

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
LINDA MARIE BELL, DISTRICT
JUDGE,
Respondents,
and
UBALDO GARCIA,
Real Party in Interest.

No. 57542

FILED

JUL 14 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY H. Ingersoll
DEPUTY CLERK

ORDER GRANTING PETITION IN PART, DENYING PETITION
IN PART

This is an original petition for a writ of mandamus or prohibition. Real party in interest Ubaldo Garcia is awaiting trial on 13 counts of sexual assault of a minor under the age of 14 and 14 counts of lewdness with a minor under the age of 14. The State seeks a writ of mandamus or prohibition directing the district court to vacate its order granting the real party's motion for psychological evaluations of the victims. See NRS 34.160; NRS 34.320; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981); see also State v. Dist. Ct. (Romano), 120 Nev. 613, 618, 97 P.3d 594, 597 (2004) (providing that writ of prohibition is appropriate remedy to prevent improper discovery), overruled on other grounds by Abbott v. State, 122 Nev. 715, 138 P.3d 462 (2006).

Prior to trial, Garcia moved the district court to compel the alleged victims, A.G. and L.T., to undergo psychological evaluations based

on inconsistencies between A.G.'s voluntary statement and preliminary hearing testimony and her testimony that indicated that she may have been coached. The district court granted the motion and later denied the State's motion to reconsider. In the instant petition, the State contends that the district court manifestly abused its discretion in concluding that the circumstances of this case warranted psychological examinations for both victims.

In Abbott, this court held that whether a compelling need for an examination exists is determined by three factors: (1) whether the State has called or obtained some benefit from a psychological or psychiatric expert, (2) whether the evidence of the crime is supported by little or no corroboration beyond the testimony of the victim, and (3) whether a reasonable basis exists to believe that the mental or emotional state of the victim may have affected his or her veracity. Abbott, 122 Nev. at 727-32, 138 P.3d at 470-73. In an original writ proceeding, we review a district court's decision ordering a psychological evaluation for a manifest abuse of discretion. See Romano, 120 Nev. at 618, 97 P.3d at 597.


The district court noted that the State was benefiting from the testimony of a forensic interviewer. See Marvelle v. State, 114 Nev. 921, 927, 966 P.2d 151, 154-55 (1998) (recognizing that testimony about "behavioral patterns and responses associated with victims of child sexual abuse . . . puts the child's behavioral and psychological characteristics at issue"). With regard to A.G., the district court acknowledged that she had testified that she did not believe that she would ever see her mother unless she accused her father of molestation, and that this testimony indicated that her mental or emotional state may have influenced her statements. In addition, her physical exam did not indicate sexual abuse.

Therefore, the district court did not manifestly abuse its discretion in granting Garcia's motion to compel a psychological examination of A.G. However, the same factors do not weigh in favor of such an exam of L.T. While the physical evidence also does not indicate that she was the victim of sexual abuse, L.T.'s testimony is corroborated by statements from another sister, B.G., who said that she witnessed Garcia sexually assault L.T. on one occasion. L.T. was also able to describe unique features of Garcia's penis.¹ Moreover, unlike A.G., the district court did not find that L.T.'s mental or emotional state has affected her veracity. Therefore, the district court manifestly abused its discretion in granting Garcia's motion to compel a psychological examination of L.T. Accordingly, we

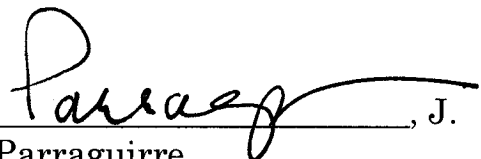
ORDER the petition GRANTED IN PART AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to vacate its order directing L.T. to undergo a psychological evaluation.

We further

ORDER the petition DENIED with respect to the State's claims regarding A.G.


_____, J.
Saitta


_____, J.
Hardesty


_____, J.
Parraguirre

¹While A.G. was also able to testify to unique aspects of Garcia's penis, the record also indicates that she had seen a photograph of it on Garcia's phone.

cc: Hon. Linda Marie Bell, District Judge
Attorney General/Carson City
Clark County District Attorney
Thomas A. Ericsson, Chtd.
Eighth District Court Clerk