

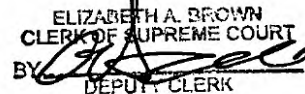
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARCO ANTONIO BLANCO-BLANCO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 86132-COA

FILED

AUG 04 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Marco Antonio Blanco-Blanco appeals from a judgment of conviction, pursuant to a jury verdict, of lewdness by a person more than 18 in the presence of a child under 18 or vulnerable person. Second Judicial District Court, Washoe County; David A. Hardy, Judge.

Blanco-Blanco's girlfriend, Eleshia Lucido, surreptitiously installed a hidden "nanny cam" in their bedroom, intending to catch him having an affair.¹ The day after she installed the camera, Lucido observed in real time and secretly recorded what appeared to be Blanco-Blanco in their bedroom manipulating his penis while Lucido's eight-year-old daughter, A.P., lay on the bed a few feet away from him watching a video. During the incident, Blanco-Blanco used a light-up toy to attract A.P.'s attention. Lucido called her older daughter, who was also present in the home, to remove A.P. from the bedroom. Lucido thereafter provided the recording to law enforcement, and Blanco-Blanco was arrested and charged with one count of lewdness by a person more than 18 in the presence of a child under 18 or a vulnerable person.

Prior to trial, Blanco-Blanco moved to suppress the video recording under NRS 200.604, Nevada's "video voyeur" statute, and NRS

¹We recount the facts only as necessary for our disposition.

200.650, Nevada's eavesdropping statute. NRS 200.604(1) criminalizes the act of secretly recording or capturing "an image of the private area of another person" without their consent and "[u]nder circumstances in which the other person has a reasonable expectation of privacy." After holding an evidentiary hearing, the district court denied Blanco-Blanco's request to exclude the video recording because it found that Lucido did not violate NRS 200.604(1) by recording him. The court did not address Blanco-Blanco's argument pertaining to NRS 200.650, and Blanco-Blanco does not mention that statute on appeal.

The matter proceeded to a two-day jury trial. During trial, the State called Lucido to testify and played the video recording during her testimony. The State asked Lucido to describe what was happening on the video and Blanco-Blanco objected, arguing that it would amount to improper narrative testimony. The district court sustained the objection in part, but determined the State could ask specific questions about what was occurring in the video rather than allowing Lucido to give a continuing commentary. Thereafter, the State asked Lucido particular questions about what Blanco-Blanco was doing throughout the video. After one such specific question, Blanco-Blanco objected to her testimony again, this time as improper lay opinion testimony, but the court overruled the objection. The jury found Blanco-Blanco guilty and he was sentenced to a prison term of 19-48 months. Blanco-Blanco now appeals.

Blanco-Blanco raises two issues on appeal. First, he argues that the district court erroneously denied his motion to exclude the video recording because it was illegally obtained under NRS 200.604(1) and, therefore, it should have been suppressed under NRS 179.505, Nevada's wiretap suppression statute. Second, he argues that the district court erroneously permitted improper lay opinion testimony when Lucido narrated

her interpretation of the video recording. We conclude that Blanco-Blanco is not entitled to relief and therefore affirm.

Initially, Blanco-Blanco fails to establish that the district court erred by denying his motion to suppress the video recording. “Suppression issues present mixed questions of law and fact. This court reviews findings of fact for clear error, but the legal consequences of those facts involve questions of law that we review de novo.” *State v. Beckman*, 129 Nev. 481, 485-86, 305 P.3d 912, 916 (2013) (internal citations omitted). Blanco-Blanco challenges the district court’s finding that Lucido did not violate NRS 200.604(1) by surreptitiously recording him. Blanco-Blanco contends that the district court should have found that Lucido violated the statute because he had a reasonable expectation of privacy in his own bedroom and did not consent to Lucido recording him. But even if Lucido *did* violate NRS 200.604(1), Blanco-Blanco still has not shown that suppression was an appropriate remedy for a violation of that statute.

We note that Blanco-Blanco does not argue on appeal that NRS 200.604 creates a self-executing suppression remedy. Instead, he argues that the video recording should have been suppressed under NRS 179.505.² Blanco-Blanco, however, did not move to suppress the video recording under NRS 179.505 in the district court, so his argument that NRS 179.505 creates a suppression remedy for violations of NRS 200.604(1) is necessarily waived. *See State v. Wade*, 105 Nev. 206, 209 n.3, 772 P.2d 1291, 1293 n.3 (1989) (“This court will not consider issues raised for the first time on appeal.”). Further, because Blanco-Blanco does not argue on appeal that NRS 200.604,

²NRS 179.505 permits, but does not require, suppression of unlawfully intercepted communications. *See Abid v. Abid*, 133 Nev. 770, 775 n.5, 406 P.3d 476, 480 n.5 (2017) (“NRS 179.505 permits an aggrieved party in a criminal proceeding to move to suppress illegally intercepted recordings; it does not render such recordings per se inadmissible.”).

in and of itself, creates a self-executing suppression remedy, any such argument is also waived. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that issues not raised on appeal are deemed waived). Therefore, Blanco-Blanco cannot show that the district court erred by failing to suppress the video recording, even if it was taken in violation of NRS 200.604(1).

Blanco-Blanco next challenges the district court's evidentiary ruling that permitted Lucido to testify about what was happening in the video recording, which Blanco-Blanco argues constitutes improper lay opinion. A district court's decision to permit narrative lay opinion testimony is reviewed for an abuse of discretion. *Burnside v. State*, 131 Nev. 371, 388-89, 352 P.3d 627, 640 (2015).³

A lay witness may testify to opinions or inferences that are "[r]ationally based on the perception of the witness; and . . . [h]elpful to a clear understanding of the testimony of the witness or the determination of a fact in issue." NRS 50.265; *Burnside*, 131 Nev. at 382, 352 P.3d at 636. In *Burnside*, the appellant argued that the district court abused its discretion "by permitting police detectives to narrate the video surveillance tapes as they were played for the jury, describing what the tapes depicted." 131 Nev. at 387-88, 352 P.3d at 639. The Nevada Supreme Court found no error because the narration "assisted the jury in making sense of the images depicted in the videos," *id.* at 388, 352 P.3d at 639 (citing *Mills v. Commonwealth*, 996 S.W.2d 473, 488-89 (Ky. 1999)), and generally "assisted

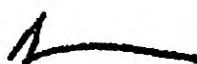
³The State argues on appeal that Blanco-Blanco failed to properly preserve this issue and therefore it should be reviewed for plain error. After reviewing the record, we conclude that Blanco-Blanco objected on the basis of improper lay opinion testimony, the same ground he raises on appeal, and therefore the issue was properly preserved.


them in understanding the evidence,” *id.* at 388, 352 P.3d at 640 (citing *United States v. Young*, 745 P.2d 733, 761 (2d Cir. 1984)).


Lucido’s testimony about what she saw occurring on the video recording was rationally based on her own perception. See NRS 50.265. Having known Blanco-Blanco for two-and-a-half years, Lucido was familiar with Blanco-Blanco’s mannerisms. Lucido’s testimony was based on her observations at the time the video recording was made when she watched events unfold in real time. Additionally, Lucido’s testimony “assisted the jury in making sense of the images depicted in the videos” and understanding why Lucido contacted law enforcement. *Burnside*, 131 Nev. at 388, 352 P.3d at 639; see also NRS 50.265. Blanco-Blanco was able to fully cross-examine Lucido about her interpretation of the video recording, and he argued his alternative interpretation of what was occurring on the video recording during closing argument. The jurors, having been presented with both parties’ respective interpretations of the video recording, could decide for themselves what it depicted. Therefore, we conclude that the district court did not abuse its discretion in permitting Lucido’s testimony and Blanco-Blanco is not entitled to relief on this claim.

Accordingly, we

ORDER the judgment of conviction AFFIRMED.⁴


_____, J.
Bulla


_____, C.J.
Gibbons


_____, J.
Westbrook

⁴Insofar as the parties have raised other arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.

cc: Hon. David A. Hardy, District Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk