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ELIZABETH A. BROWN
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IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSEPH JOHN GRECO, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 91086

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction of two counts of lewdness with a child under the age of 14. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

Appellant Joseph Greco was charged under NRS 201.230 with two counts of lewdness with a child under the age of 14. The alleged victim for both counts was Greco's step-granddaughter, I.W. Greco is married to I.W.'s paternal grandmother, Susan Greco. The first count alleged that Greco touched I.W.'s buttocks and/or genital area "on or about March 2, 2023." I.W. was six years old at the time of the Count I incident, which occurred while I.W. sat on Greco's lap at his Reno home. The second count alleged that Greco touched I.W.'s genital area on a separate occasion prior to the Count I incident, "on or between June 13, 2018 and March 1, 2023." This incident occurred when I.W. was sleeping in Susan and Greco's bed while spending the night at their house.

The charges were filed after a preliminary hearing at which I.W. testified to multiple alleged instances of sexual misconduct by Greco, only some of which made up the charges. I.W.—eight years old at the time of the hearing—spoke about the events underlying Counts I and II. She also testified that Greco had touched her inappropriately on other occasions, including in his bedroom "[p]robably more than one time," but she could not recall specifics for

any additional incidents beyond those giving rise to Counts I and II. The only other witness at the preliminary hearing was Susan's sister, who testified to witnessing Greco put his hand down the inside of I.W.'s pajamas to grab her bottom. The district court ruled that there was sufficient evidence to support binding over Counts I and II but that I.W.'s remaining testimony was insufficient to support additional counts.

Prior to trial, Greco moved to dismiss Count II on the grounds that the State impermissibly alleged multiple offenses within a single count by referencing a five-year range in which the offense could have occurred—"between June 13, 2018 and March 1, 2023." The State explained that the five-year range was necessary because I.W. could not remember exactly when the events underlying Count II occurred. The district court ruled that Count II was sufficiently particular regarding the bedroom incident to survive the motion to dismiss, even if the specific date could not be ascertained. However, it noted that, because there was evidence that I.W.'s family was still living in Reno when the alleged offense took place, the information could be narrowed to target events prior to July 2022—when I.W.'s family moved to South Carolina—rather than March 2023. As such, the State filed a second amended information to tailor Count II to an offense occurring "between June 13, 2018 and July 31, 2022."

Separately, the State sought to admit evidence under NRS 48.045(3) of uncharged sexual offenses allegedly committed by Greco against I.W. and four of his other step-granddaughters: (1) E.W. (I.W.'s younger sister); (2) B.S. (I.W.'s adult cousin); (3) C.W. (I.W.'s younger cousin); and (4) J.S. (I.W.'s adult cousin). The State provided corroborating evidence of these prior offenses, including police reports and interviews with the alleged victims. Greco objected to this evidence and also moved to preclude E.W. and C.W. from

testifying based on a lack of competency. Greco did not object to I.W.'s competency at that time.

The district court held an evidentiary hearing on the competing motions. Among other witnesses, the State called each of the step-granddaughters to discuss their allegations—E.W. and C.W., then seven and six-years-old respectively, and B.S. and J.S., who were, by then, both adults. I.W. did not testify at this hearing because she had already done so at the preliminary hearing. Greco called his wife, Susan, to support his assertion that he never behaved inappropriately with his step-granddaughters.

After the evidentiary hearing, the district court ruled on the admissibility of each step-granddaughter's other-acts testimony, as well as the competency of E.W. and C.W. to testify. On the competency issue, the district court concluded that E.W. had demonstrated her competence but that C.W., based on her equivocal responses to questioning, had not. On the admissibility of the uncharged sexual offenses, the district court admitted all the State's proffered evidence except C.W.'s testimony and a subset of I.W.'s testimony. Specifically, it concluded that (1) I.W.'s testimony regarding uncharged acts that occurred in Reno was not admissible because those acts had not been proven by a preponderance of the evidence; (2) I.W.'s testimony regarding uncharged acts that occurred in South Carolina was admissible; (3) E.W.'s testimony was admissible; (4) B.S.'s testimony was admissible; and (5) J.S.'s testimony was admissible.

The case proceeded to trial. The State offered direct evidence of the charged offenses through testimony from I.W. and Susan's sister, who witnessed the events of Count I. The State supported its case in relevant part with testimony of the uncharged sexual offenses from I.W., E.W., J.S., and B.S. Greco called several witnesses to contest the allegations, both charged and

uncharged, and to develop his claim that I.W.'s father had influenced the step-granddaughters' testimony. Greco also elected to testify. During cross-examination, the State twice asked Greco about statements he made in the wake of C.W.'s allegations, including an apology to her mother for making her daughter feel uncomfortable and comments to law enforcement at the time. Greco did not object to the questions and affirmed that he made the statements.

Before the close of trial, Greco proposed a jury instruction stating that the jury must "unanimously agree on the same factual theory" regarding how Greco committed the two offenses or else find him not guilty. The district court rejected the instruction on the grounds that "jurors are not required to unanimously agree on the specific factual theory—or means—by which the crime was committed."

The jury found Greco guilty on both counts. Greco argues on appeal that (1) the district court erred by deeming I.W. and E.W. competent to testify; (2) the district court abused its discretion by admitting other acts evidence through the testimony of I.W., E.W., B.S., and J.S.; (3) the Count II conviction is not supported by sufficient evidence; (4) the district court erred by permitting the State to allege multiple offenses within the single charge of Count II; (5) the district court abused its discretion by rejecting his proposed jury instruction; and (6) the district court abused its discretion by permitting the State to cross-examine him about inadmissible evidence.

The district court did not err by concluding that I.W. and E.W. were competent to testify

Greco argues that I.W. and E.W. should have been ruled incompetent to testify because their testimony was inconsistent and coached. The State responds, first, that Greco did not challenge I.W.'s testimony below,

so only plain error review applies to her and, second, that the record supports the conclusion that both witnesses satisfied the competency standard.

This court reviews a district court's finding that a child witness is competent for abuse of discretion, based on the record as a whole. *Lanoue v. State*, 99 Nev. 305, 307, 661 P.2d 874, 874 (1983). "A child is competent to testify if he or she is able to receive just impressions and relate them truthfully." *Evans v. State*, 117 Nev. 609, 624, 28 P.3d 498, 509 (2001), *overruled on other grounds by Lisle v. State*, 131 Nev. 356, 366 n.5, 351 P.3d 725, 732 n.5 (2015). Competency is assessed on a case-by-case basis after considering the relevant factors, including:

> (1) the child's ability to receive and communicate information; (2) the spontaneity of the child's statements; (3) indications of "coaching" and "rehearsing;" (4) the child's ability to remember; (5) the child's ability to distinguish between truth and falsehood; and (6) the likelihood that the child will give inherently improbable or incoherent testimony.

Felix v. State, 109 Nev. 151, 173, 849 P.2d 220, 235 (1993), *superseded by statute on other grounds as stated in Evans*, 117 Nev. at 625, 28 P.3d at 509-10. The competency inquiry should be revisited throughout the proceedings, as a child's demeanor and ability to recall specific details may be inconsistent across appearances. *Id.*; *Kentucky v. Stincer*, 482 U.S. 730, 740 (1987) ("[T]he determination of competency is an ongoing one for the judge to make based on the witness' actual testimony at trial."). To that end, testimony given subsequent to a credibility determination may support the prior ruling "if [it is] clear, relevant, and coherent." *Terrible v. State*, 78 Nev. 159, 160, 370 P.2d 51, 51 (1962).

I.W.'s competency

Regarding the standard of review, the district court did not rule directly on I.W.'s competency in its evidentiary order or elsewhere because

Greco did not challenge it; rather, his pretrial competency challenge targeted only E.W. and C.W. This court, therefore, has no reasoning from the lower court to review for abuse of discretion, and must instead apply plain error review. *See Guy v. State*, 108 Nev. 770, 780, 839 P.2d 578, 584 (1992) (explaining that this court "will not consider [points raised] for the first time on appeal" where "the trial court had no opportunity to [first] consider their merit") (citing *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 623 P.2d 981 (1981); *Pantano v. State*, 122 Nev. 782, 795, 138 P.3d 477, 485 (2006) (applying plain error review in this context).

On the merits, Greco asserts that I.W. should have been deemed incompetent because she could not discount the possibility that she was coached, she failed to remember critical details of her allegations, and her testimony was inconsistent. Greco also repeatedly argues that because the district court found I.W. "incompetent" to testify as to certain uncharged acts (those that occurred in Reno and were insufficient to support binding over Count III), it should have found her wholly incompetent to testify.

First, Greco misstates the district court's ruling. It never found I.W. incompetent; instead, it ruled that some of the allegations contained in her testimony had not been proven by a preponderance of the evidence and were, thus, inadmissible as other acts evidence. Incompetence and inadmissibility are not the same, and the conclusion that I.W. could not speak about certain events with the specificity required to admit those allegations at trial did not render her categorically incompetent to testify about other allegations. *See Felix*, 109 Nev. at 173, 849 P.2d at 235-36 ("[A] child may be generally competent to testify, but not specifically competent to testify about [a particular event, e.g., one that] occurred years earlier.").

Moreover, the *Felix* factors support the district court's competency determination. At the preliminary hearing, I.W. testified that her "Grandpa Joe" touched her in specific areas on multiple occasions and described two of those incidents in some detail (e.g., location, posture, who else was nearby). Her testimony was not perfect: she did not remember the precise timing of the incidents and responded to some questions with "I don't know" or "I don't remember." However, I.W. provided consistent information and did not back down from the fundamental elements of her testimony on cross-examination. For example, in response to defense counsel's attempt to elicit uncertainty—by asking, "you don't know if Grandpa Joe touched your 'V', correct?"—I.W.'s response was clear: "I know he did." Defense counsel's attempts to suggest that she was coached were similarly unsuccessful. I.W. then provided largely the same information at trial. And while her testimony was not always consistent with that from other witnesses, "[i]nconsistencies in [a child's] testimony go to the weight to be given to the evidence by the jury rather than to the question of competence." *Wilson v. State*, 96 Nev. 422, 423-24, 610 P.2d 184, 185 (1980); *Evans*, 117 Nev. at 624, 28 P.3d at 509. Thus, we conclude that the district court did not abuse its discretion by deeming I.W. competent.

E.W.'s competency

Greco argues that the district court wrongly deemed E.W. competent to testify because E.W. failed to demonstrate that she understood the consequences of lying on the stand. Applying the *Felix* factors to this record, there is sufficient support for the district court's determination that E.W. was competent to testify. At the preliminary hearing, E.W. confirmed her understanding that she "can only talk about true things" on the stand, and although she gave mixed responses when asked about the consequences of lying, she ultimately confirmed, of her own volition, that she knew "the Judge" would be mad at her if she told a lie. She then demonstrated her ability to

spontaneously provide coherent details underlying her allegations. Greco points to several instances where E.W. answered with confusion or uncertainty, but those examples reveal isolated responses that, when read in context, provide a stronger picture of E.W.'s coherence and clarity than Greco acknowledges. And Greco's attempts to analogize E.W.'s testimony to other cases where a minor witness was deemed incompetent fail; this is not, for example, an instance where the witness "failed to demonstrate any understanding whatsoever of the obligation of a witness to tell the truth." *B.B. v. Commonwealth*, 226 S.W.3d 47, 49 (Ky. 2007). Such was the case with C.W., whom the district court did conclude was incompetent to testify. But whereas C.W. was unable to confirm that she understood the difference between a truth and a lie or even that she knew what those words meant, E.W. gave sufficient indication that she was capable of testifying truthfully. Thus, Greco has not shown that the district court's determination was an abuse of discretion.

The district court did not abuse its discretion by admitting evidence of uncharged sexual offenses under NRS 48.045(3)

Greco argues that the district court abused its discretion by admitting evidence of uncharged sexual offenses allegedly committed by Greco against I.W. and three of his other step-granddaughters. The State counters that such evidence is admissible under NRS 48.045(3).

A district court's decision to admit evidence of a defendant's alleged prior sexual misconduct under NRS 48.045(3) is reviewed for abuse of discretion. *See Alfaro v. State*, 139 Nev. 216, 224, 534 P.3d 138, 147-48 (2023). NRS 48.045(3) permits the "admission of evidence in a criminal prosecution for a sexual offense that a person committed another crime, wrong or act that constitutes a separate sexual offense." The test for admitting such evidence, derived from *Franks v. State*, 135 Nev. 1, 432 P.3d 752 (2019), is as follows:

> (1) the uncharged act must constitute a sexual offense under NRS 179D.097; (2) it must be relevant to the charged offense; (3) the district court must make a preliminary finding that "a jury could reasonably find by a preponderance of the evidence that the act had occurred"; and (4) using the factors enumerated in *United States v. LeMay*, 260 F.3d 1018, 1028 (9th Cir. 2001), the district court must determine that the probative value is not substantially outweighed by the danger of unfair prejudice.

Alfaro, 139 Nev. at 224, 534 P.3d at 148 (*citing Franks*, 135 Nev. at 4-6, 432 P.3d at 755-57). The non-exhaustive list of *LeMay* factors consists of:

> (1) the similarity of the prior acts to the acts charged, (2) the closeness in time of the prior acts to the acts charged, (3) the frequency of the prior acts, (4) the presence or lack of intervening circumstances, and (5) the necessity of the evidence beyond the testimonies already offered at trial.

Alfaro, 139 Nev. at 225-26, 534 P.3d at 148-49. *Alfaro* also recognized additional considerations that bear on this analysis, including "whether the prior acts were based on 'proven facts,' whether the acts corroborated or bolstered the victim's testimony and credibility, and whether their probative value was clear and not 'capable of multiple characterizations.'" *Id.* at 225, 534 P.3d at 149, *quoting LeMay*, 260 F.3d at 1028-29. Consistent with how the analogous Federal Rules of Evidence 414 and 415 are interpreted, these factors generally favor admissibility unless the evidence differs in such a way that it is irrelevant to the defendant's propensity to commit the charged crime. *See, e.g.*, *United States v. Maati*, 144 F.4th 1080, 1085-86 (8th Cir. 2025) (explaining that under FRE 414(a), evidence of past acts of child molestation similar to the charged offense are admissible and presumed *not* to be unfairly prejudicial); *United States v. Levy*, 594 F. Supp. 2d 427, 439 (S.D.N.Y. 2009) ("[I]n sexual assault and child molestation cases, the presumption is that the probative

value of the propensity evidence is not outweighed by the risk of unfair prejudice.").

I.W.'s testimony

The district court applied the *Franks* test to determine the admissibility of other incidents alleged by I.W. that took place in South Carolina. The substance of the step-granddaughters' allegations resembled the conduct underlying the charged offenses, suggesting a pattern of Greco touching the girls' private parts underneath their clothes when they were children. Because NRS 179D.097(m) lists lewdness with a minor pursuant to NRS 201.230 as a "sexual offense," both the charged and uncharged offenses "constitute a sexual offense under NRS 179D.097," satisfying the first prong of the *Franks* test. Furthermore, the district court found I.W.'s other act evidence of Greco's conduct in South Carolina (1) relevant because it showed him engaging in conduct similar to the conduct underlying charges at hand, (2) proven by a preponderance of the evidence based on I.W.'s testimony and her forensic interview with South Carolina law enforcement, and (3) supported by all five of the *LeMay* factors.

Greco primarily argues that I.W.'s testimony was contested and therefore could not clear the preponderance bar, failing the third prong under the *Franks* test. *Alfaro*, 139 Nev. at 224, 534 P.3d at 148. But the preponderance standard does not require the underlying evidence to be uncontested. The district court instead had to find that I.W.'s allegations were supported by "[t]he greater weight of the evidence." *Preponderance of the Evidence*, *Black's Law Dictionary* (12th ed. 2024). In the context of sexual offenses against minors, it is permissible to satisfy that bar based solely on the testimony of the victim. *Cf. LaPierre v. State*, 108 Nev. 528, 531, 836 P.2d 56, 58 (1992) ("The testimony of a sexual assault victim alone is sufficient to uphold a conviction," as long as they can "testify with *some* particularity

regarding the incident"). And although the district court was not required to stick to the five non-exhaustive factors listed in *LeMay*, *see Alfaro*, 139 Nev. at 225-26, 534 P.3d at 148-49 (discouraging a rigid analysis), Greco fails to show there was some additional factor that went unconsidered and would have dispositively barred admission of I.W.'s testimony. Greco thus fails to demonstrate that the district court abused its discretion or erred in its *Franks* analysis.

E.W.'s testimony

Much of the same analysis applies to Greco's challenge to E.W.'s other acts evidence. After deeming E.W. competent to testify, the district court concluded that the other acts alleged in her testimony were (1) sexual offenses, (2) relevant, (3) proven by a preponderance of the evidence based on her testimony, and (4) supported by all five *LeMay* factors. *Alfaro*, 139 Nev. at 224, 534 P.3d at 148.

Greco makes the same arguments against this conclusion as he did regarding I.W.'s testimony, to the same result. Although her answers to the specific questions asked by both the State and defense counsel were not comprehensive, E.W. spoke in detail about Greco touching her in ways that were substantially similar to how he touched I.W., and in the same time frame. This overlapping testimony tended to corroborate I.W.'s account of the conduct giving rise to the charges at hand. *Alfaro*, 139 Nev. at 225, 534 P.3d at 149 (recognizing this type of evidentiary support as an additional factor to support admission, beyond those laid out in *LeMay*). Greco does not argue that the testimony was unfairly prejudicial, and to the extent that it contained inconsistencies, such an argument goes to the weight of the testimony rather than its admissibility, and we will not reweigh the jury's determination. *See McNair v. State*, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992) ("[I]t is the jury's function, not that of the court, to assess the weight of the evidence and

determine the credibility of witnesses."). Greco again fails to show that the district court abused its discretion by admitting this evidence.

B.S.'s testimony

The district court's analysis of B.S.'s other acts testimony mirrored the above, with one difference; it found that only four of the five *LeMay* factors supported admission. B.S., who was 27 when she testified at the preliminary hearing, alleged that Greco touched her multiple times when she was a minor, dating back to when she was five or six years old. B.S.'s allegations resembled I.W.'s, as she claimed Greco would reach inside her pants to touch her genitals, including at times when she slept in bed between him and Susan. While the district court first recognized that *LeMay*'s remoteness factor counseled against admissibility because these incidents occurred at least seventeen years ago, it ultimately concluded that any resulting risk of prejudice was outweighed by the probative value arising from the other factors. Indeed, in contrast to I.W. and E.W., B.S.—as an adult—was able to provide more detailed testimony, thereby increasing the probative value of the evidence.

Greco argues that B.S.'s testimony should have been excluded because it was too remote, contradicted by trial testimony from Greco's witnesses, and coached by I.W.'s father. First, the district court acknowledged that the remoteness element weighed against admissibility, but Greco does not persuasively argue why it was an abuse of discretion for the district court to conclude that this one factor was outweighed by the others. *See also Maati*, 144 F.4th at 1086 (finding that evidence of a sexual act from over 25 years ago was not unfairly prejudicial and thus admissible under FRE 414). Second, regarding the contradictory evidence Greco offered at trial, B.S.'s other acts testimony was admitted on a pretrial motion and B.S. testified at trial *before* Greco's witnesses. Importantly, Greco never asked the district court to revisit its in limine ruling on B.S.'s testimony during trial, once any contradictions

were established. And to the extent that B.S.'s testimony conflicted with Greco's witnesses' accounts, the district court was permitted to credit B.S.'s testimony and determine that her allegations were proven by a preponderance of the evidence under the *Franks* test. *Cf. LaPierre*, 108 Nev. at 531, 836 P.2d at 58 (permitting conviction of a sexual offense based solely on the testimony of a victim). Finally, without more evidence of coaching, the fact that I.W.'s father called B.S. to ask if she had similar experiences with Greco does not make her testimony inadmissible; it just explains how B.S. became involved in the case. Greco thus again fails to show that the district court erred by admitting this evidence.

J.S.'s testimony

The district court applied similar reasoning to conclude that testimony from J.S.—24 years old at the preliminary hearing—was also admissible. Again, J.S.'s allegations resembled I.W.'s, and while the alleged events took place at least 15 years prior, the district court found that all other *LeMay* factors weighed in favor of admissibility. The only new argument Greco raises is that J.S.'s testimony is unreliable because she never reported these prior acts to the police. Yet he does not coherently explain why the district court was wrong to find that any risk of prejudice posed by J.S.'s testimony was outweighed by its probative value. *Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) ("It is appellant's responsibility to present relevant authority and cogent argument."). Therefore, this argument also fails.

Greco's conviction of Count II was supported by sufficient evidence

Greco argues that his conviction for Count II was not supported by sufficient evidence because it rested solely on I.W.'s testimony. Rehashing many of the arguments we have already rejected, Greco challenges the evidentiary basis for the Count II conviction on the grounds that (1) the district court found I.W. incompetent to testify about events taking place during the

same time period; (2) I.W. was never deemed competent by a forensic expert; and (3) her testimony was unreliable because it was internally inconsistent, contradicted by Greco's witnesses, and coached. The State argues that it offered sufficient evidence to prove each element beyond a reasonable doubt and that Greco's arguments go to that evidence's weight, not its sufficiency.

To resolve sufficiency arguments, this court "asks whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Alfaro*, 139 Nev. at 219, 534 P.3d at 144 (internal quotation marks omitted). The essential elements of the lewdness with a child offense are: (1) a lewd or lascivious act; (2) upon or with the child's body or any part of the child's body; (3) the child's age; and (4) the intent to arouse, appeal to, or gratify, the lust or passion of the accused or the child." *Wilson v. State*, No. 54814, 2011 WL 6181386, at *2 (Nev. December 9, 2011) (Order of Affirmance), *citing Gay v. Sheriff*, 89 Nev. 118, 119 n.1, 508 P.2d 1, 2 n.1 (1973). *Alfaro* affirmed that "the testimony of a sexual assault victim alone can be sufficient to uphold a conviction" as long as the victim can "testify with *some* particularity" about the charged incidents in a way that supplies "reliable indicia that the acts charged actually occurred." 139 Nev. at 220, 534 P.3d at 145, *quoting LaPierre*, 108 Nev. at 531, 836 P.2d at 58. And "[t]o the extent [a child victim's] testimony contain[s] internal inconsistencies or conflict[s] with [the defendant's] account, resolving competing narratives is the province of the jury, not to be disturbed if their verdict is supported by substantial evidence." *Id.* at 221, 534 P.3d at 146.

Under this standard, Greco's arguments fail. First, as discussed above, he mischaracterizes the district court's ruling when he states that it found I.W. incompetent to testify. Second, Greco provides no authority to

support his argument that district courts cannot make competency determinations without expert psychological examination. *Maresca*, 103 Nev. at 673, 748 P.2d at 6 (requiring cogent argument and supporting authority). And such a requirement is nowhere to be found in *Felix*, 109 Nev. at 173, 849 P.2d at 235.

Third, although Greco provided witness testimony that conflicted with I.W.'s account, and even if I.W.'s own account was at times inconsistent, the State is correct that this alone does not mean the evidence was insufficient for the jury to convict. The task is to view the evidence supporting conviction—here, I.W.'s testimony—in the State's favor and ask if it is sufficient to satisfy the elements of the charged offense, *not* to accept competing testimony as a basis for reversing the conviction. *See Alfaro*, 139 Nev. at 219, 221, 534 P.3d at 144, 146. Facts to support the first three elements of the Count II offense—a lewd act, acting upon a child's body, and the age of the child—can be found by I.W.'s trial testimony: she provided her age and testified with sufficient detail about Greco touching her private parts under her clothes while she was sleeping over at his house before her family moved to South Carolina. *Cf. id.* at 221, 534 P.3d at 145-46 (rejecting a sufficiency argument where the child victim "adequately described the time frame, place, and manner of the activity underlying each count at trial" and that testimony was bolstered by others); *Shue v. State*, 133 Nev. 798, 808, 407 P.3d 332, 340 (2017) (explaining what constitutes a lewd act, including obscene or indecent sexual conduct). She was not required to testify to the exact date of the incident, as that is not an element of the offense. *See, e.g.*, *LaPierre*, 108 Nev. at 531, 836 P.2d at 58 (recognizing that "child victims are often unable to articulate specific times of events"); *Cunningham v. State*, 100 Nev. 396, 400, 683 P.2d 500, 502 (1984) (stating that "[t]ime is clearly not an element" of lewdness with a minor).

Greco's strongest sufficiency argument is that the State failed to prove that he acted with the requisite intent "of arousing, appealing to, or gratifying [his] lust of passions or sexual desires." NRS 201.230(b); *Moore v. State*, 136 Nev. 620, 623, 475 P.3d 33, 36 (2020) (affirming that lewdness with a minor requires specific intent). But this is where the State's propensity evidence comes in, as intent can be inferred from such evidence. *Findley v. State*, 94 Nev. 212, 214, 577 P.2d 867, 867-68 (1978) (finding propensity was relevant and outweighed the possibility of a jury convicting for general as opposed to specific criminal intent); *cf. Grant v. State*, 117 Nev. 427, 435, 24 P.3d 761, 766 (2001) ("Intent need not be proven by direct evidence but can be inferred from conduct and circumstantial evidence."). In *Franks*, we rejected a similar sufficiency challenge on the grounds that the jury could reasonably infer the requisite intent from a combination of victim testimony regarding the defendant's lewd conduct and propensity evidence showing the defendant's pattern of such conduct. 135 Nev. at 8, 432 P.3d at 758 (reasoning from this evidence that the charged act was not accidental and thus intentional). Greco's attempt to counteract this evidence with testimony about the family's custom of physical affection does not negate that a reasonable jury could have inferred the requisite intent from five separate and corroborating witnesses testifying to Greco's pattern of lewd conduct. We thus conclude that sufficient evidence supports the Count II conviction.

The State did not allege multiple offenses in a single charge

Greco argues that the district court should have dismissed Count II because it was a duplicitous charge. He asserts that the State used an overbroad time frame, in bad faith, to incorporate multiple offenses into one count and alleviate the State's burden to provide sufficient evidence of any single offense. The State responds that it permissibly alleged several alternative factual theories or means by which the offense occurred.

A district court's decision not to dismiss an information is reviewed for abuse of discretion. *Martinez v. State*, 140 Nev., Adv. Op. 70, 558 P.3d 346, 354 (2024). Where the information is challenged on constitutional grounds, review is de novo. *See id.* at 354-55. While Greco references the Constitution in section headers throughout his brief, he never provides a constitutional analysis, so we proceed with abuse of discretion review. *See Maresca*, 103 Nev. at 673, 748 P.2d at 6 (requiring cogent argument).

Reviewing Greco's pretrial challenge to the information, the district court determined, based on I.W.'s preliminary hearing testimony, that Count II "singularly focuses" on a specific allegation of lewd conduct, and that Greco thus had sufficient notice to mount an adequate defense. The district court recognized that identifying the precise date of the offense was impractical given I.W.'s age, but it did acknowledge that the State had failed to tailor the five-year date range as narrowly as possible. The State subsequently amended the Count II date range from between July 13, 2018 and March 1, 2023, to between July 13, 2018 and July 31, 2022, to reflect the time before I.W.'s family moved to South Carolina.

The Sixth Amendment of the U.S. Constitution provides that "[i]n all criminal prosecutions, the accused shall enjoy the right to . . . be informed of the nature and cause of the accusation" against them. As a notice-pleading state, Nevada requires only that "the information must be a plain, concise and definite written statement of the essential facts constituting the offense charged." NRS 173.075(1); *Sheriff, Clark Cnty. v. Levinson*, 95 Nev. 436, 437, 596 P.2d 232, 233 (1979) ("In the information, the prosecution is required to make a definite statement of facts constituting the offense in order to adequately notify the accused of the charges and to prevent the prosecution from circumventing the notice requirement by changing theories of the case.").

Under this standard, "[i]t may be alleged in a single count that the means by which the defendant committed the offense are unknown[.]" NRS 173.075(2). "Unless time is an essential element of the offense charged, there is no absolute requirement that the state allege the exact date, and the state may instead give the approximate date on which it believes the crime occurred." *Cunningham*, 100 Nev. at 400, 683 P.2d at 502. Time is not an essential element of the lewdness offense, but "the state should, wherever possible, allege the exact date on which it believes a crime was committed, *or as closely thereto as possible*." *Id.*

The district court was thus correct to conclude that the State could have provided a narrower date range. To determine whether the subsequent second amended information was sufficiently clear to provide notice to the defendant of the crime charged, "this court will look not only to the pleading but also to the transcript of the preliminary hearing or the Grand Jury session." *Logan v. Warden*, 86 Nev. 511, 513, 471 P.2d 249, 251 (1970) (explaining that defendants must have sufficient clarity as to what the State intends to prove at trial in order to prepare their defense). Reviewing I.W.'s preliminary hearing testimony, it is clear that the State was targeting a specific incident—when Greco allegedly touched I.W. while she was sleeping in his bed during a sleepover at Greco's house—even if I.W. could not recall its precise date. In fact, at the hearing, Greco's counsel affirmed an understanding of the two instances that made up Counts I and II. We thus reject Greco's argument on appeal that Count II was duplicitous.

The district court did not abuse its discretion by rejecting Greco's proposed jury instruction

Greco argues that the district court erred by rejecting his proffered unanimity instruction as to Count II, which he proposed in response to the allegedly duplicitous charge. That proposed instruction stated, in key part:

> As to Count II the State must prove one of the factual theories to all twelve jurors beyond a reasonable doubt. In other words, the State must prove to all twelve of you that the Defendant 1) rubbed and/or touched I.W.'s genital area with his *hand* (s) or 2) rubbed and/or touched I.W.'s genital area with his *finger*.

(emphasis added). The State responds that Greco's proposed instruction was incorrect because juries do not need to be in complete agreement regarding the means by which an offense was committed.

Whereas Greco's duplicity argument asserted that the State's theory was overbroad as to *when* the offense occurred, this argument asserts the State was required to narrow its theory to prove *how* it occurred; namely, which specific part of Greco's body (hand or finger) touched I.W. But "[t]he district court has broad discretion to settle jury instructions," and an abuse of discretion arises only if "the district court's decision is arbitrary or capricious or if it exceeds the bounds of law or reason." *Crawford v. State*, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005) (internal quotation marks omitted). As the district court recognized, "jurors are not required to unanimously agree on the specific factual theory—or means—by which a crime is committed." NRS 173.075(2) (permitting the State to allege alternative theories for the means by which a single offense was committed). Under our law, it is acceptable that some jurors might have convicted Greco on the belief that he committed a lewd act on I.W. by one means (with his hand) while others believed he committed the act by another means (with his finger); what matters is that the jury unanimously agreed that he committed the offense. The district court thus did not abuse its discretion by rejecting Greco's proposed unanimity instruction.

The district court did not abuse its discretion by permitting the State to cross-examine Greco about his own prior statements

Greco argues that the State committed unconstitutional prosecutorial misconduct by questioning him about inadmissible evidence. As discussed above, the district court ruled pretrial that C.W. was incompetent to testify and deemed her testimony against Greco inadmissible. During an off-record discussion at trial, the district court later ruled, upon Greco's objection, that the State could not cross-examine one of Greco's general character witnesses about C.W.'s allegations. Greco's counsel conceded that the State could, however, question Greco himself about those allegations, should he choose to testify. Then, during Greco's cross-examination, the State twice asked if he remembered statements he made after those allegations arose. The State did not introduce external evidence regarding those allegations or their substance; rather, the prosecutor asked Greco to confirm that he had brought the allegations up with law enforcement after his arrest in this case, and that he had apologized to C.W.'s mother that his physical contact had made C.W. uncomfortable. Greco did not object to those questions on the stand.

"Generally, the permissible extent of cross-examination is largely within the sound discretion of the trial court." *Bushnell v. State*, 95 Nev. 570, 572, 599 P.2d 1038, 1039 (1979). But where a party fails to object at trial, this court applies plain error review. *Grey v. State*, 124 Nev. 110, 120, 178 P.3d 154, 161 (2008). "To be plain, an error must be so unmistakable that it is apparent from a casual inspection of the record," *Nelson v. State*, 123 Nev. 534, 543, 170 P.3d 517, 524 (2007) (internal quotation marks omitted), and "the defendant must demonstrate that the error affected his or her substantial rights, by causing actual prejudice or a miscarriage of justice," *Martinorellan v. State*, 131 Nev. 43, 49, 343 P.3d 590, 593 (2015), *quoting Valdez v. State*, 124 Nev. 1172, 1190, 196 P.3d 465, 477 (2008).

Although Greco claims that the State's questioning amounted to "misconduct permitted by the trial court over objection," there is no indication in the record that he objected to the State's questions, and Greco provides no citation in his briefing to support that such an objection was made. To the contrary, the record shows that his counsel conceded that this line of questioning was permissible. Moreover, the State asked Greco about his own statements, not about the substance of C.W.'s allegations. The questions were brief and meant to contradict Greco's testimony on the stand that he had never been inappropriate with his step-granddaughters. Inquiries of this type are generally permissible as a method of impeachment. NRS 50.135 (permitting cross-examination on prior inconsistent statements). Greco, thus, fails to show that the district court's decision to permit limited cross-examination on this subject was error at all, let alone plain error affecting his substantial rights.

In sum, we do not find that the district court committed error. To the extent that Greco makes a cumulative error argument, it fails. *Cf. Matadamas-Serrano v. State*, 142 Nev., Adv. Op. 20, 584 P.3d 793, 807 (2026) ("[C]umulative error requires multiple errors to cumulate.").

Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Pickering, J.

Parraguirre, J.

Bell, J.

cc: Hon. Connie J. Steinheimer, District Judge
Richard F. Cornell
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk