

IN THE SUPREME COURT OF THE STATE OF NEVADA

JEANIST ADELL LINDSEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56043

FILED

JUN 08 2011

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 guilty verdict, of two counts of lewdness with a child under the age of 14. Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge.

Appellant Jeanist Adell Lindsey's sole claim on appeal is that the district court erred by admitting testimony of the victim's mother and a police detective as to the victim's out-of-court statements about the offenses. We disagree.


Under NRS 51.385(1), statements of a child under 10 years old describing an act of sexual conduct or physical abuse performed on the child are admissible if there is a hearing outside the presence of a jury regarding their trustworthiness, and the child testifies at the proceeding or is unavailable or unable to testify. The trustworthiness of a statement is determined by whether "(a) [t]he statement was spontaneous; (b) [t]he child was subjected to repetitive questioning; (c) [t]he child had a motive to fabricate; (d) [t]he child used terminology unexpected of a child of similar age; and (e) [t]he child was in a stable mental state." NRS 51.385(2).


Here, the district court conducted the requisite NRS 51.385 hearing regarding the admissibility of the victim's statements to her mother and a police detective. Considering the factors enumerated in


NRS 51.385(2), the district court concluded that the challenged statements provided sufficient circumstantial guarantees of trustworthiness.¹ See Pantano, 122 Nev. 782, 787-91, 138 P.3d 477, 480-83 (2006) (applying NRS 51.385 under similar factual circumstances). And contrary to Lindsey's view, we conclude that the challenged testimony was not cumulative to the victim's trial testimony but provided additional facts not revealed in her testimony. Accordingly, we discern no error. See Archanian v. State, 122 Nev. 1019, 1029, 145 P.3d 1008, 1016 (2006) (reviewing the admission of evidence for an abuse of discretion).²

Having considered Lindsey's claim and concluded that it lacks merit, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Cherry


_____, J.
Gibbons


_____, J.
Pickering

¹We reject Lindsey's contention that the district court erroneously admitted the victim's mother's testimony under the excited utterance exception to the hearsay rule. See NRS 51.095. Although the prosecutor argued during the NRS 51.385 hearing that the mother's testimony qualified as an excited utterance, the district court clearly admitted the testimony pursuant to NRS 51.385.

²Lindsey argues that the challenged hearsay statements were admitted after the victim testified, leaving him no opportunity to cross-examine her about the inconsistencies between her pretrial statements and trial testimony. However, nothing in the record suggests that Lindsey could not have recalled the victim and cross-examined her about those matters.

cc: Hon. Elissa F. Cadish, District Judge
Wentworth Law Office
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk