

IN THE SUPREME COURT OF THE STATE OF NEVADA

PETER JUSTIN PIRTLE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51835

FILED

DEC 11 2009

ORDER OF AFFIRMANCE

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of 11 counts of sexual assault of a minor under the age of 14. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge. Appellant Peter Justin Pirtle was sentenced to 3 concurrent prison terms of 20 years to life to be served consecutively to 8 concurrent prison terms of 20 years to life.

Pirtle contends that the district court erred by denying his motion for independent psychological examinations of two of the three victims and by limiting the testimony of his expert witness. We conclude that the former issue lacks merit. Regarding the latter issue, although we conclude that the district court abused its discretion by limiting the testimony of Pirtle's expert witness, we conclude that the error was harmless.

Independent psychological examinations

Pirtle first contends that the district court erred in denying his motion for independent psychological examinations of Victims 1 and 2. We disagree.

A district court should order an independent psychological examination when a "defendant presents a compelling reason for such an

examination.” Koerschner v. State, 116 Nev. 1111, 1116, 13 P.3d 451, 455 (2000) (quoting Washington v. State, 96 Nev. 305, 307, 608 P.2d 1101, 1102 (1980)). Whether a compelling need for an examination exists is determined by the consideration of three factors: (1) whether the State has called or obtained some benefit from a psychological or psychiatric expert, (2) whether the evidence of the crime “is supported by little or no corroboration beyond the testimony of the victim,” and (3) whether a reasonable basis exists to believe that the mental or emotional state of the victim may have affected his or her veracity. Id. at 1116-17, 13 P.3d at 455. These factors should be considered based on the facts and circumstances of each case, and are “not necessarily to be given equal weight.” Id.; Keeney v. State, 109 Nev. 220, 226, 850 P.2d 311, 315 (1993), overruled on other grounds by Koerschner, 116 Nev. 1111, 13 P.3d 451.

Here, the State did not call a designated expert of psychology or psychiatry to testify at trial. And we conclude the testimony of Dr. Neha Mehta, a medical doctor, did not put the victims’ “behavioral and psychological characteristics at issue.” Abbott v. State, 122 Nev. 715, 727-28, 138 P.3d 462, 470-71 (2006); Marvell v. State, 114 Nev. 921, 927, 966 P.2d 151, 154-55 (1998), abrogated on other grounds by Koerschner, 116 Nev. 1111, 13 P.3d 451.

Further, substantial corroborating evidence supports the victims’ testimony. Specifically, Victim 1 testified that he bit down on Pirtle’s penis after Pirtle placed his penis in Victim 1’s mouth. Pirtle’s wife testified that she saw what looked like bite marks on Pirtle’s penis at around the same time. Also around the same time, Pirtle told his sister-in-law’s boyfriend the somewhat fantastic story that he injured his penis by slamming it in a car door.

In corroboration of Victim 2's testimony, her mother testified that she saw blood in Victim 2's underwear, and that Victim 2 complained several times that her vagina hurt. Victim 2 testified that Pirtle hid the children's shoes under his bed so they couldn't run away; Victim 2's mother recalled an occasion when her daughter walked to her place of employment early one morning with no shoes on. In addition, Victim 2 testified that when her mother inadvertently interrupted the abuse on one occasion, she ran to the bathroom to put her overalls back on before her mother came inside; her mother testified that she arrived home one day to find Victim 2 in the bathroom, crying and putting on her overalls.

Finally, we conclude that no reasonable basis existed to believe that the victims' mental or emotional states may have affected their veracity.

Considering each of these factors, we conclude that Pirtle failed to show a compelling reason for independent psychological examinations of Victims 1 and 2. Accordingly, we conclude that the district court did not abuse its discretion by denying Pirtle's motion for independent psychological examinations. Abbott, 122 Nev. at 728, 138 P.3d at 471.

Limitation of expert testimony

Pirtle next contends that the district court erred by prohibiting his expert witness, Dr. Mark Chambers, from testifying regarding false reports of abuse by children because such testimony was essential to his defense that the children's allegations were fabricated. Pirtle specifically asserts Dr. Chambers' testimony would have been given "[w]ithout forming an opinion as to the witnesses in this case." The State argues that the district court properly prohibited such testimony because it constitutes an impermissible comment on the veracity of the child

victims. We agree with Pirtle; however, we conclude that this error does not warrant reversal.

Expert testimony is appropriate if the expert's testimony "will assist the trier of fact to understand the evidence or to determine a fact in issue." NRS 50.275. Its purpose "is to provide the trier of fact a resource for ascertaining truth in relevant areas outside the ken of ordinary laity." Townsend v. State, 103 Nev. 113, 117, 734 P.2d 705, 708 (1987). In a child sexual abuse case, an expert may testify that the victim's behavior is consistent with the behavior of a victim of sexual assault. NRS 50.345. However, an expert witness may not vouch for the credibility of another witness's testimony. Marvelle, 114 Nev. at 931, 966 P.2d at 157. The fact that expert testimony may serve to degrade a victim's credibility does not automatically render the testimony inadmissible. Townsend, 103 Nev. at 118-19, 734 P.2d at 709. So long as the expert refrains from expressing a direct opinion as to the truth of the victim's testimony, the expert's testimony is admissible, regardless of the refutative or corroborative effect it may have on a victim's testimony. Id.

Here, the district court prohibited Dr. Chambers from testifying regarding: (1) scientific studies verifying false accusations of sexual abuse by children, (2) how a child's belief that someone is bad or dangerous or otherwise undesirable can lead to a child rationalizing the creation of false allegations against a person, (3) published literature on the characteristics of false abuse allegations made in the context of a child-custody dispute, (4) psychological literature on memory errors and other common signs indicative of a false report by children, and (5) signs which indicate that a child's report may have been enhanced by contact with adults. This testimony would have been useful to the jury to determine whether the children were in fact abused. The testimony is

relevant and not within the common knowledge of jurors. Further, Dr. Chambers did not propose to express an opinion applying the general information to the child-witnesses; thus, Dr. Chambers' testimony would not have directly characterized the children's testimony as truthful or untruthful.

Moreover, we conclude that an expert's general testimony regarding false allegations of abuse and indications of coaching or bias in a child-victim's testimony does not constitute impermissible comment on the veracity of a child-witness. See Koerschner, 116 Nev. at 1121, 13 P.3d at 457 (Rose, C.J., concurring) (stating that a psychological expert is permitted to testify whether a child victim shows signs of having been coached in his or her testimony); Abbott, 122 Nev. at 728, 138 P.3d at 471 (suggesting that expert testimony regarding indications of coaching is permissible by concluding that a witness may qualify as an expert when she "states whether there was evidence that the victim was coached"). Accordingly, we conclude that the district court abused its discretion by granting the State's motion in limine and limiting the testimony of Pirtle's expert psychological witness. Grey v. State, 124 Nev. ___, ___, n.17, 178 P.3d 154, 161, n.17 (2008). However, we further conclude that such error is harmless.

In this case, Victim 2 testified extensively, although somewhat inconsistently, regarding the alleged abuse against herself and the third victim (Victim 3). As discussed above, significant testimonial evidence corroborated the victims' allegations. Further, the absence of the proposed expert testimony did not hinder defense counsel from presenting Pirtle's

theory of the case—that the children fabricated the allegations¹—or from pointing out the many inconsistencies in the children’s claims. And, significantly, despite Dr. Chambers’ testimony that children have no reliable memory before age four, the jury convicted Pirtle of abusing Victim 1 based mainly on Victim 1’s testimony of abuse which occurred when Victim 1 was three years old. For these reasons, we conclude that the erroneous limitation on Dr. Chambers’ testimony was harmless. See Lobato v. State, 120 Nev. 512, 521, 96 P.3d 765, 772 (2004).

Having considered Pirtle’s contentions and concluded that no relief is warranted, we

ORDER the judgment of conviction AFFIRMED.

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

¹Specifically, in his closing argument, defense counsel argued that “it’s a known fact that there are times when children make false statements.” Defense counsel pointed out that Victim 2 was told that Pirtle raped Victim 3 shortly before Victim 2 came forward with her allegations, and that Pirtle and Victim 2’s mother were engaged in a custody dispute. Defense counsel asserted that Victims 1 and 2 fabricated the abuse allegations to assist Victim 2’s mother in the “custody battle” and to help protect Victim 3, whom they thought had been abused by Pirtle.

cc: Eighth Judicial District Court Dept. 7, District Judge
Thomas A. Ericsson, Chtd.
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk