IN THE SUPREME COURT OF THE STATE OF NEVADA

JESSE ARON ROSS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 62400

FILED

FEB 13 2014

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 statutory sexual seduction, open or gross lewdness, and sexual assault of a child under 16 years of age.[1] Fifth Judicial District Court, Nye County; Kimberly A. Wanker, Judge. Appellant raises three issues on appeal.

First, appellant argues that the district court erred by allowing the victim to testify to uncharged acts of misconduct pursuant to NRS 48.035(3), which permits evidence of other acts or crimes that are "so closely related to an act in controversy or a crime charged that an ordinary witness cannot describe the act in controversy or the crime charged without referring to the other act or crime." Specifically, appellant contends that the uncharged acts of misconduct that occurred in California before the alleged offense in Nevada were inadmissible because

[1]The district court merged the statutory sexual seduction and the sexual assault with a child under 16 years of age counts.

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the "alleged relationship between Appellant and the alleged victim could have been made known to have begun in California without any mention of the uncharged acts." We review the district court's decision to admit evidence for abuse of discretion and will not overturn that decision absent manifest error. *Ledbetter v. State*, 122 Nev. 252, 259, 129 P.3d 671, 676 (2006).

The instant offenses stem from an incident in Pahrump at the Nugget Hotel and Casino in which appellant engaged in anal sex with the then 14-year-old victim on Halloween weekend of 2009. An evidentiary hearing revealed that appellant's first sexual contact with the victim occurred in Charleston View, California, where they lived. The victim testified to a number of incidents of sexual conduct that occurred over the course of several months and that the sexual contact progressed to anal sex two to three times a week. In exchange for sex, appellant provided the victim with money, alcohol, cigarettes, pornography, and cell phone and computer access. The victim testified that he did not enjoy or want to have sex with appellant but wanted the things appellant offered him in exchange for sexual acts. The victim's therapist opined that, based on his evaluation, the victim had been sexually abused; the therapist also described grooming behaviors, which included befriending a victim, gaining the victim's trust, and providing gifts and money to the victim.

We have explained that "the State is entitled to present a full and accurate account of the circumstances surrounding the commission of a crime, and such evidence is admissible even if it implicates the accused in the commission of other crimes for which he has not been charged." *Brackeen v. State*, 104 Nev. 547, 553, 763 P.2d 59, 63 (1988). But to be

admissible under NRS 48.035, "the crime must be so interconnected to the act in question that a witness cannot describe the act in controversy without referring to the other crime." *Bletcher v. State*, 111 Nev. 1477, 1480, 907 P.3d 978, 980 (1995). We conclude that the district court did not abuse its discretion in admitting the challenged testimony because it portrays a pattern of events so interconnected with the charged offenses that the nature of the charged offenses could not have been accurately described without reference to it.[2]

Second, appellant argues that his convictions should be reversed based on ineffective assistance of trial counsel because counsel (1) was unprepared to cross-examine the inconsistencies between the victim's preliminary and trial testimony, (2) did not obtain medical records concerning his circumcision, and (3) failed to have him examined by a urologist. "This court has repeatedly declined to consider ineffective-assistance-of-counsel claims on direct appeal unless the district court has held an evidentiary hearing on the matter or an evidentiary hearing would be needless." *Archanian v. State*, 122 Nev. 1019, 1036, 145 P.3d 1008, 1020-21 (2006). Because appellant has not alleged that either of these exceptions apply, we decline to consider this contention on direct appeal.

Third, appellant argues that the ineffective assistance of counsel and the admission of uncharged acts "could have made the jury come to a different verdict" and therefore his sentence as a habitual

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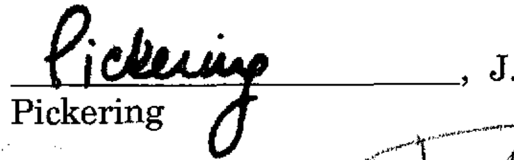
[2]Immediately following the victim's testimony at trial, the district court instructed the jury on the limited use of the evidence.

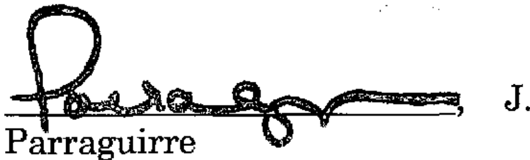
criminal might not have been possible and should be reversed. Based on our conclusions above, appellant's argument lacks merit.

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

ORDER the judgment of conviction AFFIRMED.



_______________, J.
Pickering



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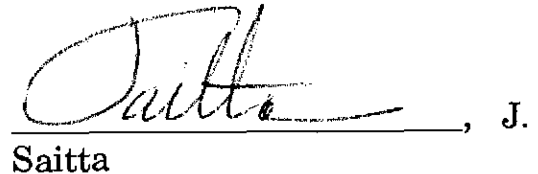

_______________, J.
Saitta

cc: Hon. Kimberly A. Wanker, District Judge
Andrew S. Fritz
Nye County District Attorney
Attorney General/Carson City
Nye County Clerk