IN THE COURT OF APPEALS OF THE STATE OF NEVADA

FREDERICK HAROLD HARRIS, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 69093

FILED

MAY 24 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Frederick Harold Harris, Jr., appeals from a judgment of conviction, pursuant to a jury verdict, of 36 counts consisting of sexual assault with a minor under 14 years of age; lewdness with a child under the age of 14; child abuse, neglect, or endangerment; first degree kidnapping; coercion; administration of a drug to aid in the commission of a crime; sexual assault with a minor under 16 years of age; sexual assault; battery with intent to commit sexual assault; pandering; and living from the earnings of a prostitute. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Harris was convicted for physically and sexually abusing several children in the same family.[1] On appeal, Harris asserts (1) the district court improperly limited his cross-examination regarding a book authored by the mother of the children, (2) the district court improperly allowed the State to introduce testimonial hearsay statements into evidence, (3) the district court improperly prevented Harris from inquiring into one of the children's past sexual history, (4) Harris' kidnapping charges were incidental to other charges, (5) Harris is entitled to a new trial based on juror misconduct, (6) there is insufficient evidence to

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

support Harris' convictions, and (7) cumulative error warrants reversal in this case.

After careful consideration, we conclude the majority of Harris' arguments lack merit.[2] We agree, however, the district court erred in two aspects, but we disagree that these errors warrant reversal.

First, we agree that the district court improperly limited Harris' ability to cross-examine the mother of the children regarding the title of a book she wrote.[3] Though the extent of cross-examination is generally within the sound discretion of the trial court, when the examiner seeks to show bias "[t]he only proper restriction should be those inquiries which are repetitive, irrelevant, vague, speculative, or designed merely to harass, annoy or humiliate the witness." *Bushnell v. State*, 95 Nev. 570, 572-73, 599 P.2d 1038, 1039-40 (1979). Relevant evidence "means evidence having any tendency to make the existence of any fact that is of

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[2]NRS 50.090 prevented Harris from presenting evidence of the oldest victim's past sexual conduct unless the prosecutor presented evidence or the victim testified regarding such conduct, neither of which happened here. Further, while Harris generally asserts that the kidnapping charges are incidental to other charges against him, he fails to cogently argue this issue, and we therefore need not consider it. *See Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987). The district court did not abuse its discretion by denying the motion for a new trial for juror misconduct, as any misconduct did not prejudice Harris. *See Meyer v. State*, 119 Nev. 554, 561, 80 P.3d 447, 453 (2003) (setting forth the standard of review). And finally, as each victim testified about Harris' conduct, sufficient evidence supports the verdict. *See Rose v. State*, 123 Nev. 194, 203, 163 P.3d 408, 414 (2007) (the victim's testimony alone is sufficient to uphold a conviction).

[3]But, the district court did not err in its handling of the mother's unfinished book. Harris was permitted to ask her whether the book had any relation to the trial, and she responded that it did not.

consequence to the determination of the action more or less probable than it would be without the evidence." NRS 48.015.

The mother of the children authored a book titled *Secret Revenge*. The book's plot involves a rape victim who murders her rapist. The district court ruled that the book's title was too prejudicial, but allowed questioning regarding its contents. We conclude that the district court erred in this regard as the title of the book is relevant and more probative than prejudicial in showing possible bias on the part of the witness under these facts. But, because Harris was allowed to cross-examine the mother regarding the book's contents and the mother denied that the book had anything to do with Harris, the error was harmless. *See Lobato v. State*, 120 Nev. 512, 521, 96 P.3d 765, 772 (2004) ("[A]ny error that does not affect a defendant's substantial rights shall be disregarded").

We also agree with Harris that the district court improperly allowed the State to present testimonial hearsay at trial. Testimonial hearsay of a non-testifying witness is generally inadmissible unless the witness is unavailable at trial and the defendant had a prior opportunity to cross-examine the witness. *Crawford v. Washington*, 541 U.S. 36, 68 (2004). A statement is testimonial if it "would lead an objective witness reasonably to believe that the statement would be available for use at a later trial." *Flores v. State*, 121 Nev. 706, 719, 120 P.3d 1170, 1178-79 (2005) (quoting *Crawford*, 541 U.S. at 52 (2004)). Hearsay is an out-of-court statement "offered in evidence to prove the truth of the matter asserted." NRS 51.035.

Here, the district court erred by allowing a detective to testify regarding a statement made by Harris' girlfriend during a 2012 police

investigation.[4] Harris' girlfriend's statement to the detective was clearly testimonial, as it was made in the course of a police investigation and could be expected to be used in trial, therefore its admission violated the Confrontation Clause. Furthermore, the State probably introduced the statement to prove the truth of the matter asserted—that two children disclosed sexual abuse to Harris' girlfriend. In fact, the State admitted that this testimony was hearsay, but argued that the statement was admissible because it was made against Harris' girlfriend's penal interest.

The hearsay exception against penal interest is inapplicable because Harris' girlfriend was available as a witness for trial, but she didn't testify. *See* NRS 51.345. But, by the time the detective testified towards the end of the State's case-in-chief, three witnesses had already testified to the same statement. Therefore, although the district court's error allowing the admission of testimonial hearsay violated the Confrontation Clause and is of constitutional dimension, we conclude "beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained," and, therefore, the error was harmless under these circumstances. *See Medina v. State*, 122 Nev. 346, 355, 143 P.3d 471,

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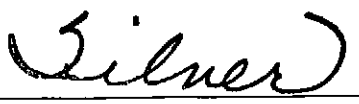
[4]But, the district court did not err by allowing a doctor to testify regarding the girlfriend's statements made during a medical examination of a minor child. Because the girlfriend, the minor child's guardian at the time, made the statement to obtain a medical diagnosis for the child and not as part of a police investigation, the statement was non-testimonial and fell under the hearsay exception in NRS 51.115. *See Chavez v. State*, 125 Nev. 328, 342-43, 213 P.3d 476, 486-87 (2009). *See also United States v. Yazzie*, 59 F.3d 807, 813 (9th Cir. 1995) ("In most circumstances, we believe that statements to a doctor by a parent of an injured child could easily qualify as a statement for the purpose of obtaining a proper medical diagnosis.").

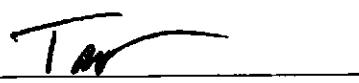
476-77 (2006) (stating confrontation clause issues are subject to harmless error analysis and holding reversal is not required if the error is harmless beyond a reasonable doubt) (internal quotations and citation omitted).

In light of the overwhelming evidence against Harris and relatively minor errors by the district court, we are also not persuaded cumulative error applies. *See Valdez v. State*, 124 Nev. 1172, 1195, 196 P.3d 465, 481 (2008) (in reviewing for cumulative error, we consider "(1) whether the issue of guilt is close, (2) the quantity and character of the error, and (3) the gravity of the crime charged." (internal quotations and citation omitted)). Accordingly, we

ORDER the judgment of conviction AFFIRMED.



_____, C.J.
Silver



_____, J.
Tao

_____, J.
Gibbons

cc: Hon. Michelle Leavitt, District Judge
Christopher R. Oram
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk