An unpublished order shall not be regarded as precedent and shall not be cited as legal authority. SCR 123.

IN THE SUPREME COURT OF THE STATE OF NEVADA

UBALDO SALDANA GARCIA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 62921

FILED
MAR 0 2 2015
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, on 13 counts of sexual assault with a minor under the age of 14 and 14 counts of lewdness with a child under the age of 14. Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge.

Appellant Ubaldo Garcia's conviction stems from his sexual assault of L.T. and A.G. Garcia argues on appeal that (1) the district court abused its discretion in excluding the evidence regarding the alleged sexual assault of L.T. by her cousin, (2) the district court abused its discretion in excluding the evidence regarding Maurice Calcote, and (3) the testimony of the sexual assault victims was insufficient to uphold his conviction.[1]

*The district court did not abuse its discretion in excluding evidence regarding the alleged sexual abuse of L.T. by her cousin*

The district court excluded evidence of an alleged statement L.T. made to her mother claiming that L.T. had been sexually assaulted by

[1]Garcia also argues that his conviction must be reversed based on cumulative error pursuant to *Valdez v. State*, 124 Nev. 1172, 1195-96, 196 P.3d 465, 481 (2008). Because we perceive no error in this case, we conclude that this argument is without merit and do not discuss it further.

her cousin after determining that it was only nominally probative and was prohibited by NRS 50.090, Nevada's rape shield statute. Garcia argues that this was an abuse of discretion by the district court because the evidence was admissible as a result of the source-of-knowledge exception to the rape shield statute.[2]

A district court's decision to admit or exclude evidence is reviewed for an abuse of discretion. *Ramet v. State*, 125 Nev. 195, 198, 209 P.3d 268, 269 (2009). District courts have great discretion "in determining the relevance and admissibility of evidence" and this court will not overturn that decision unless the district court clearly abused its discretion. *Crowley v. State*, 120 Nev. 30, 34, 83 P.2d 282, 286 (2004) (internal quotations omitted).

Absent certain statutory exceptions, NRS 50.090 prevents the presentation of "any previous sexual conduct of the victim . . . to challenge the victim's credibility." This court has also recognized certain exceptions, including where a defendant can demonstrate that the victim had other prior sexual experiences that could explain the source of the victim's knowledge of the sexual activity described in the victim's testimony. *See Summitt v. State*, 101 Nev. 159, 163, 697 P.2d 1374, 1377 (1985). Garcia argues that under this exception, the evidence regarding L.T.'s alleged sexual assault by her cousin was admissible to show that L.T. had a source of knowledge for the sexual acts for which he was charged.

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[2]Garcia also urges this court to create a new exception that would allow for the rehabilitation of witness credibility. We decline to do so as there is no caselaw or statutory authority to support the creation of this exception. Furthermore, even if such an exception existed, it would have no effect on the outcome in this case.

Twice the district court determined that the probative value of the evidence relating to the alleged sexual assault of L.T. by her cousin did not outweigh its prejudicial effect. The district court's decision was based largely on evidence of Garcia's unique anatomical feature—marbles surgically implanted on both sides of Garcia's penis. This unique feature was described by L.T., both verbally and in drawings, during interviews at the Child Advocacy Center regarding Garcia's sexual assaults of L.T. While the district court acknowledged that the separate incident involving L.T. and her cousin could have provided L.T. with "a basis for knowledge for penal to vaginal contact," the court determined that the marbles were the deciding factor in excluding the evidence because L.T. could not have known about Garcia's unique anatomical feature from the incident with the cousin.[3]

Although Garcia attempts to argue that the exclusion of this evidence violated his constitutional rights to due process and to confront witnesses, we conclude that this argument is without merit. Garcia had an adequate opportunity to argue the probative value of admitting the evidence during trial on two separate occasions outside the presence of the jury, *see Summitt*, 101 Nev. at 163, 697 P.2d at 1377 (stating that a defendant must have an opportunity, upon motion, "to demonstrate that

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[3]Garcia also argues that L.T. likely would have had independent knowledge of the marbles from jokes he and L.T.'s mother Esmeralda made around the home, as well as from a picture of his penis L.T. may have seen on his phone. However, L.T. testified that she never overheard conversations between Garcia and Esmeralda about the marbles, and there was no evidence presented to show that L.T. ever saw the picture on Garcia's cell phone. Furthermore, L.T. testified that she was able to draw and describe Garcia's penis because she saw it when he sexually assaulted her.

due process requires the admission of such evidence because the probative value . . . outweighs its prejudicial effect" (internal quotations omitted)), and an opportunity to cross-examine and recross-examine L.T. as to her accusations that he sexually assaulted her, *see Delaware v. Fensterer*, 474 U.S. 15, 21-22 (1985) (holding that "the Confrontation Clause is generally satisfied when the defense is given a full and fair opportunity to probe and expose . . . infirmities [in a witness' testimony] through cross-examination, thereby calling to the attention of the factfinder the reasons for giving scant weight to the witness' testimony"). Accordingly, we conclude that Garcia has failed to demonstrate that the district court clearly abused its discretion in excluding the evidence that the cousin allegedly sexually assaulted L.T. *See Abbott v. State*, 122 Nev. 715, 732, 138 P.3d 462, 473 (2006) (stating that the district court has "sound discretion to admit or exclude evidence of a victim's . . . prior sexual experiences").

*The district court did not abuse its discretion in excluding evidence regarding Maurice Calcote*

During trial, Garcia attempted to introduce evidence of Maurice Calcote's status as a registered tier II sex offender. Calcote was dating L.T.'s mother Esmeralda during some of the time Garcia is said to have sexually assaulted L.T. and A.G. The district court held an evidentiary hearing outside the presence of the jury and determined that the evidence should be excluded because it had "so little probative value to it," and because "there would be some inference underlying that [Calcote] must have molested these girls, and that's just not appropriate. There's no evidence of that."

Garcia argues that this case is similar to *Summitt* and, as was the case in *Summitt*, this evidence was permissible as an independent source-of-knowledge exception under the rape shield statute. We disagree.

Unlike *Summitt,* Garcia does not claim, nor is there any evidence in the record to demonstrate, that there were any "specific incidents of sexual conduct" between Calcote and either L.T. or A.G. that would have given them "the experience or ability to contrive" the sexual assault charges against Garcia. *Summitt*, 101 Nev. at 164, 697 P.2d at 1377 (internal quotation omitted). Instead, Garcia points merely to interactions Calcote and his daughter had with L.T. and A.G. from which Garcia claims that L.T. and A.G. *may* have been able to accumulate sufficient knowledge to fabricate the charges against him. These interactions are wholly distinct from the "specific incidents" required in *Summitt* and do not reveal a basis of knowledge as is claimed by Garcia.

Because there was no evidence of any specific incidents involving Calcote and either L.T. or A.G., we conclude that the district court correctly determined that the prejudicial effect of evidence relating to Calcote's status as a registered tier II sex offender outweighed its probative value, and the district court did not abuse its discretion in excluding this evidence.

*There was sufficient evidence to find Garcia guilty of the crimes charged*

Garcia contends that the testimony of L.T. and A.G. was insufficient to uphold his conviction because their claims were inconsistent and unclear, and their credibility was questionable based on previous lies and a potential motive to lie about the allegations. We determine these claims to be without merit.

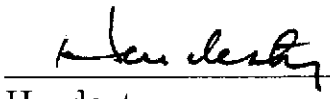
This court has "repeatedly held that the testimony of a sexual assault victim alone is sufficient to uphold a conviction." *LaPierre v. State*, 108 Nev. 528, 531, 836 P.2d 56, 58 (1992). While the testimony need not be corroborated, "'the victim must testify with *some* particularity

regarding the incident in order to uphold the charge.'" *Rose v. State*, 123 Nev. 194, 203, 163 P.3d 408, 414 (2007) (quoting *LaPierre*, 108 Nev. at 531, 836 P.2d at 58). When the victim is a child, the child does not have to "'specify exact numbers of incidents, but there must be some reliable indicia that the number of acts charged actually occurred.'" *Id.* (quoting *LaPierre*, 108 Nev. at 531, 836 P.2d at 58). Here, while there were some minor discrepancies as to the details of the assaults and her age at the time of the incidents, L.T. never wavered on her claims that she was sexually abused by Garcia on numerous occasions. In particular, she explicitly recounted four separate incidents in the presence of the jury. Likewise, while there were some minor discrepancies as to the exact details of how Garcia touched A.G., A.G. was able to describe the locations where she was touched by Garcia and graphically detail his actions.

Although Garcia contends that L.T. was not a credible witness based on history and her motivation to lie, the jury is tasked with determining the credibility of a witness and weighing the evidence, and it determined she was credible. *See Rose*, 123 Nev. at 202-03, 163 P.3d at 414; *Hutchins v. State*, 110 Nev. 103, 109, 867 P.2d 1136, 1140 (1994). Thus, viewing the evidence in favor of the prosecution, "*any* rational [juror] could have found the essential elements of the crime[s charged] beyond a reasonable doubt." *Rose*, 123 Nev. at 202, 163 P.3d at 414 (internal quotations omitted). Therefore, we conclude that Garcia's conviction was supported by sufficient evidence.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.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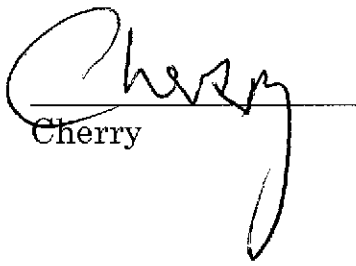
Douglas


, J.
Cherry

cc: Hon. Elizabeth Goff Gonzalez, District Judge
Oronoz & Ericsson
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Clark County District Attorney
Eighth District Court Clerk