IN THE SUPREME COURT OF THE STATE OF NEVADA

RAUL GARCIA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 37816

FILED

MAR 14 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury trial, of one count of sexual assault on a child under the age of 14 years and two counts of lewdness with a child under the age of 14 years. The district court sentenced appellant Raul Garcia to serve a prison term of life with the possibility of parole after 20 years for the sexual assault count and two consecutive prison terms of life with the possibility of parole after 10 years for the lewdness counts.

Garcia first contends that the district court erred in refusing his request to admit evidence that the victim and her mother's boyfriend Jorge Palma were being coached during their testimony. In particular, Garcia wanted to present two witnesses, the court bailiff and another individual present at the trial, to testify that they observed the victim's mother nodding or shaking her head, affirmatively or negatively, in response to questions asked by defense counsel. We conclude that the district court did not abuse its discretion in refusing to allow such testimony.

Relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the

action more or less probable."[1] The district court has broad discretion with regard to the admission of evidence, and its decision to exclude evidence will not be disturbed unless manifestly wrong.[2] Indeed, even relevant evidence may be excluded if the district court finds that its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issue, or needless presentation of cumulative evidence.[3]

In the instant case, we conclude that the district court did not abuse its discretion in excluding the testimony that the victim's mother was purportedly coaching the witnesses by nodding or shaking her head in response to questions. After conducting an evidentiary hearing on the issue and reviewing the trial testimony of the victim and Palma, the district court found that the victim and Palma gave specific narrative and descriptive testimony about their observations that was not coached by the victim's mother. While acknowledging that the victim's mother had nodded or shaken her head in response to counsel's questions, the district court expressly found that the victim's mother did so in response to immaterial, leading questions that were duplicative since they merely sought the witnesses' confirmation of narrative descriptions previously given. Because the evidence about the victim's mother's conduct might needlessly confuse the issue of whether Garcia committed the charged offenses, we conclude that Garcia has failed to show that the district court's determination that this evidence was inadmissible was manifestly wrong.

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[1]NRS 48.015.

[2]Woods v. State, 101 Nev. 128, 136, 696 P.2d 464, 470 (1985); Walker v. State, 116 Nev. 670, 6 P.3d 477 (2000).

[3]NRS 48.035.

Garcia next contends that the district court erred in giving the jury instruction no. 20.[4] Specifically, Garcia contends that "instruction number twenty was nothing more than a judicially approved excuse for any discrepancy in the testimony of the victim and gave the force of law to that excuse." We disagree.

NRS 175.161(2) provides that "[i]n charging the jury, the judge shall state to them all such matters of law he thinks necessary for their information in giving their verdict." The district court has broad discretion in giving a particular jury instruction, and its decision to give a particular instruction will not be reversed unless it is arbitrary or exceeds the bounds of law.[5]

In the instant case, we conclude that the district court did not err in giving instruction no. 20 because it was neither arbitrary nor a misstatement of the law.[6] Rather, instruction no. 20 properly informed the jury that, in considering a discrepancy in a witness' testimony, it should consider the nature of the discrepancy, as well as the witness'

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[4]Instruction no. 20 provides:

> Inconsistencies or discrepancies in the testimony of a witness, may or may not cause the jury to discredit such testimony. An innocent misrecollection, like failure to recollect, is not an uncommon experience. In weighing the effect of a discrepancy, consider whether it pertains to a matter of importance, or an unimportant detail, and whether the discrepancy results from innocent error or willful falsehood.

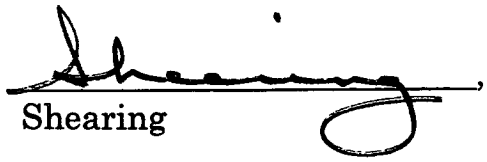
[5]Jackson v. State, 117 Nev. ___, ___, 17 P.3d 998, 1000 (2001).

[6]Accord U.S. v. Butler, 56 F.3d 941, 945-46 (8th Cir. 1995); People v. Beardslee, 806 P.2d 1311, 1324 (Cal. 1991).

motivation to lie. Because instruction no. 20 was given to assist the jury in fulfilling its role of weighing the credibility of witnesses and gauging the weight that should be given to a witness' testimony, we conclude that the district court did not abuse its discretion in allowing it.[7]

Having considered Garcia's contentions and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.



_____, J.
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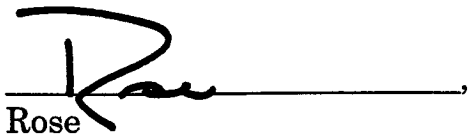

_____, J.
Rose

_____, J.
Becker

cc: Hon. Jerome Polaha, District Judge
Attorney General/Carson City
Washoe County District Attorney
Washoe County Public Defender
Washoe District Court Clerk

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[7]In so concluding, we reject Garcia's contention that our holding in Nevius v. State, 101 Nev. 238, 248-49, 699 P.2d 1053, 1060 (1985) warrants a ruling that instruction no. 20 was erroneous. Nevius held that a district court is not obligated to give a specific instruction with respect to eyewitness testimony, but did not hold that the district court commits reversible error if it exercises its discretion to do so. 101 Nev. at 248-49, 699 P.2d at 1060 (emphasis added).