IN THE SUPREME COURT OF THE STATE OF NEVADA

DONALD STEPHEN YAAG A/K/A
DONALD S. YAAG,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53787

FILED

APR 08 2010

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of nine counts of sexual assault of a minor under the age of fourteen. Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge. Appellant Donald Stephen Yaag raises six contentions on appeal.

First, Yaag argues that the amended information failed to adequately specify the dates of the offenses alleged. We conclude that this claim lacks merit. Time was not an essential element of the charges of sexual assault of a minor and lewdness with a minor, see NRS 200.366; NRS 201.230; Martinez v. State, 77 Nev. 184, 189, 360 P.2d 836, 838 (1961) (holding that time is not an element of the offense of rape); see also People v. Wrigley, 443 P.2d 580, 584 (Cal. 1968) (holding that time is not an essential element of the crime of committing lewd and lascivious acts upon a minor), and thus the State was not required to allege an exact date and could give an approximate date, see Cunningham v. State, 100 Nev. 396, 400, 683 P.2d 500, 502 (1984). Further, the victim testified to multiple instances of lewdness and sexual assault between January 1, 2004, and December 31, 2006.

Second, Yaag argues that the district court erred in admitting testimony about uncharged acts of sexual abuse with the victim when she was roughly four years old. We discern no abuse of discretion. See Somee v. State, 124 Nev. ___, ___, 187 P.3d 152, 160 (2008). The victim's testimony about prior abuse by Yaag was relevant to his motivation to assault the victim. See Mclellan v. State, 124 Nev. 263, 269, 182 P.3d 106, 110 (2008). Further, the victim's testimony was sufficient to prove the prior abuse by clear and convincing evidence. See id.

Third, Yaag argues that the district court erred in failing to give a limiting instruction regarding the uncharged bad acts. While the district court did not instruct the jury prior to the testimony, it did instruct on the use of the evidence during its final charge to the jury. See Leonard v. State, 117 Nev. 53, 66, 17 P.3d 397, 405 (2001) (providing that this court presumes that the jury follows the district court's instructions). Further, considering the specificity of the victim's testimony concerning the instances of abuse, we conclude that the failure to give the limiting instruction at the time of admission did not have a "substantial and injurious effect or influence the jury's verdict." Rhymes v. State, 121 Nev. 17, 24, 107 P.3d 1278, 1282 (2005).

Fourth, Yaag argues that the district court improperly limited the subject matter of his cross-examination of the victim and her mother by indicating that inadmissible evidence could be introduced if the defense opened the door to it on cross-examination. Inadmissible evidence, such as the audio tapes of intercepted phone calls in this case, could be introduced to correct a false impression if one is created during the examination. See U.S. v. Wales, 977 F.2d 1323, 1327 (9th Cir. 1992). Therefore, the district court's warning did not impermissibly limit Yaag's right to confrontation.

Fifth, Yaag argues that the district court erred in refusing to give jury instructions based on his theory of the case. We discern no abuse of discretion. Crawford v. State, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005). The given instruction on multiple sexual acts as part of a single criminal encounter accurately reflected Nevada law. See Townsend v. State, 103 Nev. 113, 120-21, 734 P.2d 705, 710 (1987). Further, the evidence presented at trial did not necessitate Yaag's proposed instruction concerning the brevity of time between similar acts of sexual assault.

Sixth, Yaag argues that cumulative error warrants reversal of his conviction. Because we conclude that Yaag failed to demonstrate prejudicial error with regard to any claims discussed above, he is not entitled to relief on this basis. Hernandez v. State, 118 Nev. 513, 535, 50 P.3d 1100, 1115 (2002). Accordingly, we

ORDER the judgment of conviction AFFIRMED.

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

cc: Hon. Elissa F. Cadish, District Judge
Law Offices of Martin Hart, LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk