

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERTO ROSALES-BARRIOS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 89596

**FILED**

NOV 20 2025

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of four counts of first-offense lewdness with a child under the age of 14 years, two counts of lewdness committed by a person over 18 with a child 14 or 15 years of age, four counts of using or permitting a minor under the age of 14 to be the subject of a sexual portrayal in a performance, two counts of using or permitting a minor under 16 years of age to be the subject of a sexual portrayal in a performance, and first-offense possession of visual pornography of a person under the age of 16. Second Judicial District Court, Washoe County; Tammy Riggs, Judge.

Appellant Roberto Rosales-Barrios was convicted of sexually abusing a minor. The charges arose after the victim disclosed numerous incidents in which Rosales-Barrios sexually abused her over the course of several years. Police obtained a warrant to search Rosales-Barrios's phone and recovered multiple videos of him sexually abusing the victim. Rosales-Barrios raises two issues on appeal.

*Motion to suppress*

Rosales-Barrios argues the district court erred in denying his motion to suppress evidence taken from his cell phone. "A motion to

suppress presents mixed questions of law and fact.” *Smith v. State*, 140 Nev., Adv. Op. 19, 545 P.3d 716, 719 (2024). “We review the district court’s findings of fact for clear error, but we review application of the law de novo.” *Id.* (citing *Somee v. State*, 124 Nev. 434, 441, 187 P.3d 152, 157-58 (2008)).

Rosales-Barrios raises two arguments for the illegality of the seizure and search of his phone. First, Rosales-Barrios asserts that detectives unconstitutionally seized his phone. Detectives took Rosales-Barrios’s phone during his police interview, prior to arresting him and without a warrant. Thus, for the seizure to be valid, an exception to the warrant requirement must apply. *Acosta v. State*, 140 Nev., Adv. Op. 40, 573 P.3d 1258, 1265 (2025). The parties contest whether Rosales-Barrios consented to the seizure, obviating the need for a warrant. We need not address those arguments, because the exigent circumstances exception to the warrant requirement allows police to seize a cell phone to prevent the destruction of evidence on the device. *Id.* When the police interviewed Rosales-Barrios, he was alerted to the investigation into him, and to the fact officers sought evidence on Rosales-Barrios’s phone. Under those circumstances, police could seize Rosales-Barrios’s cell phone to prevent the destruction of evidence. While exigent circumstances would not justify a search of the phone’s contents, police obtained a warrant to search the phone.

Rosales-Barrios also argues the search warrant was unparticularized and thus unconstitutional. Rosales-Barrios asserts the warrant did not limit the search to any particular type of evidence and did not place any temporal limitations on the search. Warrants must “state with particularity the place, person, and thing to be searched or seized.” *Id.* at 1266 (quoting *Smith*, 140 Nev., Adv. Op. 19, 545 P.3d at 720).

The police had probable cause to believe Rosales-Barrios's phone contained evidence of his crimes based on the victim's and a witness's specific statements that Rosales-Barrios took inappropriate pictures of the victim at the beach and communicated with the victim via various messaging apps. The warrant confined the search to communications with the victim and her family members which tended to show a relationship with the victim; photographs, images, videos, and other media depicting the victim; information about the phone's location related to the other evidence sought; and evidence of the identity of the phone's user around the times that items of evidentiary value on the phone were created, modified, or accessed. Thus, the warrant identified specific pieces of evidence, the existence of which was supported by probable cause, and the search was temporally limited by confining it to items of evidentiary value during Rosales-Barrios's relationship with the victim. *Cf. id.* (concluding the insufficient warrant contained no temporal limitations nor any description of the type of evidence sought). Accordingly, we conclude that Rosales-Barrios fails to demonstrate the district court erred in denying the motion to suppress evidence taken from the cell phone.

#### *Jury instructions*

Rosales-Barrios challenges the jury instructions concerning the use of a minor under 14 years of age as the subject of sexual portrayal in a performance. The settling of jury instructions is reviewed for an abuse of discretion or judicial error. *Jackson v. State*, 117 Nev. 116, 120, 17 P.3d 998, 1000 (2001). Whether an instruction correctly states the law presents a legal question that is reviewed de novo. *Nay v. State*, 123 Nev. 326, 330, 167 P.3d 430, 433 (2007).

Rosales-Barrios argues the relevant instruction did not require the State to prove that the victim was under 14 at the time of the portrayals, a fact that increased the sentence on counts 7-10. Rosales-Barrios asserts this violates the requirement that facts which increase the punishment for a crime be submitted to the jury and proven beyond a reasonable doubt. See *Alleyne v. United States*, 570 U.S. 99, 103 (2013) (requiring “any fact that increases the mandatory minimum” sentence to be submitted to a jury); see also *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000).

Rosales-Barrios was charged with four counts of use of a minor under the age of 14 as the subject of a sexual portrayal (counts 7-10), and two counts of use of a minor under the age of 16 as the subject of a sexual portrayal (counts 11-12). The penalty for the offense depends on the minor’s age. NRS 200.750. If the minor is 14 years of age or older, the sentence is life imprisonment with the possibility of parole after five years. NRS 200.750(1). But if the minor is less than 14 years old, parole is only a possibility after 10 years. NRS 200.750(2). Thus, while NRS 200.750 is styled as a sentencing statute, it provides a fact—the age of the minor victim at the time of the offense—that increases the defendant’s minimum time of incarceration.

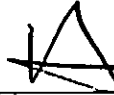
The jury was instructed on the elements of the use-of-a-minor offense but, over Rosales-Barrios’s objection, the jury was not instructed that it had to find beyond a reasonable doubt that the victim was under the age of 14 to find Rosales-Barrios guilty on counts 7-10. In *Alleyne*, the United States Supreme Court held that “any fact that increases the mandatory minimum [sentence] is an ‘element’ that must be submitted to [a] jury.” 570 U.S. at 103. Rosales-Barrios contends that because the victim’s age was a fact that increased the minimum time of incarceration

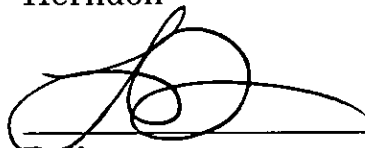
for the offense of use of a minor as the subject of sexual portrayal, it is an element of the offense for purposes of sentencing. As such, the jury should have been instructed on this element. The State argues the jury instructions here do not run afoul of *Alleyne* because the sentence would be fixed at life for the relevant counts, and the victim's age only affects parole eligibility after which Rosales-Barrios would still remain under supervision.

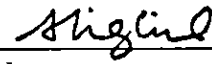
Even assuming the district court erred in failing to instruct the jury it had to find that the victim was under the age of 14 when Rosales-Barrios committed the offenses in counts 7-10, we conclude this error was harmless and does not warrant reversal. *See Cortinas v. State*, 124 Nev. 1013, 1027, 195 P.3d 315, 324 (2008) (observing that an error is harmless if "it appears beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained" (internal quotation marks omitted)). First, the charging information that was included in the jury instructions and the verdict form specified that the relevant counts charged Rosales-Barrios with use of a minor under the age of 14 in a sexual portrayal. Second, Rosales-Barrios does not contest that the evidence at trial demonstrated the victim's age for the counts of lewdness with a minor under 14, which correlated with counts 7-10. There was ample testimony about the victim's age when each video supporting those charges were created or modified. Finally, each count of using a minor in a sexual portrayal was tied to a count of lewdness with a minor, and the jury found the victim's age beyond a reasonable doubt with respect to the lewdness counts. Because the jury had to find the victim's age beyond a reasonable doubt for each count of lewdness with a minor, the jury necessarily found the same fact for each count of using a minor in a sexual portrayal. For these reasons, we

conclude the error was harmless beyond a reasonable doubt. Accordingly,  
we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, C.J.  
Herndon

  
\_\_\_\_\_, J.  
Bell

  
\_\_\_\_\_, J.  
Stiglich

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