

IN THE SUPREME COURT OF THE STATE OF NEVADA

GABINO GALVEZ-GALVEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 89546

FILED

APR 15 2026

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 incest, sexual assault against a child under 16 years, and lewdness committed by a person over 18 with a child 14 or 15 years of age. Second Judicial District Court, Washoe County; Kathleen M. Drakulich, Judge.

A jury found appellant Gabino Galvez-Galvez guilty of incest, sexual assault, and lewdness for willful and unlawful sexual acts against his biological daughter, G.G. On appeal, Galvez-Galvez argues that three trial errors and/or the cumulative effect of those errors require the reversal of his judgment of conviction.

Sixth Amendment Confrontation Clause

Galvez-Galvez argues that the State was required to present testimony from all analysts and lab technicians involved in generating the DNA evidence admitted at trial. He contends that the data produced by nontestifying lab technicians were, in effect, testimonial statements and that the State's testifying expert criminalist relied on these statements to draw her conclusions.

The Confrontation Clause of the Sixth Amendment guarantees a defendant's right to confront those who make testimonial statements asserted for their truth; it does not mandate testimony from every person who participated in routine or technical aspects of forensic testing for a DNA sample to be properly admitted into evidence. U.S. Const. amend. VI; *Melendez-Diaz v. Massachusetts*, 557 U.S. 305, 310, 311 n.1 (2009) (clarifying that the Confrontation Clause does not require "that anyone whose testimony may be relevant in establishing the chain of custody, authenticity of the sample, or accuracy of the testing device, must appear in person as part of the prosecution's case"); see *Chavez v. State*, 125 Nev. 328, 339, 213 P.3d 476, 484 (2009) (observing that the relevant Confrontation Clause inquiry "is whether the statement at issue is 'testimonial'").

We disagree with Galvez-Galvez's characterization of the record and thus reject his resulting assertion that a Confrontation Clause violation occurred here. *Chavez*, 125 Nev. at 339, 213 P.3d at 484 (observing that an alleged Sixth Amendment Confrontation Clause violation presents a question of law, which we review de novo, while evidentiary rulings are typically evaluated under an abuse of discretion standard). Reviewing this matter de novo, the testifying analysts performed the substantive DNA analysis themselves and generated the corresponding reports that were admitted at trial. Darby Steinmetz, a criminalist with the Washoe County Sheriff's Office Forensic Science Division, authored three reports concerning DNA analysis in this case showing that Galvez-Galvez's semen was on the interior of condoms found in G.G.'s bedroom, with G.G.'s DNA on their exterior. Steinmetz was subject to cross-examination about her interpretations during the trial. She testified to looking at data from DNA

profiles and performing an interpretation, comparing her analysis to reference samples, and then writing the final reports. Similarly, Savannah Bloomquist, another criminalist with the Washoe County Sheriff's Office, testified about the screening and sample prep she performed in this case. The involvement of other laboratory technicians concerned routine DNA processing and chain-of-custody procedures, not testimonial conclusions introduced for their truth. As the United States Supreme Court has observed, "gaps in the chain [of custody] normally go to the weight of the evidence rather than its admissibility," leaving it to "the prosecution to decide what steps in the chain of custody are so crucial as to require evidence; but what testimony *is* introduced must (if the defendant objects) be introduced live." *Melendez-Diaz*, 557 U.S. at 311 n.1 (alteration in original) (internal quotation marks omitted). The State met its obligation by presenting testimony from reviewing analysts who conducted the screening, prepared the sample, interpreted the data, and authored the final reports. And Galvez-Galvez had the opportunity to cross-examine these analysts, including questioning them about generation of the DNA sample data and the basis for their interpretations. Therefore, we conclude that the district court did not violate Galvez-Galvez's right to confrontation by admitting the DNA evidence in question.

Authentication of the mother's DNA

Galvez-Galvez argues that the State failed to lay a proper foundation for the admission of DNA evidence from G.G.'s mother. Galvez-Galvez claims that Detective Joseph Lear's testimony about contacting G.G.'s mother in Mexico and sending a DNA test kit to the address she provided was insufficient to establish the chain of custody for the admission of the test results.

We conclude that the State properly authenticated the DNA evidence and provided a sufficient foundation. Detective Lear and Steinmetz testified as to the collection and testing of the sample. “[T]he authentication inquiry is whether the matter in question is what its proponent claims.” *Rodriguez v. State*, 128 Nev. 155, 161, 273 P.3d 845, 848 (2012) (internal quotation marks omitted). Addressing that inquiry, Detective Lear testified that he learned G.G.’s mother resided in Mexico, spoke with her about her willingness to provide a sample for the investigation, sent a DNA test kit and instructions to her given address in Tijuana, and the mother returned the box and sample swabs to him. Steinmetz testified as to how DNA was extracted from the sample, that the testing methodology assumed G.G.’s mother was the source of the sample, and that the results would not have been usable had that assumption been incorrect. This testimony was adequate to authenticate that the sample was what the State claimed it to be and provided a sufficient foundation for how the DNA results were received and tested to confirm parentage. Therefore, we conclude that the district court did not abuse its discretion in admitting the mother’s DNA evidence, which was used to establish that Galvez-Galvez was G.G.’s biological father. *Chavez*, 125 Nev. at 344, 213 P.3d at 487 (recognizing that we review a district court decision to admit or exclude evidence for an abuse of discretion). Regardless, Galvez-Galvez admitted at trial that G.G. was his daughter, so any error in admitting this evidence was harmless. Thus, Galvez-Galvez again fails to show reversible error.

Fifth Amendment right to remain silent

Galvez-Galvez contends that the State improperly elicited testimony from Detective Lear about Galvez-Galvez’s request for counsel

while he voluntarily participated in an interview at the police station before his arrest. Galvez-Galvez argues that he invoked his right to an attorney and declined to speak further, and the State's reference to this Fifth Amendment right was not harmless because it was intended to show him in a negative light and that he acted like a guilty person because he wanted an attorney. U.S. Const. amend. V. The Fifth Amendment does not allow a prosecutor to comment on an accused's silence. *Buff v. State*, 114 Nev. 1237, 1248, 970 P.2d 564, 571 (1998). Even assuming eliciting testimony about a defendant wanting legal representation or declining to answer questions in a prearrest interview is improper, *cf. Combs v. Coyle*, 205 F.3d 269, 281-82 (6th Cir. 2000) (observing that there is split of authority in federal circuit courts on "whether the use of prearrest silence as substantive evidence of guilt violates the Fifth Amendment"), it does not rise to a reversible constitutional violation under the circumstances here. Even improper comments on a defendant's "silence will be harmless beyond a reasonable doubt if (1) at trial there was only a mere passing reference . . . or (2) there is overwhelming evidence of guilt." *Morris v. State*, 112 Nev. 260, 264, 913 P.2d 1264, 1267-68 (1996) (internal citation omitted). In response to the State's question about how the interview ended, Detective Lear testified that Galvez-Galvez requested an attorney at which time he terminated the interview. While the State should be cautious about eliciting answers that touch upon a defendant's right to remain silent, any error here was harmless because the improper reference was brief and there was substantial evidence of guilt supporting Galvez-Galvez's conviction.

Other independent evidence of guilt supports Galvez-Galvez's conviction and any error here is harmless beyond a reasonable doubt.

Medina v. State, 122 Nev. 346, 355, 143 P.3d 471, 476-77 (2006) (“reversal is not required if the State could show beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained”) (internal quotation marks omitted). G.G. testified about the sexual abuse and the victim’s testimony alone is sufficient to uphold a defendant’s conviction if the victim can “testify with *some* particularity regarding the incident.” *LaPierre v. State*, 108 Nev. 528, 531, 836 P.2d 56, 58 (1992). G.G.’s brother testified and was cross-examined about witnessing a sexual assault that occurred during a family vacation celebrating his 14th birthday, and G.G.’s stepmother testified about witnessing inappropriate touching, hugging, holding hands, and contact between G.G. and her father that did not resemble “a normal type of behavior between a father and a daughter.” G.G.’s middle school friend also testified that while they were in the 8th grade, G.G. told her “that her dad would touch her” but that G.G. recanted the story the next day. Thus, even if error occurred, we conclude that it was harmless beyond a reasonable doubt as we do not perceive this comment as having prejudiced Galvez-Galvez and it does not warrant reversal.

Cumulative error

Lastly, Galvez-Galvez argues that all these errors cumulatively require reversal. Claims for cumulative error are evaluated by considering “(1) whether the issue of guilt is close, (2) the quantity and character of the error, and (3) the gravity of the crime charged.” *Valdez v. State*, 124 Nev. 1172, 1195, 196 P.3d 465, 481 (2008) (internal quotation marks omitted). In evaluating Galvez-Galvez’s claim, the issue of guilt is not close, as testimony from G.G.’s stepmother, brother, and middle school friend corroborates her account of being sexually abused by her father. For the reasons discussed above, we do not conclude errors were made on any of the

