sup>Id. at 777, 942 P.2d at 170-71.

<sup>11</sup>Summit, 101 Nev. at 162-63, 697 P.2d at 1376-77.

had described intercourse and fellatio, creating a presumption in the minds of the jury that the alleged acts must have occurred, or the victim would not have been able to describe them.<sup>12</sup> On that basis, we determined that excluding evidence of the child's prior experiences constituted reversible error.<sup>13</sup>

Here, the district court did not abuse its discretion when it denied Healey's request to present evidence of the victim's other allegations of abuse. The victim accused Healey of abusing her anally, while the allegations Healey sought to admit were of vaginal penetration and touching. Pursuant to Johnson, the victim's allegations of vaginal abuse were not probative of the physical evidence of anal penetration presented against Healey.<sup>14</sup> Likewise, Summit does not require admission of the victim's other allegations because that evidence would not have explained her ability to describe Healey's abuse. Because the allegations of abuse excluded by the district court involved conduct other than that with which he was charged, we conclude that Healey's assertions based on Johnson and Summit are without merit.

Second, Healey contends that the district court's decision to exclude the victim's statements regarding other abuse violated his constitutional right to confront the witnesses against him. Healey asserts that this evidence was necessary to properly cross-examine the victim and

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<sup>12</sup>Id. at 164, 697 P.2d at 1377.

<sup>13</sup>Id.

<sup>14</sup>See Johnson, 113 Nev. at 777, 942 P.2d at 170-71.

show inconsistencies in what the victim had told people during the investigation. A defendant's Sixth Amendment right to confrontation is not violated by a refusal to permit cross-examination regarding prior accusations or sexual abuse when the defendant has not met his burden at a Miller hearing.<sup>15</sup> Because we have already determined that the district court properly excluded evidence of the victim's other accusations, and because Healey cross-examined the victim regarding inconsistencies between her preliminary hearing testimony and trial testimony, we conclude that Healey's claim in this regard is without merit.

Third, Healey argues that the district court erred by denying his motion for a new trial.<sup>16</sup> Healey bases his claim on some of the jurors' statements at the conclusion of trial that the case was close and that evidence of the victim's other assertions of abuse might have influenced their decision. A district court may order a new trial if required as a

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<sup>15</sup>See Brown v. State, 107 Nev. 164, 168-69, 807 P.2d 1379, 1382 (1991).

<sup>16</sup>The State argues that the motion was not timely filed. The verdict was rendered on November 17, 2006, and the motion was filed on November 27, 2006. NRS 176.515(4) allows only seven days to file a motion for a new trial based on "other grounds." However, NRS 178.472 provides that when the last day of a period of time is a Saturday, Sunday, or nonjudicial day, "the period runs until the end of the next day which is not a Saturday, a Sunday, or a nonjudicial day." In this case, the seventh day fell on Friday, November 24, 2006, which was the day after Thanksgiving. The Friday following Thanksgiving is an official State holiday designated "Family Day." Therefore, the period in which to file did not expire until Monday, November 27, the day on which Healey filed his motion.

matter of law, or if there is newly discovered evidence.”<sup>17</sup> However, juror comments after a verdict are not a proper basis for a motion for a new trial.<sup>18</sup> A “district court’s denial of a motion for new trial will not be reversed absent an abuse of discretion.”<sup>19</sup>

Essentially, the sole basis for Healey’s motion for a new trial was the district court’s exclusion of evidence regarding the victim’s other allegations of abuse. Having already concluded that the district court did not err in excluding this evidence, we similarly conclude that the district court did not abuse its discretion in denying Healey’s motion for a new trial.

Fourth, Healey asserts that there was insufficient evidence presented to support the jury’s verdict. We have repeatedly held that “the uncorroborated testimony of a victim, without more, is sufficient to uphold a rape conviction.”<sup>20</sup> The victim testified in detail about two incidents in which Healey sexually assaulted her in the bathroom. She positively identified Healey in a photographic line-up and testified at trial about the unique tattoo around Healey’s neck. And the victim disclosed to her foster

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<sup>17</sup>NRS 176.515(1).

<sup>18</sup>See State v. Green, 81 Nev. 173, 175, 400 P.2d 766, 767 (1965).

<sup>19</sup>Steese v. State, 114 Nev. 479, 490, 960 P.2d 321, 328 (1998).

<sup>20</sup>Gaxiola v. State, 121 Nev. 638, 648, 119 P.3d 1225, 1232 (2005); State v. Gomes, 112 Nev. 1473, 1481, 930 P.2d 701, 706 (1996); Washington v. State, 112 Nev. 1067, 1073, 922 P.2d 547, 551 (1996); Hutchins v. State, 110 Nev. 103, 109, 867 P.2d 1136, 1140 (1994).



mother that Healey had sexually abused her. We conclude that this evidence alone was sufficient to support the conviction.

However, the record includes other evidence to support the jury's verdict. The victim's foster mother testified that she noticed the victim's strange behavior, such as having bowel movements in her underwear and hiding the soiled underwear in her bedroom. Dr. Goebel stated that she found physical evidence that corroborated the victim's story. Nurse Suiter testified that the findings of her examination were consistent with the history recited by the victim. Several witnesses testified that during the period Healey was residing with the victim's family, the victim's parents were usually locked in their bedroom doing methamphetamine and the victim was often left alone with Healey and other drug users.

We conclude that the evidence adduced at trial sufficiently established Healey's guilt beyond a reasonable doubt as determined by a rational trier of fact.<sup>21</sup> It is for the jury to determine the weight and credibility to give conflicting testimony, and the jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict.<sup>22</sup>

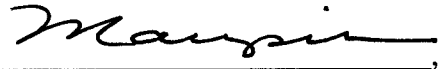
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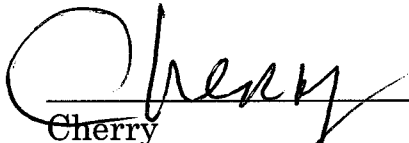
<sup>21</sup>See Wilkins v. State, 96 Nev. 367, 374, 609 P.2d 309, 319 (1980); see also Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998).

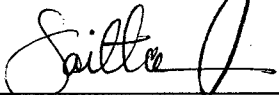
<sup>22</sup>See Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20 (1981); see also McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

Having considered Healey's arguments and concluded that they are without merit, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Maupin

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

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

cc: Hon. Jennifer Togliatti, District Judge  
Law Offices of Cynthia Dustin, LLC  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk