

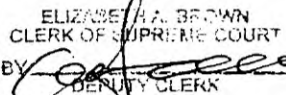
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JAMARR LAMONTE REED,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 83827-COA

FILED

OCT 27 2022

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

ORDER OF AFFIRMANCE

Jamarr Lamonte Reed appeals from a judgment of conviction, entered pursuant to a jury verdict, of first-degree kidnapping resulting in substantial bodily harm, first-degree kidnapping, two counts of second-degree kidnapping, two counts of battery with intent to commit sexual assault, and five counts of sexual assault. Eighth Judicial District Court, Clark County; Ronald J. Israel, Judge.

Reed argues that the district court abused its discretion by permitting one of the victims, K.M., to testify, because K.M. was incompetent. Under NRS 50.015, “[e]very person is competent to be a witness except as otherwise provided in this title.” Reed does not allege that K.M. fell within any provision of Title 4 of the Nevada Revised Statutes that would have made her incompetent to testify.

Rather, Reed argues K.M. was incompetent to testify because she was mentally ill, she was under the influence of illegal or legal drugs, and she could not fairly track and answer questions. “When the competency of any witness has been questioned, it is within the discretion of the trial court to consider factors relative to qualification and to determine if such person is competent to testify.” *Fox v. State*, 87 Nev. 567, 569, 491 P.2d 35,

22-33830

36 (1971) (quotation marks omitted). A person is competent to testify to matters over which they have personal knowledge, *see* NRS 50.025(1)(a), and this is true even if they may be under the influence of drugs at the time of their testimony, so long as they understand the significance of the questions posed and are capable of responding in a lucid manner, *see Fox*, 87 Nev. at 570-71, 491 P.2d at 36-37.

We review the district court's competency determination for an abuse of discretion. *Lanoue v. State*, 99 Nev. 305, 307, 661 P.2d 874, 874 (1983). In reviewing the determination, we consider both the voir dire examination and the witness's subsequent testimony, "which may support a finding of competence if clear, relevant and coherent." *Id.* (quotation marks and internal punctuation omitted).

On the seventh day of trial, the district court examined K.M. outside the presence of the jury. K.M. admitted to using drugs the day prior but denied being currently under the influence of drugs. K.M.'s appointed counsel indicated his belief that K.M. was not competent to testify, but the district court disagreed. The district court determined that K.M. appeared willing and able to testify. The record supports this determination as it indicates K.M. understood why she was brought to court and that she was able to follow and respond to questions.

K.M.'s testimony at trial further supported the district court's determination. K.M.'s testimony was generally clear, relevant, and coherent, and K.M. complied with the district court's request during voir dire that she not mention gangs in her trial testimony. To the extent there were concerns regarding K.M.'s past or present mental health and drug use, the district court properly provided a cautionary instruction informing the jury that it could consider these issues in determining K.M.'s credibility.

See *Fox*, 87 Nev. at 571, 491 P.2d at 37 (stating the district court should provide a cautionary instruction regarding the credibility and weight to be given to a witness's testimony when a witness is addicted to, or under the influence of, drugs). And the jury heard testimony from an expert witness regarding the effects of various drugs and mental disorders on one's ability to perceive and recall events. For these reasons, we conclude the district court did not abuse its discretion by permitting K.M. to testify at trial.

Reed also argues that the district court erred by denying his motion for mistrial and a new trial and that K.M.'s testimony prejudiced him with respect to the other alleged victims; however, both of Reed's claims depend on the premise that K.M. was incompetent to testify. As previously discussed, the district court did not abuse its discretion by permitting K.M. to testify, and K.M.'s testimony at trial did not undermine the district court's decision that K.M. was competent to testify. Therefore, we further conclude that the district court did not abuse its discretion by denying Reed's motion for mistrial and a new trial, see *Mortensen v. State*, 115 Nev. 273, 281, 986 P.2d 1105, 1111 (1999), and that Reed has failed to demonstrate he is entitled to relief. Accordingly, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Ronald J. Israel, District Judge  
The Draskovich Law Group  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk