IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JEFFREY DAVID VOLOSIN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 72184

ORDER OF AFFIRMANCE

Jeffrey David Volosin appeals from a judgment of conviction, pursuant to an *Alford*[1] plea, of lewdness with a child under the age of 14 years. Third Judicial District Court, Lyon County; Leon Aberasturi, Judge.

Volosin and his cousin were separately charged with a variety of crimes for sexually assaulting a 13-year old victim over the course of two years. The cousin subsequently confessed to his role in the crimes and agreed to testify against Volosin at trial. Before trial began, Volosin entered an *Alford* plea to lewdness with a child under 14 and was sentenced to the statutory term of life with the possibility of parole after ten years.[2] Volosin reserved four issues under NRS 174.035(3), appealing three of those issues here.[3]

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[1]*North Carolina v. Alford*, 400 U.S. 25 (1970).

[2]We do not recount the facts except as necessary to our disposition.

[3]Volosin also appeals on the basis that his rights were violated by the district court's failure to grant him reasonable bail or release on his own recognizance. However, Volosin waived this claim because it was not reserved in his *Alford* plea. Therefore, we decline to consider the merits of his claim. *See Webb v. State*, 91 Nev. 469, 470, 538 P.2d 164, 164 (1975)

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First, we consider whether the information failed to adequately place Volosin on notice of the charges against him when the information contained no specific dates; rather it alleged a time frame spanning two and a half years during which the underlying events occurred while the victim lived in Lyon County.

The Sixth Amendment to the United States Constitution guarantees that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be informed of the nature and cause of the accusation." U.S. Const. amend. VI. Under Nevada law, an "information must be a plain, concise and definite written statement of the essential facts constituting the offense charged." NRS 173.075(1). "The indictment or information must specify the acts of criminal conduct upon which the state is relying." *Sheriff, Clark Cty. v. Standal*, 95 Nev. 914, 916, 604 P.2d 111, 112 (1979). "[W]e review de novo whether the charging document complied with constitutional requirements." *West v. State*, 119 Nev. 410, 419, 75 P.3d 808, 814 (2003). Unless time is an essential element of the offense charged, the State is not required to allege the exact date, but may provide the approximate date on which the crime may have occurred. *Cunningham v. State*, 100 Nev. 396, 400, 683 P.2d 500, 502 (1984). Time is not an element of rape or the commission of lewd acts upon a minor. *Id.*

We conclude that the information provided Volosin sufficient notice of the nature of the alleged offenses during the time the victim

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("A guilty plea represents a break in the chain of events which has preceded it in the criminal process . . . . [A criminal defendant] may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea." (internal quotation marks omitted)).

completed fifth grade until she moved from Lyon County in eighth grade. The information adequately informed him of the period of time during which the offenses were alleged to have occurred. *See Cunningham*, 100 Nev. at 400-01, 683 P.2d at 502 (determining that an information which alleged that the defendant had committed one act "on or about the calendar year of 1981" and two acts "on or about the calendar years of 1981 and 1982, but prior to November 15, 1982" provided sufficient notice to the defendant in a child sexual assault case). Additionally, because the information provided Volosin with sufficient notice of the nature of the alleged offenses, we conclude that the information complied with Nevada law.

Next, we consider whether the district court erred in denying Volosin's motion to admit evidence of the victim's alleged prior false allegations of sexual assault without first conducting a hearing pursuant to *Miller v. State*, 105 Nev. 497, 501, 779 P.2d 87, 89 (1989). We review a district court's decision to admit or exclude evidence of a victim's alleged prior false allegations for abuse of discretion. *Abbott v. State*, 122 Nev. 715, 732, 138 P.3d 462, 473 (2006).

Here, our review of the record reveals that even if the district court erred in failing to hold a *Miller* hearing, any error was harmless in view of the overwhelming evidence of Volosin's guilt.[4] Volosin's cousin would have testified at trial that he and Volosin together sexually

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[4]We caution the district court that in a different case, the failure to conduct a Miller hearing regarding a victim's alleged false accusation may be reversible error as the record may be inadequate for the appellate court's review. But under these facts, we find any error to conduct an evidentiary hearing was harmless.

assaulted the victim and that he stood convicted of that crime. Further, the victim's sister would have testified corroborating the victim's testimony and regarding what was going on in the household with Volosin and why she left to live with her father. Thus, three independent witnesses would have testified to corroborate the victim in this case. Therefore, the district court's failure to actually conduct a *Miller* hearing under these facts did not affect Volosin's substantial rights. *See* NRS 178.598 ("[a]ny error, defect, irregularity, or variance which does not affect substantial rights shall be disregarded").

Last, we consider whether the district court abused its discretion by denying Volosin's request that the victim be evaluated by the defense's licensed psychologist. We review a district court's denial of a defendant's request for a child victim to undergo a psychological evaluation for abuse of discretion. *Abbott*, 122 Nev. at 723, 138 P.3d at 467. The defendant must present a compelling reason for the examination. *Koerschner v. State*, 116 Nev. 1111, 1116, 13 P.3d 451, 455 (2000), *modified on other grounds by State v. Eighth Judicial Dist. Court (Romano)*, 120 Nev. 613, 623, 97 P.3d 594, 600 (2004), *overruled on other grounds by Abbott*, 122 Nev. at 725-27, 138 P.3d at 469-70. The district court should consider three factors to determine whether a compelling need exists: 1) whether the State has called or obtained some benefit from a psychological expert; 2) whether the evidence of the crime "is supported by little or no corroboration beyond the testimony of the victim;" and 3) whether there is a reasonable basis to believe the victim's mental or emotional state may have affected their veracity. *Id.* at 1116-17, 13 P.3d at 455; *see also Abbott*, 122 Nev. at 727, 138 P.3d at 470 (affirming the

Koerschner test as proper for determining whether a criminal defendant is entitled to a psychological evaluation of the victim).

We conclude here that the district court did not err in denying Volosin's request to force the victim to undergo a psychological examination. Although the victim was 13 when the assault occurred, she was a 20-year old adult by the time she would have testified at trial. We note that the legal standard for granting a court-ordered psychological examination is largely designed to test the ability of child witnesses to testify truthfully, not to force adult sexual assault victims to undergo psychological testing as their credibility can be determined by the jury like any other witness in a criminal trial. Thus, we find that the district court did not abuse its discretion in denying Volosin's motion as no compelling need existed for one in this case. [5]

In light of the foregoing, we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Silver

_____, J.
Tao

_____, J.
Gibbons

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[5]Volosin contends that if we grant relief on any of his claims on appeal, he should be allowed to withdraw his plea pursuant to NRS 174.035(3). Because his claims on appeal are unsuccessful, we deny his request to withdraw his plea.

cc: Hon. Leon Aberasturi, District Judge
Karla K. Butko
Attorney General/Carson City
Lyon County District Attorney
Third District Court Clerk