

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSHUA J. BALDASSARRE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 65159

**FILED**

**MAR 18 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, of lewdness with a minor, two counts of sexual assault on a vulnerable person, and open or gross lewdness. The district court imposed three life sentences (two consecutive, one concurrent) with the possibility of parole after ten years for the first three charges, and a term of 364 days, with credit for time served, on the final charge. Eighth Judicial District Court, Clark County; Valorie J. Vega, Judge.

During the summer of 2006, S.W., at the time only 12 years-old, was sexually assaulted by Joshua Baldassarre while swimming at a pool at Baldassarre's mother's apartment complex. Baldassarre was dating S.W.'s mother, Tracy. S.W. underwent heart surgery in December of 2006, and during the surgery she suffered a stroke rendering her partially paralyzed and requiring assistance. At the time, S.W. was living with her father in Pahrump, however, because his health began to decline, S.W., along with her brother M.W., moved in with Tracy, who was living with Baldassarre in Las Vegas.

Once S.W. moved in with Tracy the sexual advances continued. On one occasion, S.W. refused sexual advances from Baldassarre while the two were alone in a hotel room in Laughlin. Baldassarre then proceeded to masturbate in front of S.W. On another occasion, Baldassarre took S.W. to a gas station where he again made sexual advances toward S.W. who refused, and asked to be taken home.

Because of S.W.'s condition, a personal care assistant, Rosa Barboza, was hired to assist S.W. twice a day. Since 2010, Rosa assisted S.W. in changing her clothes, brushing her teeth, combing her hair, and changing her diaper. One morning in June of 2012, Rosa arrived at the Baldassarre residence to assist S.W. Baldassarre's truck was idling in the driveway unattended and Rosa became alarmed. Rosa found the front door locked, which was unusual because she was not given a key and the front door normally was left unlocked so she could enter to assist S.W. After knocking and ringing the doorbell three times, Baldassarre opened the door and stated he had just come by to get a bottle of water. Rosa found S.W. to be very scared and angry, clenching her fists, and shaking. Rosa questioned S.W. about what had happened, but S.W. refused to answer. Rosa told Tracy about the incident, who assured her that it would be taken care of.<sup>1</sup>

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<sup>1</sup>S.W. previously told M.W. about the sexual advances. M.W. had relayed the information to Tracy, who questioned S.W. about the advances, but did not take action because the information she was given was too vague.

Shortly after, Tracy, M.W., and S.W. moved in with Tom, Tracy's new boyfriend. S.W. told Tom about Baldassarre making sexual advances at her and Tom insisted on calling the police immediately. Charges were filed and a preliminary hearing was conducted in justice court. Baldassarre was bound-over to district court on seven of eleven charges.

Baldassarre filed a motion for a pretrial psychological evaluation of S.W. The district court held a hearing and denied the motion. The court found that Baldassarre did not provide a compelling reason to order the psychological evaluation. The court applied the legal standard announced in *Koerschner*<sup>2</sup> and *Abbott*.<sup>3</sup> The court concluded that a psychological evaluation was not necessary to determine competency, and reiterated that if S.W.'s competency was challenged at trial, a separate hearing would be held to make that determination.<sup>4</sup>

On appeal, Baldassarre contends that the district court erred in denying his motion to order a psychological evaluation. Baldassarre

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<sup>2</sup>116 Nev. 1111, 13 P.3d 451 (2000).

<sup>3</sup>122 Nev. 715, 138 P.3d 462 (2006).

<sup>4</sup>Baldassarre conflated two legal standards by requesting a psychological evaluation so the district court may determine whether the victim is *competent* to testify as a witness. It is within the discretion of the district court to determine whether a witness is competent to testify considering factors relative to qualification. *Fox v. State*, 87 Nev. 567, 569, 491 P.2d 35, 36 (1971).

argues that compelling reasons exist in this case for a psychological evaluation. We disagree.

This court reviews a district court's denial of a motion to conduct a psychological evaluation of a sexual assault victim for abuse of discretion. *Washington v. State*, 96 Nev. 305, 307, 608 P.2d 1101, 1102 (1980), *abrogated on separate grounds by Lickey v. State*, 108 Nev. 191, 827 P.2d 824 (1992).

The central inquiry is whether the defendant provided a compelling reason for a psychological evaluation. *Koerschner v. State*, 116 Nev. 1111, 1116-1117, 13 P.3d 451, 455 (2000). To determine whether a compelling reason for an evaluation exists, the district court should examine the following three factors, not necessarily giving them the same weight: (1) whether the State utilizes an expert in psychiatry or psychology to its benefit; (2) whether there is little or no corroborating evidence beyond the testimony of the victim; and (3) whether a reasonable basis exists to believe the victim's emotional or mental state has affected the victim's veracity. *Id.* at 1117, 13 P.3d at 455.

Applying these factors to the present case, we find the district court did not abuse its discretion in denying Baldassarre's request for a psychological evaluation. The first factor to consider is whether the State employed an "expert" to its benefit. A witness is considered to be an "expert" when he or she does more than just relate the facts of the victim interview and instead analyzes the facts, and/or states that the victim has been coached, or has a bias against the defendant. *Abbott v. State*, 122 Nev. 715, 728, 138 P.3d 462, 471 (2006). The State did not utilize a licensed psychiatrist or psychologist. Detective Ransom Beza was the only

witness to testify at the trial regarding the investigation. That testimony was confined to percipient facts. Thus, the State did not utilize any "expert" as contemplated by the court in *Abbott*.


Turning to the second factor, Baldassarre alleges that there is no physical evidence corroborating the victim's testimony as to the sexual acts. However, *physical evidence* is not required to corroborate a victim's testimony. *Washington v. State*, 96 Nev. 305, 307-08, 608 P.2d 1101, 1103 (1980) (holding that the eyewitness testimony of the victim's cousin satisfied the corroboration factor), *abrogated on separate grounds by Lickey v. State*, 108 Nev. 191, 827 P.2d 824 (1992). Here, portions of S.W.'s testimony were corroborated by the testimony of two other witnesses.


Finally, Baldassarre argues that there was a reasonable basis to believe S.W.'s mental or emotional state affected her veracity. A reasonable basis exists to believe a victim's veracity has been affected by his or her mental or emotional state when the victim has made prior unsubstantiated allegations of sexual assault, or has been exposed to or has engaged in sexual activities. *Abbott*, 122 Nev. at 731, 138 P.3d at 473. None of these concerns were alleged by Baldassarre. Baldassarre's arguments regarding the remoteness in time of the incidents and informing police, the motivation of the break-up between he and Tracy, and S.W.'s current physical condition, do not amount to a reasonable basis, and all of these arguments could have been appropriately addressed on cross-examination of S.W. The record reflects Baldassarre was given ample opportunity to cross-examine S.W. regarding her veracity.

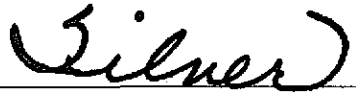
Finally, S.W. was 19 years-old at the time of her testimony at trial. Concerns such as coaching are not present; concerns that a district court would analyze in granting this type of motion.

Having considered Baldassarre's contentions<sup>5</sup> and concluding that the district court did not abuse its discretion, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Silver

cc: Eighth Judicial District Court, Dept. 2  
Clark County Public Defender  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

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<sup>5</sup>We also note that a serious question exists whether the psychological evaluation requested by Baldassarre is appropriate when the victim's condition – possible memory loss following a stroke – appears to be a neurological issue rather than a psychological one. Alberto Maud, M.D., *Memory Loss After Stroke*, 67 *The Official Journal of the Am. Acad. of Neurology*, no. 8 at E14-E15 (Oct. 24, 2006). Although Baldassarre was aware of S.W.'s physical condition prior to trial which may have resulted in some memory loss, he did not request a physical evaluation to explore the extent of the memory loss.