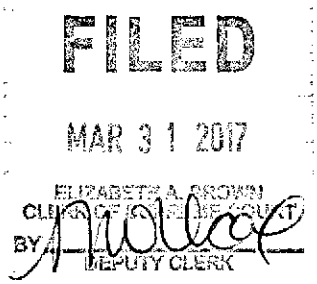
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CHRISTOPHER MICHAEL PATTERSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent

No. 68917



ORDER OF AFFIRMANCE

Christopher Michael Patterson appeals from a jury verdict finding him guilty of kidnapping, sexual assault, battery, open or gross lewdness, and child abuse or neglect. Eighth Judicial District Court, Clark County; Susan Johnson, Judge.

This case arises primarily from events occurring at Patterson's apartment on the evening of January 1, 2011.[1] On appeal, Patterson argues reversal is required because 1) the district court erred by denying his motion to vacate the battery conviction or grant a new trial, 2) the district court failed to require Patterson's presence when the court responded to a jury question, 3) the prosecutors' comments during closing arguments constituted misconduct,[2] 4) the district court

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

[2]We need not consider this argument, as the closing arguments comprise a substantial portion of the record yet Patterson neither cites to any specific page nor quotes any language from the closing arguments. *See* NRAP 28(e)(1) (requiring the parties to support "every assertion in briefs regarding matters in the record" with "a reference to the page and volume number . . . where the matter relied on is to be

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improperly permitted the jury to take a day off before starting deliberations,[3] 5) the district court erred by denying Patterson's motion for an independent psychological exam, 6) failing to sever the counts regarding B.R. and C.K., 7) the court erred by limiting the defense expert's testimony, 8) the district court should have allowed Patterson to present evidence that C.K. previously made a false allegation of rape, and 9) cumulative error applies.

The district court did not err by denying Patterson's motion to vacate the battery conviction or grant a new trial. As an initial matter, the sexual assault and battery charges each required an element the other did not, and thus the charges did not violate the prohibition

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found"); *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (this court need not consider claims that are not cogently argued). Additionally, we note Patterson did not contemporaneously object to the alleged errors. *See Davis v. State*, 107 Nev. 600, 606, 817 P.2d 1169, 1173 (1991) (holding that we need not consider arguments raised on appeal that were not presented to the district court in the first instance), *overruled on other grounds by Means v. State*, 120 Nev. 1001, 103 P.3d 25 (2004).

[3]We do not consider this argument because Patterson failed to object below and provides no authority supporting his argument on appeal. *See Davis v. State*, 107 Nev. 600, 606, 817 P.2d 1169, 1173 (1991) (failure to object precludes appellate review), *overruled on other grounds by Means v. State*, 120 Nev. 1001, 103 P.3d 25 (2004); *Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (this court may refuse to consider arguments not supported by relevant authority). Moreover, the district court instructed the members of the jury to refrain from certain conduct during the recess and nothing in the record suggests that the instruction was not followed. *See Summers v. State*, 122 Nev. 1326, 1333, 148 P.3d 778, 783 (2006) (the jury is presumed to follow the instructions of the court).

against double jeopardy. *See Estes v. State*, 122 Nev. 1123, 1143, 146 P.3d 1114, 1127 (2006) (offenses are separate and do not violate the prohibition against double jeopardy if each requires an element the other does not). Evidence is sufficient to support a verdict if "'*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *Higgs v. State*, 126 Nev. 1, 11, 222 P.3d 648, 654 (2010) (quoting *Rose v. State*, 123 Nev. 194, 202, 163 P.3d 408, 414 (2007) (internal quotations omitted)). Further, a victim's testimony alone is sufficient to uphold a conviction. *Rose*, 123 Nev. at 203, 163 P.3d at 414. Our review of the record reveals that sufficient evidence existed for the jury to return a verdict of sexual assault and battery with intent to commit sexual assault. Therefore, the district court did not err in denying Patterson's motion to vacate the battery conviction or grant a new trial.

Patterson argues that reversal is mandated because he was not present at the time the court answered a jury question during jury deliberations as required by *Manning v. State*, 131 Nev. ___, ___, 348 P.3d 1015, 1019 (2015). *Manning* addressed a district court's failure to notify the parties of a jury's question and confer with them regarding the court's answer. *Id.* The supreme court concluded this violated the defendant's constitutional rights, stating "we believe that due process gives a defendant the right to be present when a judge communicates to the jury." *Id.* The court further noted such error is not reversible if it is harmless beyond a reasonable doubt. *Id.*

Here, the district court notified and conferred with the State and defense counsel, and both sides agreed upon a response, which the court answered by sending a note into the jury room. We need not

address whether the district court was required to bring the jury and Patterson into the courtroom before the judge could relay that response to the jury, as under these facts, the alleged error is harmless beyond a reasonable doubt. The court's response to the jurors' question merely referred the jury to specific jury instructions, and nothing suggests, nor does Patterson allege, that his presence would have changed the court's response to the jurors' inquiry. *See id.* (In determining whether an error was harmless, this court considers "(1) 'the probable effect of the message actually sent'; (2) 'the likelihood that the court would have sent a different message had it consulted with appellants beforehand'; and (3) 'whether any changes in the message that appellants might have obtained would have affected the verdict in any way'") (citations omitted). Therefore, reversal is not necessary on this issue.

Patterson also asserts the district court should have severed counts 9-11, regarding B.R., from the remaining charges regarding C.K. NRS 173.115 allows the joinder of offenses if both are "[b]ased on the same act or transaction," or "[b]ased on two or more acts or transactions connected together or constituting parts of a common scheme or plan." The supreme court has held joinder is appropriate where charges are "connected together." *Weber v. State*, 121 Nev. 554, 573 119 P.3d 107, 120 (2005). Charges are connected together where evidence in one charge would be admissible in a separate trial against the other charge. *Id.* Likewise, evidence is admissible under NRS 48.035(3) if the crimes are so intertwined that it is impossible for the witness to testify regarding one crime without referring to the other. *Weber*, 121 Nev. at 574, 119 P.3d at 121. "Error resulting from misjoinder of charges is harmless unless the improperly joined charges had a substantial and

injurious effect on the jury's verdict." *Id.* at 570-71, 119 P.3d at 119. To meet this "heavy burden," the defendant must show more than just "that severance might have made acquittal more likely." *Middleton v. State*, 114 Nev. 1089, 1108, 968 P.2d 296, 309 (1998) (citations omitted).

In this case, counts 9-10 involving child abuse were intertwined with the events supporting counts 1-8, also involving child abuse, and they were properly joined. Count 11, regarding Patterson's prior drug transactions, stems from different events, but also involves child abuse of the same child in counts 9-10. However, we need not consider whether joinder was improper because Patterson has not provided a record on appeal demonstrating that he asked for counts 9-11 to be severed, nor has he demonstrated how the alleged improper joinder actually had a substantial and injurious effect on his case. Therefore, he has not met his burden on appeal to show the alleged error is reversible.

We further conclude the court did not err by denying Patterson's motion for C.K. to undergo an independent psychological examination. We review a district court's denial of such a request for an abuse of discretion. *Abbott v. State*, 122 Nev. 715, 723, 138 P.3d 462, 467 (2006). The defendant must present a compelling reason for the examination. *Koerschner v. State*, 116 Nev. 1111, 1116, 13 P.3d 451, 455 (2000), *modified by State v. District Court (Romano)*, 120 Nev. 613, 97 P.3d 594 (2004), *overruled on other grounds by Abbott*, 122 Nev. 715, 138 P.3d 462. In determining whether a compelling need exists, three factors come into play: 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 the victim's mental or emotional state may have affected her veracity. *Id.* at 1116-17, 13 P.3d at 455. Here, however, the State did not present a psychological or psychiatric expert, substantial testimony corroborated C.K.'s testimony of the sexual assault, C.K. was 19 years old at the time of trial, and there was no reasonable basis[4] to believe C.K.'s mental or emotional state may have affected her veracity.

Nor did the district court err by limiting Patterson's expert's testimony. The court prevented Patterson's expert from opining as to whether, statistically, C.K. and B.R.'s testimony was consistent or inconsistent with a victim of a crime, and, therefore, believable. But, an expert may not bolster a witness or opine concerning a victim's credibility or veracity. *Romano*, 120 Nev. at 622, 97 P.3d at 600, *overruled on other grounds by Abbott*, 122 Nev. 715, 138 P.3d 462. Further, although the district court may have unduly restricted other areas of potential inquiry, no prejudice has been shown as Patterson argued witness inconsistencies during his closing.

Finally, we conclude the doctrine of cumulative error does not apply in this case. In determining questions of cumulative error, we consider "(1) whether the issue of guilt is close, (2) the quantity and

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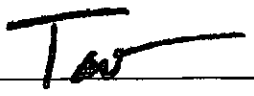
[4]We disagree that C.K.'s prior allegation of sexual assault provides a basis for questioning her veracity. The district court held a hearing on that allegation pursuant to *Miller v. State*, 105 Nev. 497, 779 P.2d 87 (1989), and the testimony did not show that C.K.'s prior allegations were in fact false or suggest that those events predisposed C.K. to invent sexual assault allegations. For these same reasons, we conclude the district court did not err by denying Patterson's motion to admit Carly's prior sexual assault allegation. *See id.* at 501, 779 P.2d at 89 (holding *false* accusations of rape are not barred by the rape shield law).

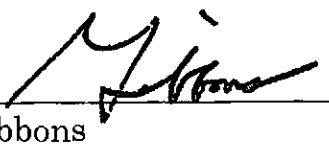
character of the error, and (3) the gravity of the crime charged." *Valdez v. State*, 124 Nev. 1172, 1195, 196 P.3d 465, 481 (2008). Here, the errors, if any, were both few and minor, and the issue of guilt was not close. Accordingly, we

ORDER the judgment of the district court AFFIRMED.[5]

_____, C.J.
Silver



_____, J.
Tao



_____, J.
Gibbons

cc: Hon. Susan Johnson, District Judge
The Law Office of Dan M. Winder, P.C.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

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[5]We have carefully considered Patterson's remaining arguments and conclude they are without merit.