IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MAIRA ALEJANDRA SEPULVEDA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 74437-COA

ORDER OF AFFIRMANCE

Maira Alejandra Sepulveda appeals from a judgment of conviction, pursuant to a jury verdict, of conspiracy to commit murder, attempt murder with use of a deadly weapon, battery with use of a deadly weapon resulting in substantial bodily harm, three counts of destroying evidence, performance of act or neglect of duty in willful or wanton disregard of safety of persons or property resulting in substantial bodily harm or death, and two counts of discharge of firearm from or within a structure or vehicle. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

The victim, who survived a gunshot to her head, suffered temporary memory loss but recovered sufficiently to testify before two grand juries and at trial, where she identified Sepulveda as the assailant.[1] Several months after the trial, however, the victim recanted her testimony, claiming she remembered nothing of the incident and had only purported to remember facts that her family and the prosecution had actually provided her. Sepulveda moved for a new trial based on this newly discovered evidence. The district court denied her motion, finding the new evidence

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

18-906890

incredible and the prospect of a new trial unlikely to result in a different outcome.

On appeal, Sepulveda "asks that her request for a new trial be granted."[2] We review a district court's decision whether to grant a new trial for an abuse of discretion. *State v. Carroll*, 109 Nev. 975, 977, 860 P.2d 179, 180 (1993). We conclude that the district court did not abuse its discretion by denying the motion for a new trial. *See Callier v. Warden*, 111 Nev. 976, 990, 901 P.2d 619, 627-28 (1995) (explaining the four requirements for granting a motion for a new trial based on an out-of-court recantation).

In denying Sepulveda's motion for a new trial, the district court applied the *Callier* requirements and found that under the first requirement,[3] it was "not even closely satisfied that" the victim's testimony was false. The court found that the victim's responses to police interviews and her testimony before two grand juries and at trial demonstrated a recollection independent of whatever facts may have been provided to her. Further, the court found that police and the prosecution were diligent in confirming that they neither coached nor coerced the victim, and that in police interviews and sworn testimony, she consistently denied any such coercion. The court even questioned the victim's motivations in recanting her testimony, concluding that her claim that she in fact remembered

---

[2]Sepulveda's argument in her opening brief (she did not file a reply) is identical to her argument in her motion for a new trial—she does not argue on appeal that the district court abused its discretion or erred in denying her motion. Nonetheless, we review the district court's denial of her motion.

[3]"[T]he court is satisfied that the trial testimony of material witnesses was false." *Id.* at 990, 901 P.2d at 627.

nothing and had only purported to remember information her family and the prosecution provided her was "incredible."

The court also found that under the fourth *Callier* requirement,[4] it was "not even closely satisfied that [a new trial] . . . would have resulted in a different result." The court found that the jury based its verdict only "in part on [the victim's] testimony as well as everything else," alluding to the additional evidence—documentary, forensic, and testimonial—supporting the verdict independently of the victim's testimony.

We conclude that the record supports the district court's findings, and thus that the district court did not abuse its discretion by denying the motion for a new trial. Accordingly, we

ORDER the judgment of conviction AFFIRMED.

_____, C.J.
Silver

_____, J.
Tao

_____, J.
Gibbons

cc: Hon. Douglas W. Herndon, District Judge
Carl E.G. Arnold
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

[4]"[I]t is probable that had the false testimony not been admitted, a different result would have occurred at trial." *Id.* at 990, 901 P.2d at 628.