IN THE SUPREME COURT OF THE STATE OF NEVADA

CLARENCE L. ALDRIDGE A/K/A CLARENCE LEROY ALDRIDGE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51969

FILED

JUL 23 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 three counts of lewdness with a child under the age of 14. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge. The district court sentenced appellant Clarence Aldridge to serve two consecutive terms and one concurrent term of life in prison with the possibility of parole after 10 years.

Aldridge raises four arguments on appeal. First, he argues that the district court erred in denying his motions for mistrial and for a new trial made after a witness referenced his prior prison term. Second, he argues that the district court abused its discretion and deprived him of his due process rights by preventing him from eliciting during cross-examination evidence that the mother of two of the four complaining witnesses had a motive to give false testimony at trial. Third, he argues that even if the above errors are not individually significant, they amount to cumulative error requiring reversal. Finally, he argues that insufficient

evidence supports his convictions. For the reasons stated below, we affirm the judgment of conviction.

Aldridge was tried for nine counts of lewdness with four girls under the age of 14: R.A., A.J., M.J., and E.F. All four girls testified at trial, as did Dawn Glosser, the mother of A.J. and M.J. Aldridge was convicted of committing some of the alleged lewd acts with R.A. and A.J., all of which occurred during a birthday party for another girl. He was acquitted of all remaining counts.

Reference to Aldridge's prior prison term

Aldridge argues that the district court erred in denying his motions for mistrial and for a new trial made after a witness referred to his having been in prison. We review for abuse of discretion a district court's order denying a motion for mistrial or for new trial. Rudin v. State, 120 Nev. 121, 141-42, 86 P.3d 572, 585 (2004).

The district court shall exclude evidence of other crimes offered "to prove the character of a person in order to show that he acted in conformity therewith." NRS 48.045(2). In determining whether a reference is evidence of other crimes, the district court inquires "whether 'a juror could reasonably infer from the facts presented that the accused had engaged in prior criminal activity.'" Manning v. Warden, 99 Nev. 82, 86, 659 P.2d 847, 850 (1983) (quoting Commonwealth v. Allen, 292 A.2d 373, 375 (Pa. 1972)). The district court may cure an error arising from an unsolicited, inadvertent reference to a prior crime by immediately admonishing the jury to disregard the reference. Sterling v. State, 108 Nev. 391, 394, 834 P.2d 400, 402 (1992). Where defense counsel rejects such an admonition for tactical reasons, the right sought to be protected is

deemed waived. See Dias v. State, 95 Nev. 710, 714, 601 P.2d 706, 709 (1979) (holding that when defense counsel makes a tactical decision not to move to strike hearsay or to request a cautionary instruction, defendant is deemed to have waived his right to confront the hearsay declarant).

In this case, the district court had properly ruled prior to trial to exclude references to Aldridge's prior criminal history. However, when the prosecutor asked witness Monica Eichenauer to describe a specific telephone conversation she had with Aldridge, she responded in relevant part "[t]hat he didn't do this. And he didn't want to go back to prison." The district court found that the reference was inadvertent and that both parties had advised the witness to refrain from mentioning Aldridge's criminal history. The district court further found that the comment would not automatically cause a juror to believe that Aldridge had been previously convicted of molesting children, but it nevertheless offered to give a curative instruction to the jury. Defense counsel declined such an instruction for fear that it would call additional attention to the reference to Aldridge's criminal history. After a juror asked whether they would be told why Aldridge had been in prison before, Aldridge renewed his motion for mistrial. As Aldridge raised no new argument, the district court relied on its previous ruling and again offered to admonish the jury, which defense counsel again declined.

The district court misstated the threshold test for comments related to Aldridge's other crimes, focusing its inquiry on whether a juror could infer that Aldridge had engaged in prior criminal activity of a similar nature to that for which he was then standing trial. However, the appropriate inquiry is whether a juror could infer that Aldridge had

engaged in any prior criminal activity. This court held in Thomas v. State, 114 Nev. 1127, 967 P.2d 1111 (1998), that a juror could infer prior criminal activity from a witness's reference to a defendant being "back in jail." Id. at 1141-42, 967 P.2d at 1121. The district court therefore erred in failing to find the comment to be a violation of NRS 48.045(2). However, the district court essentially reached the correct result when it nevertheless offered to admonish the jury regarding the challenged reference. We will not overturn the order of a district court when, even though based on erroneous reasoning, it reaches the correct result. Wyatt v. State, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970). Further, when defense counsel rejected the admonition for tactical reasons, she essentially waived her objection to the comment. Because the district court reached the correct result, and because defense counsel declined the cure to the inadvertent reference, we hold that the district court did not abuse its discretion in denying appellant's motions for mistrial and for a new trial.

Challenging Glosser's credibility

Aldridge next argues that the district court abused its discretion and denied Aldridge his right to due process when the court refused to allow him to elicit certain testimony from witness Dawn Glosser's supervisor, Claudia Carrasco,[1] to impeach Glosser and to support

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[1]While the section heading to one of Aldridge's opening brief arguments refers to cross-examining Glosser, the text in that section refers only to cross-examining Carrasco. Further, while some objections to defense counsel's cross-examination of Glosser were sustained, defense

continued on next page . . .

his theory of the case. A defendant has a due process right to introduce evidence that would tend to prove his theory of the case. Vipperman v. State, 96 Nev. 592, 596, 614 P.2d 532, 534 (1980). However, that due process right "is subject to the rules of evidence," Rose v. State, 123 Nev. 194, 205 n.18, 163 P.3d 408, 416 n.18 (2007), cert. denied, ___ U.S. ___, 129 S. Ct. 95 (2008), and the admission of evidence is within the sound discretion of the district court. Nolan v. State, 122 Nev. 363, 370, 132 P.3d 564, 568 (2006). When the evidence sought to be admitted is to prove a witness's motive to give false testimony, the district court's discretion is limited, and it may only exclude the evidence if it is "repetitive, irrelevant, vague, speculative, or designed merely to harass, annoy, or humiliate." Baltazar-Monterrosa v. State, 122 Nev. 606, 619, 137 P.3d 1137, 1145-46 (2006) (quoting Lobato v. State, 120 Nev. 512, 520, 96 P.3d 765, 771 (2004)). This court will not overturn a district court's decision to admit or deny evidence unless that decision is manifestly wrong. Nolan, 122 Nev. at 370, 132 P.3d at 568-69.

One of Aldridge's theories of the case was that Glosser fabricated the allegations to get money from him, and he sought to elicit evidence of her financial motivation by introducing evidence of a prior

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. . . continued

counsel did not make an offer of proof on the record, thereby precluding review of that exclusion. See Sterling, 108 Nev. at 395, 834 P.2d at 403.

inconsistent statement.[2] Specifically, Glosser had previously testified that she had not "ever made any statement . . . regarding compensation for [her] daughters," and Aldridge sought to introduce testimony from Carrasco that, the day after the birthday party, Glosser commented to her, "[M]y kids need to go to college. My kids need stability. I'm a single mom." The district court excluded the evidence for lack of foundation, reasoning that "not asking for compensation" is not inconsistent with "a very vague reference" to college and stability. We agree.

Although a district court's discretion to exclude evidence is narrower where the evidence sought to be admitted is to show a motive to give false testimony, to the extent that the Glosser's comments to Carrasco could be construed as evidence of such a motive, the comments are vague and speculative and were therefore properly excluded. As the district court noted, statements about Glosser's children's need for stability and to attend college are not the same as demanding compensation. In addition, Carrasco testified during her offer of proof that Glosser never specifically mentioned that she expected Aldridge to provide those things. Finally, there was testimony from the interviewing detective that Aldridge himself

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[2]Aldridge also makes reference in his opening brief to Glosser's financial problems, made worse by her substance abuse. However, no evidence was introduced regarding any financial problems Glosser may have suffered. Although the opening brief credits Carrasco with testifying that Glosser was fired because she was drunk all the time, thereby implying financial problems, a careful review of Carrasco's testimony before the jury and her offer of proof fails to reveal any such statement.

told the detective that while he had the feeling Glosser wanted money from him, she never specifically demanded any. In light of the vague and speculative nature of the excluded testimony, it was within the district court's discretion to exclude the evidence, and we hold that the district court was not manifestly wrong in doing so. Furthermore, because the evidence was properly excluded, Aldridge's due process rights were not violated.

Cumulative error

Aldridge next argues that any errors found to be individually harmless are nevertheless cumulatively significant and warrant reversal. Indeed, we have held, "Although individual errors may be harmless, the cumulative effect of multiple errors may violate a defendant's constitutional right to a fair trial." Byford v. State, 116 Nev. 215, 241-42, 994 P.2d 700, 717 (2000). However, as Byford clearly implies, cumulative error is only possible where there are multiple errors. Where, as here, there is only one error–a comment about Aldridge going "back to prison"–there can be no cumulative error.

Insufficient evidence

Aldridge's final argument is that insufficient evidence supported his convictions. More specifically, he argues that the State's case rested on the credibility of four complaining witnesses who gave conflicting testimony and who were influenced by Glosser's improper financial motives. The standard of review for sufficiency of the evidence is "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." McNair v. State, 108

Nev. 53, 56, 825 P.2d 571, 573 (1992) (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979)). This court has long held that a person may be convicted of sexual crimes on only the testimony of the victim. Gaxiola v. State, 121 Nev. 638, 648, 119 P.3d 1225, 1232 (2005). Furthermore, "[t]his court will not reweigh the evidence or evaluate the credibility of witnesses because that is the responsibility of the trier of fact." Mitchell v. State, 124 Nev. ___, ___, 192 P.3d 721, 727 (2008).

In this case, there was sufficient evidence to convict Aldridge of three counts of lewdness. First, he was convicted of one count of touching R.A. on her bottom. The uncontroverted evidence, elicited during the testimony of R.A., was that Aldridge called her to him during the birthday party and, either while pulling her onto his lap or while she was sitting on his lap, closed his fingers on her bottom. R.A. further testified that she got off his lap because she did not like that he touched her bottom. In addition, Glosser testified that when she entered the living room, she observed Aldridge hugging R.A. and E.F. in turn.

Aldridge was also convicted of one count of touching A.J. on her bottom and one count of kissing her. A.J. testified at trial that while she was sitting on Aldridge's lap, he whispered in her ear that he loved to touch her and patted her on the bottom several times. He then put his lips on hers and she felt his tongue on her mouth as she sucked in her lips. Adding to this evidence, E.F. also testified that she observed Aldridge licking A.J.'s lips. In addition, a police detective testified that during an interview, Aldridge stated that he always told A.J. that he loved her when she would climb into this lap and that when A.J. kissed him on the lips to

thank him for bringing ice cream, he might have licked her lips because she tasted like ice cream.

In addition to the above acts, Aldridge stated during his police interview that he liked the way children's skin felt and that he loved children and loved to touch them. He also told the detective that he liked children to sit in his lap and that he could not recall how many children he has told how soft they felt and asked what type of soap they used.

Aldridge argues that inconsistencies in the girls' testimony and Glosser's bias warrant reversal. Viewing the testimony in the light most favorable to the state, we see no material inconsistencies in the girls' testimony or bias on the part of Glosser. We therefore hold that sufficient evidence supported his convictions.

Having considered Aldridge's arguments and concluded that no relief is warranted, we

ORDER the judgment of conviction AFFIRMED.

_____, J.
Parraguirre

_____, J.
Douglas

_____, J.
Pickering

cc: Hon. Douglas W. Herndon, District Judge
Law Office of Jeannie N. Hua, Inc.
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk