

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,  
Petitioner,  
vs.  
THE EIGHTH JUDICIAL DISTRICT OF  
THE STATE OF NEVADA, IN AND FOR  
THE COUNTY OF CLARK; AND THE  
HONORABLE JAMES M. BIXLER,  
DISTRICT JUDGE,  
Respondents,  
WALTER HAN LAAK AND ARMANDO  
OCEGUEDA, JR.,  
Real Parties in Interest.

No. 56761

**FILED**

**MAY 16 2011**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *S. Young*  
DEPUTY CLERK

ORDER GRANTING PETITION

This is an original petition for a writ of mandamus or prohibition. Real parties in interest Walter Han Laak and Armando Ocegueda, Jr., are awaiting trial on three counts of sexual assault with a deadly weapon and one count of assault with a deadly weapon. The State seeks a writ of mandamus or prohibition directing the district court to vacate its order granting the real parties' motion for a psychological evaluation of the victim. See NRS 34.160; NRS 34.320; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981); see also State v. Dist. Ct. (Romano), 120 Nev. 613, 618, 97 P.3d 594, 597 (2004) (providing that writ of prohibition is appropriate remedy to prevent improper discovery), overruled on other grounds by Abbott v. State, 122 Nev. 715, 138 P.3d 462 (2006).

Prior to trial, Laak and Ocegueda moved the district court to compel the alleged victim to undergo a psychological evaluation based on

medical records that indicated that the victim suffered from epilepsy, had used drugs in the past, and experienced memory problems. The district court granted the motion and later denied the State's motion to reconsider. The State contends that the district court abused its discretion for three reasons.

First, the State argues that the district court does not have authority to compel an adult victim to undergo a psychological examination as such examinations are limited to child victims of sex crimes. We disagree. Although our caselaw in this matter primarily concerns child victims, the district court has inherent authority to grant a motion permitting a psychological evaluation of an adult sexual assault victim. See Colley v. State, 98 Nev. 14, 16-17, 639 P.2d 530, 532 (1982), declined to follow on other grounds by Lickey v. State, 108 Nev. 191, 827 P.2d 824 (1992).

Second, the State argues that the district court manifestly abused its discretion by failing to apply the factors set forth in Koerschner v. State, 116 Nev. 1111, 13 P.3d 451 (2000), modified by Romano, 120 Nev. at 623, 97 P.3d at 600, overruled by Abbott, 122 Nev. 715, 138 P.3d 462. We agree.

In Koerschner, this court concluded that whether a compelling need for an examination exists is determined by 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; see also Abbott, 122 Nev. at 727, 138 P.3d at 470 (reaffirming the test set forth in Koerschner). In an original writ

proceeding, we review a district court's decision ordering a psychological evaluation for a manifest abuse of discretion. See Romano, 120 Nev. at 618, 97 P.3d at 597.

The district court noted that the State was not benefitting from the assistance of a psychological expert and considerable corroborating evidence supported much of the victim's allegations. Thus, the district court's decision appears to rest solely on its conclusion that there is a reasonable basis to believe that the victim's mental or emotional state may have affected her veracity. While we recognize that a neurological condition like epilepsy could give rise to a mental or emotional condition that might affect a person's veracity, the record in this case does not indicate that the victim suffered from such a mental or emotional condition affecting her veracity. Further, the negligible evidence of drug use in the record does not appear to be of such significance as to question the victim's mental or emotional state. Therefore, the district court manifestly abused its discretion in granting the real parties' motion to compel a psychological evaluation of the victim.<sup>1</sup>

Third, the State argues that due process does not entitle the real parties to compel the victim to undergo a psychological examination. We agree. While the decision to grant such a motion rests within the district court's discretion, see id., we have concluded that the denial of such a motion where the defendant has demonstrated a compelling need for a psychological evaluation violates due process, id. at 725, 138 P.3d at 469. However, as the real parties failed to demonstrate a compelling need,

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<sup>1</sup>While the district court's order indicates that its decision rests on its review of the victim's juvenile records, the order does not identify what information contained in those records influenced its decision.

due process does not require that the district court grant their motion. Accordingly, we

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to vacate its order directing the victim to undergo a psychological evaluation.<sup>2</sup>

Douglas, C.J.  
Douglas

Pickering, J.  
Pickering

Hardesty, J.  
Hardesty

cc: Hon. James M. Bixler, District Judge  
Clark County District Attorney  
Brent D. Percival  
James J. Ruggeroli  
Attorney General/Carson City  
Eighth District Court Clerk

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<sup>2</sup>In light of our order, we deny the State's motion to strike portions of the district court's order filed on December 8, 2010.