

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KEMAL GULER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 67341

FILED

MAR 04 2016

TRACIE K. LINDSEMAN
CLERK OF SUPREME COURT
BY *Williams*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a jury verdict finding defendant guilty of sexual assault, coercion, open or gross lewdness, indecent exposure, and child abuse and neglect. Eighth Judicial District Court, Clark County; Kathleen E. Delaney, Judge.

The charges against Kemal Guler stem from allegations he sexually abused two of his minor daughters, A.A. and L.G., when they were respectively 14 and 16 years of age.¹ On appeal, Guler argues the district court abused its discretion by admitting evidence of other bad acts and by refusing to order that the victims undergo a psychological evaluation. Guler also contends there was insufficient evidence that he sexually abused A.A. We disagree.

We review a district court's admission of evidence of other bad acts for abuse of discretion. *Newman v. State*, 129 Nev. ___, ___, 298 P.3d 1171, 1178 (2013). Evidence of other bad acts is admissible under NRS 48.045(2) to show "motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident," or for other

¹We do not recount the facts except as necessary to our disposition.

appropriate purposes. See *Bigpond v. State*, 128 Nev. 108, 116, 270 P.3d 1244, 1249 (2012). Here, the district court conducted a *Petrocelli*² hearing and properly considered all factors and the evidence that Guler also sexually assaulted the victims in Arizona and assaulted another daughter, T.T., was relevant to show motive pursuant to *Ledbetter v. State*, 122 Nev. 252, 129 P.3d 671 (2006). Specifically, this established Guler's ongoing "sexual attraction to and obsession with the young female members of his family, which explained to the jury his motive to sexually assault" A.A. and L.G., his natural children. *Ledbetter*, 122 Nev. at 263, 129 P.3d at 679. The evidence was also relevant for other nonpropensity purposes, including to explain the circumstances surrounding the sexual assaults, why the victims delayed reporting the abuse, and why L.G. repeatedly denied abuse when questioned by various authorities. The evidence also illustrated the family dynamics, specifically the dynamics of the relationship between Guler and his daughters. This, in turn, explains why Guler would sexually assault his daughters with little apparent concern for whether nearby family members witnessed the abuse. Thus, we conclude the district court did not abuse its discretion in admitting the evidence.³

²*Petrocelli v. State*, 101 Nev. 46, 692 P.2d 503 (1985).

³We agree the district court incorrectly concluded the evidence was also admissible under NRS 48.035. That statute allows other bad act evidence only where it is so interconnected to the crime at issue that it would be impossible for the witness to testify without reference to the other evidence. *Bellon v. State*, 121 Nev. 436, 444, 117 P.3d 176, 181 (2005). But here, the witnesses could have testified to the Nevada events without referencing the earlier abuse in Arizona. Nevertheless, we will affirm the district court's decision if it correctly admitted the evidence,
continued on next page...

Neither did the district court abuse its discretion in denying Guler's motion for an independent psychological examination of the victims. *See Abbott v. State*, 122 Nev. 715, 723, 138 P.3d 462, 467 (2006) (we will not set aside a district court's decision to deny a psychological examination absent an abuse of discretion). An examination is warranted only where the defendant demonstrates a compelling need for the examination. *See id.* at 722-23, 138 P.3d at 467-68. In evaluating whether a compelling need exists, we consider 1) whether the State has called or obtained some benefit from a psychological expert, 2) whether evidence of the crime is supported by any corroboration, and 3) whether a reasonable basis exists to believe that the mental or emotional state of the victim may have affected the victim's veracity. *Koerschner v. State*, 116 Nev. 1111, 1116-17, 13 P.3d 451, 455 (2000). Here, the State called no psychological expert, several witnesses testified Guler sexually abused A.A. and L.G., and nothing in the record supports that A.A. or L.G. had any mental or emotional instability that would affect their ability to testify truthfully at trial.⁴

Finally, we conclude the evidence was sufficient to show Guler sexually assaulted A.A. NRS 200.364 defines sexual penetration as "any

...continued


even if for the wrong reason. *See Ledbetter*, 122 Nev. at 260, 129 P.3d at 677.

⁴Although both A.A. and L.G. made conflicting statements in the years prior to trial regarding the abuse, and L.G. made statements contradicting A.A.'s testimony regarding A.A.'s affinity with cats, such conflict goes not to the victims' mental or emotional state, but to the victims' credibility—which the jury, not the court, assesses. *See Rose v. State*, 123 Nev. 194, 202-03, 163 P.3d 408, 414 (2007).

intrusion, however slight, of any part of a person's body" or into the person's genital openings. The State charged Guler with "placing his finger(s) on or in [A.A.'s] genital opening." A.A. testified that Guler digitally penetrated A.A. at a hotel, and that on another occasion Guler reached into her underwear and rubbed her vagina, including placing his fingers past the lips of her vagina. Both instances meet the statutory definition of "any intrusion, however slight," as Guler penetrated past the exterior of A.A.'s body and into her outer sexual organs. *See Higgs v. State*, 126 Nev. 1, 11, 222 P.3d 648, 654 (2010) (the evidence is sufficient so long as any rational trier of fact could have found the defendant guilty beyond a reasonable doubt). A.A.'s testimony regarding the abuse provides sufficient evidence for the convictions on these counts. *See Rose v. State*, 123 Nev. 194, 203, 163 P.3d 408, 414 (2007) (a victim's testimony, alone, will uphold a conviction so long as the victim testifies with some particularity). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Kathleen E. Delaney, District Judge
Michael R. Pandullo
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk