IN THE SUPREME COURT OF THE STATE OF NEVADA

ARTHUR THOMAS VAUGHT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53458

FILED

MAR 11 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict of open and gross lewdness. Second Judicial District Court, Washoe County; Deborah A. Agosti, Judge.

Appellant Arthur Thomas Vaught argues that the district court erred in denying his pretrial motions seeking discovery of the victim's prescription drug and mental health records. We review the district court's denial of a pretrial discovery motion for an abuse of discretion. Lisle v. State, 113 Nev. 679, 695, 941 P.2d 459, 470 (1997). We perceive no abuse of discretion by the district court. As to the prescription drug records, the district court acceded to Vaught's request that the court review the records in camera to determine whether they had exculpatory impeachment value and determined that they did not. Vaught did not object or further challenge the district court's determination and offers no cogent basis on appeal for concluding that the district court abused its discretion; he also had the opportunity to cross-examine the victim regarding her prescription drug usage at the time of the incident and any effects that those prescription drugs had on her demeanor, perceptions, and ability to tell the truth. As to the mental health records, the district

court determined that the request was overbroad and would not lead to discoverable information and that the records were not close enough in time or relationship to the allegations. Vaught fails to adequately explain how the records are exculpatory or relevant to the victim's credibility. Vaught has not demonstrated that the district court abused its discretion.

Vaught next argues that the district court erred in refusing to instruct the jury on (1) the importance of the victim's credibility, suggesting that the requested instruction was required under Miller v. State, 105 Nev. 497, 779 P.2d 87 (1989); and (2) battery as a lesser-included offense of sexual assault. We review the district court's decision to reject a jury instruction for abuse of discretion or judicial error. Crawford v. State, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005). We perceive no abuse of discretion or judicial error in the district court's rejection of either instruction. First, Miller does not require a special instruction on the importance of a sexual-assault victim's credibility, and the district court gave appropriate general instructions on witness credibility. Second, the lesser-included-offense issue is moot as Vaught was acquitted of the alleged greater offense (sexual assault), and in any event, Vaught's claim lacks merit as we have held that battery is not a lesser-included offense of sexual assault under the Blockburger[1] test, Estes v. State, 122 Nev. 1123, 1143, 146 P.3d 1114, 1127-28 (2006), which this court uses to determine whether a lesser-included-offense instruction is required, Barton v. State, 117 Nev. 686, 694, 30 P.3d 1103, 1108 (2001),

[1]Blockburger v. United States, 284 U.S. 299 (1932).

overruled on other grounds by Rosas v. State, 122 Nev. 1258, 147 P.3d 1101 (2006).

Vaught finally suggests that the district court erred by refusing to merge the open and gross lewdness conviction into the sexual assault offense of which he was acquitted. Because Vaught offers no cogent argument or relevant authority in support of this claim, we decline to consider it. See 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; issues not so presented need not be addressed by this court.").

Having determined that Vaught's claims do not warrant relief, we

ORDER the judgment of conviction AFFIRMED.

_____, J.
Hardesty

_____, J.
Douglas

_____, J.
Pickering

cc: Chief Judge, Second Judicial District
Hon. Deborah A. Agosti, Senior Justice
Bowen, Hall, Ohlson & Osborne
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk