

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TIMOTHY LEE LEVERETTE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 88654-COA

**FILED**

NOV 26 2024

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Timothy Lee Leverette appeals from a judgment of conviction, pursuant to a jury verdict, of soliciting a child for prostitution and attempted abuse or neglect of a child involving sexual exploitation. Second Judicial District Court, Washoe County; David A. Hardy, Judge.

Officer Christopher Johnson, a detective in the Reno Police Department's Regional Human Exploitation and Trafficking (H.E.A.T.) unit, conducted an undercover sting operation where he posed as a 17-year-old girl on a known prostitution website.<sup>1</sup> During the course of his operation, Officer Johnson posted several advertisements to the website, using unique terminology typically employed by sex workers and purchasers to arrange sexual transactions. He later received text messages from a phone number registered to Leverette, who was a 47-year-old man. During the communications that ensued, an agreement was reached where Leverette would pay the minor child who Officer Johnson was posing as for sexual intercourse. Consequently, Leverette was arrested and charged with

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<sup>1</sup>We recount the facts only to the extent necessary to our disposition.

one count of soliciting a child for prostitution and one count of attempted abuse or neglect of a child involving sexual exploitation.

Prior to trial, pursuant to a motion in limine, Leverette and the State disputed the admissibility of Officer Johnson's testimony as an expert witness in the field of sex trafficking and the commercial sex trade. Specifically, the State sought to introduce expert testimony from Officer Johnson, "based upon his education, training, and experience, as to prostitution subculture and the normal behavior and language used in prostitution subculture."

During a pre-trial *Hallmark*<sup>2</sup> hearing to determine the scope of his testimony, Officer Johnson stated that he served in the H.E.A.T. unit for four years investigating crimes involving commercial sex, child exploitation, and related online offenses. He explained that, before his current role with H.E.A.T, he spent two additional years on a street enforcement team investigating commercial sex crimes, sex trafficking, and street-level prostitution. He also explained that he received specialized training on sex trafficking and commercial sex offenses through national human trafficking programs taught by survivor advocates and other detectives, where he learned about victim-centered approaches to communicating with survivors and investigative techniques for addressing commercial sex crimes. Officer Johnson further testified that while conducting commercial sex investigations, he learned of "prostitution websites" where traffickers have their victims post advertisements online, as well as the demand for the unlawful purchase of children for sex in the

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<sup>2</sup>*Hallmark v. Eldridge*, 124 Nev. 492, 189 P.3d 646 (2008).

region. The district court reserved its ruling on Leverette's motion in limine until trial.

Before opening statements at trial, the district court denied Leverette's motion and permitted Officer Johnson to testify as an expert but set parameters on the scope of his testimony. The court allowed Officer Johnson to describe his experience with H.E.A.T., his specialized training involving survivor participation and the impact prostitution has on minors, terms used in the commercial sex industry, and the nature of websites he and his colleagues perceive as facilitating illegal prostitution. However, the court limited Officer Johnson's opinion testimony to online prostitution and excluded discussion of other commercial sex offenses to avoid prejudicing Leverette and confusing the issues at trial. This limitation was necessary because the case involved an attempted sexual exploitation charge based on Leverette's interactions with Officer Johnson through text messages, and did not involve trafficking.<sup>3</sup> The district court also permitted Officer Johnson to testify as a percipient witness regarding the sting operation that led to the arrest and indictment of Leverette.

The matter proceeded to a two-day jury trial that included both expert and lay testimony from Officer Johnson in his role as a percipient witness. Officer Johnson was the only witness who testified at trial. The jury ultimately convicted Leverette on both counts. Leverette then brought

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<sup>3</sup>The district court informed the jury that Officer Johnson was assigned to investigate sex trafficking, along with various other crimes, as part of his role with the H.E.A.T. unit. However, the court clarified that the trafficking industry was not relevant to Leverette's charges, although the term "trafficking" would not be excluded, as it was relevant to the officer's assignment.

the present appeal to challenge the admission of Officer Johnson's testimony.

On appeal, Leverette argues that the district court erred in allowing Officer Johnson to testify as an expert witness because his testimony lacked a reliable methodology. Leverette also argues that insufficient steps were taken by the court to protect him from prejudice resulting from Officer Johnson testifying in a dual capacity—as an expert and percipient witness. We address each of Leverette's arguments in turn.

*Whether Officer Johnson could properly testify as an expert*

We review a district court's admission of testimony, including expert testimony, for abuse of discretion. *Archanian v. State*, 122 Nev. 1019, 1029, 145 P.3d 1008, 1016 (2006); *Mulder v. State*, 116 Nev. 1, 12-13, 922 P.2d 845, 852 (2000). In line with this standard, "the admissibility of expert testimony is a matter for the sound discretion of the trial judge." *Townsend v. State*, 103 Nev. 113, 119, 734 P.2d 705, 709 (1987).

To be admissible, expert testimony must "assist the trier of fact to understand the evidence or to determine a fact in issue." *Hallmark v. Eldridge*, 124 Nev. 492, 498, 189 P.3d 646, 650 (2008) (alteration in original) (quoting NRS 50.275) (setting forth the three requirements for expert testimony to be admissible). "The 'assistance' requirement has two components: whether the testimony is (1) relevant and (2) the product of reliable methodology." *Perez v. State*, 129 Nev. 850, 858, 313 P.3d 862, 867 (2013) (citing *Hallmark*, 124 Nev. at 500, 189 P.3d at 651).

Leverette challenges Officer Johnson's expert testimony only on the ground that it was not the product of reliable methodology. In determining whether an expert's opinion is based upon reliable

methodology, the Nevada Supreme Court has outlined the following five factors for district courts to consider:

whether the opinion is (1) within a recognized field of expertise; (2) testable and has been tested; (3) published and subjected to peer review; (4) generally accepted in the scientific community (not always determinative); and (5) based more on particularized facts rather than assumption, conjecture, or generalization.

*Hallmark*, 124 Nev. at 500-01, 189 P.3d at 651-52 (footnotes omitted). However, the Nevada Supreme Court has held that the above factors are not exhaustive but rather “may be accorded varying weights, and may not apply equally in every case.” *Perez*, 129 Nev. at 860, 313 P.3d at 869 (quoting *Higgs v. State*, 126 Nev. 1, 20, 222 P.3d 648, 660 (2010)).

In this case, considering the applicable factors, we agree that Officer Johnson’s testimony regarding the commercial sex industry was based on a recognized field of expertise. *See, e.g., United States v. Anderson*, 851 F.2d 384, 392-93 (D.C. Cir. 1988) (finding no abuse of discretion in admitting expert testimony on the nature of the relationship between pimps and prostitutes); *United States v. Evans*, 272 F.3d 1069, 1094 (8th Cir. 2001) (finding no abuse of discretion in allowing expert testimony “regarding the operation of a prostitution ring, including recruitment of prostitutes and the relationship between pimps and prostitutes, and regarding jargon used in such rings”). Furthermore, the testimony was also based on specific, particularized facts from his direct, hands-on experience, such as his knowledge of prostitution websites where traffickers post advertisements for their victims. And based on his experience, he could also opine on the adverse effects on victims of prostitution. Thus, Officer Johnson’s testimony



was not speculative or generalized but provided concrete insights based on real investigations he had conducted. The nature of Officer Johnson's testimony was such that the remaining factors for evaluating whether expert testimony is based on a reliable methodology did not necessarily apply. *See Perez*, 129 Nev. at 860, 313 P.3d at 869.

Importantly, although the factors associated with scientific tests and processes are not relevant in this case, Officer Johnson's expert testimony on prostitution culture and the relevant terminology drew from his training and firsthand observations of the commercial sex industry, and courts have admitted such testimony under similar circumstances. *See State v. Stafford*, 972 P.2d 47, 54 (Or. Ct. App. 1998) (noting that observations about grooming behavior not drawn from testing or scientific methodology but derived from personal observations made in light of education, training, and experience constituted admissible evidence based on specialized knowledge); *see also Perez*, 129 Nev. at 860, 313 P.3d at 869 (approvingly citing *Stafford*). Given Officer Johnson's extensive experience and training in investigating commercial sex crimes, and the Nevada Supreme Court's recognition that testimony on pimping and prostitution culture can qualify as admissible expert evidence, *see Ford v. State*, 127 Nev. 608, 625 n.9, 262 P.3d 1123, 1134 n.9 (2011); *see also Boyd v. State*, No. 81195, 2022 WL 129510, at \*1 (Nev. Jan. 13, 2022) (Order of Affirmance) (holding that police officer's expert testimony on pimp-prostitution culture was relevant to assist the jury to determine whether defendant's behavior and communications conformed to that of a pimp), the district court acted within its discretion in admitting Officer Johnson's expert testimony.

*Whether sufficient protective steps were taken for Officer Johnson to testify in the dual role of an expert witness and a percipient witness*

Leverette also argues that the district court erred by failing to provide the jury with a cautionary instruction distinguishing between Officer Johnson's expert and percipient witness or lay testimony. To this end, he relies upon the Seventh Circuit's opinion in *United States v. York* to argue that a jury "needs to know when an agent is testifying as an expert and when he is testifying as a fact witness." 572 F.3d 415, 425 (7th Cir. 2009).

The Nevada Supreme Court has cited to the Seventh Circuit's opinion in *York* to emphasize that there are "risks" and "limitations" involved when an officer testifies about "pimping and prostitution culture and its code words." *Ford*, 127 Nev. at 625 n.9, 262 P.3d at 1134 n.9. In *York*, the Seventh Circuit cautioned that there are "inherent dangers" when law enforcement officers testify as both an expert and fact witness. 572 F.3d at 425. These dangers include the potential for the witness's dual role to confuse the jury or cause it to give undue weight to their factual testimony due to the expert's "aura of special reliability." *Id.* (internal quotation marks omitted). Given these dangers, the Seventh Circuit held that "[t]he jury needs to know when an agent is testifying as an expert and when he is testifying as a fact witness." *Id.* As a suggestion for addressing this issue, the Seventh Circuit held that the "potential for prejudice . . . can be addressed by means of appropriate cautionary instructions and by examination of the witness that is structured in such a way as to make clear when the witness is testifying to facts and when he is offering his opinion as an expert." *Id.* (internal quotation marks omitted). The Seventh Circuit also recognized additional precautions, "such as the government's

establishing the proper foundation for the witness's expert opinions . . . and the district court allowing the defense to rigorously cross-examine the expert about his [testimony]." *Id.*

Contrary to Leverette's claim on appeal, the record shows that the district court issued a cautionary instruction at Leverette's request. After Officer Johnson provided his expert testimony, defense counsel requested a sidebar and asked the court to issue a transitional instruction that Officer Johnson would now be testifying as a percipient witness regarding the facts of the case. The State did not object, and the court subsequently provided the following instruction to the jury:

Ladies and Gentlemen, you have preliminary testimony about language and practices within the sex industry. That testimony was offered by this witness based upon his training and experience.

You will now hear testimony from this witness about what he did and why he did it to include, possibly, language in practices.

But please remember that you as the jury will determine the facts of this case.

Furthermore, defense counsel acknowledged that the district court had provided this cautionary instruction before Officer Johnson's lay testimony regarding the sting operation involving Leverette, which continued on the second day of trial. Specifically, defense counsel stated for the record:

[The officer] testified based on his training and experience about what different emojis mean, what different lingo means and things like that.

Then there is a transition and the court, at my request, gave a cautionary instruction, and now he's testifying as to more as a lay witness, a percipient witness, so to speak.



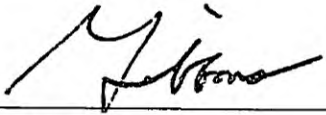
After recognizing that Leverette had received the requested cautionary instruction, defense counsel asked the State to refrain from questioning Officer Johnson about his training and expertise during his testimony as a lay witness. In response to these concerns, the court instructed the State not to base its questions on Officer Johnson's training and experience while he provided lay testimony, but only to testify regarding the facts of his involvement. The record shows that the State followed this instruction, and Leverette did not raise any further objections to the State's questioning of Officer Johnson.

The protective steps taken by the district court in this case are arguably the model of how to handle a witness who testifies in a dual capacity. *See id.* at 425-26 (considering the importance of properly managing dual-role testimony, courts should outline the witness's qualifications at the outset, allow for thorough cross-examination to address the basis of the witness's opinions, provide timely and clear instructions on how to evaluate expert versus factual testimony, and structure the questioning to clearly distinguish when the witness is testifying as an expert and when as a fact witness). Here, the State began by having Officer Johnson testify about his years of experience in commercial sex and trafficking investigations and giving certain opinions regarding online prostitution, which Leverette was allowed to explore during cross-examination. Only after the court provided the transitional instruction did Officer Johnson begin testifying as a percipient witness. Additionally, the court reasonably controlled Officer Johnson's testimony by instructing the State to avoid questioning him about his expertise while he provided lay witness testimony, and the State obliged. *See* NRS 50.115(1) (requiring the

district court to “exercise reasonable control over the mode and order of interrogating witnesses . . . [t]o make the interrogation and presentation effective for the ascertainment of the truth”); *see also York*, 572 F.3d at 425. Because sufficient protective steps were taken to avoid the potential for jury confusion, Leverette has failed to establish reversal is warranted on this basis.

Therefore, we conclude that the district court did not abuse its discretion in admitting Officer Johnson’s testimony, nor in providing the transitional instruction between his opinion testimony as an expert and his fact testimony as a percipient witness. *See Mulder*, 116 Nev. at 12-13, 992 P.2d at 852. Accordingly, we

ORDER the judgment of conviction AFFIRMED.<sup>4</sup>

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

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

  
\_\_\_\_\_, J.  
Westbrook

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<sup>4</sup>Insofar as Leverette raises arguments that are not specifically addressed in this order, we have considered the same and conclude they do not present a basis for relief.

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