

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CRISTOBAL BENAVIDES,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 78873-COA

FILED

OCT 21 2020

H. A. BROWN  
CLERK OF THE SUPREME COURT  
CITY CLERK

*ORDER OF AFFIRMANCE*

Cristobal Benavides appeals a judgment of conviction pursuant to a jury verdict. Eighth Judicial District Court, Clark County; Jacqueline M. Bluth, Judge.

A jury found Benavides guilty of two counts of lewdness with a child under the age of fourteen, guilty of one count of sexual assault on a child under the age of fourteen, and not guilty of two counts of lewdness with a child under the age of fourteen. Benavides received an aggregate sentence of life with the possibility of parole after fifty-five years.

The evidence at trial revealed that officers from the Las Vegas Metropolitan Police Department (LVMPD) responded to a report of child molestation at Sunrise Hospital. They met seven-year-old Z.C., the victim, and Z.C.'s mother, Priscella. Priscella alleged that Benavides, the father of Priscella's boyfriend at the time, had sexually assaulted and molested Z.C. the day before. A LVMPD sex crimes detective interviewed Priscella, and forensic interviewers later took Z.C.'s statement.

Priscella, her boyfriend, and Priscella's children, Z.C., N.J., and E.J., were staying with Benavides at his home for a couple of days. Benavides was watching television with Priscella's daughters in his bedroom. Z.C. and Benavides were both on Benavides's bed. Z.C. was lying

down on her back and covered by a small blanket, while Benavides was sitting upright.

Benavides reached under the blanket and began to feel and rub Z.C.'s vagina over her clothing. Z.C. described this as Benavides trying to rub and "squish[ ]" her private area. Benavides then slid his hand beneath her clothing and digitally penetrated Z.C.'s vagina. Z.C. told Benavides to stop, but he did not. He removed his hand and licked his fingers. N.J. then left the bedroom and went into the living room area to find Priscella because Z.C. told her what just happened. After N.J. left, Benavides moved his head closer to Z.C. and kissed Z.C.'s vagina over her clothes. Benavides then got up and left the bedroom. Z.C. went to her mother and told her what Benavides had done. Priscella then left Benavides's residence with her children and took them to her home.

The State charged Benavides, by way of criminal complaint, with four counts of lewdness with a child under the age of fourteen and one count of sexual assault with a child under the age of fourteen. Pursuant to a plea agreement negotiated by his private counsel, Bret Whipple, Benavides unconditionally waived his right to a preliminary hearing in justice court. However, at his arraignment in district court, Benavides withdrew from the plea agreement and Whipple withdrew as Benavides's counsel. The State then filed an amended information charging Benavides with four counts of lewdness with a child under the age of fourteen and one count of sexual assault with a minor under the age of fourteen.<sup>1</sup> The Special Public Defender served as Benavides's trial counsel.

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<sup>1</sup>Pursuant to the plea agreement, two lewdness charges in the complaint were to be dismissed as part of the plea agreement, but the State

On appeal, Benavides claims that (1) there was insufficient evidence to support his convictions for lewdness and sexual assault, and (2) his prior counsel was ineffective under *Strickland v. Washington*, 466 U.S. 668, 687 (1984). We disagree.

Benavides makes identical arguments for both his sufficiency-of-the-evidence challenges to his lewdness and sexual assault convictions.<sup>2</sup> In his argument, Benavides isolates a small portion of Z.C.'s testimony that describes Benavides at one point putting his finger near Z.C.'s private area, and claims that this testimony alone is insufficient to support a conviction for either crime. Benavides does not address any of the other evidence presented at trial.

In reviewing a sufficiency-of-the-evidence challenge, this court considers “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.” *Stewart v. State*, 133 Nev. 142, 144, 393 P.3d 685, 687 (2017) (internal quotation marks omitted). “[I]t is the jury’s function, not that of the [reviewing] court, to assess the weight of the evidence and determine the credibility of witnesses.” *McNair v. State*, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

NRS 201.230 makes it a felony to commit a lewd act on a child under the age of fourteen years, “with the intent of arousing, appealing to, or gratifying the . . . sexual desires of that person or of that child.” “[A] lewdness victim’s testimony need not be corroborated” and is alone

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reinstated these charges after Benavides withdrew from the plea agreement.

<sup>2</sup>It appears in Benavides’s opening brief that he copied word for word his argument from his lewdness challenge into his sexual assault challenge.

sufficient for a jury to find a defendant guilty. *Franks v. State*, 135 Nev. 1, 7, 432 P.3d 752, 757-58 (2019) (citing *Gaxiola v. State*, 121 Nev. 638, 649-50, 119 P.3d 1225, 1233 (2005)).

Here, Z.C.'s testimony, standing alone, is sufficient to support Benavides's lewdness convictions. *See id.* A person rubbing a child near her private area, with the intent to gratify the person's sexual desires, is a lewd act. *See id.* at 8, 432 P.3d at 758. In this instance, intent can be inferred from the totality of Benavides's conduct, which included touching the victim's private area over clothing but under a blanket, then touching under clothing resulting in digital penetration, licking his fingers, and then kissing Z.C.'s vagina over her clothing after another child left the room. *See id.* This testimony shows that Benavides's initial touching near Z.C.'s vaginal area was to appeal to his sexual desires. *See* NRS 201.230. Benavides does not contend that his actions were unintentional or done for a non-sexual purpose; his trial defense was that Z.C. was not a credible witness and there was no DNA evidence to support a sexual assault conviction.

Benavides fails to address the trial testimony as a whole, thereby mischaracterizing the record on appeal. He does not address the second lewdness count where Benavides kissed Z.C.'s vagina over her clothes, nor does he attempt to explain how this is not a lewd act. Benavides similarly overlooks Z.C.'s full testimony that describes how Benavides put his fingers on her private area over her clothes. Benavides similarly fails to account for Priscella's and the forensic interviewers' testimony about how Z.C. told them that Benavides touched and "squished" her vagina. Based on this evidence, we conclude that a rational juror could find Z.C.'s testimony credible. *See McNair*, 108 Nev. at 56, 825 P.2d at 573. Therefore,



sufficient evidence was presented to convict Benavides of committing lewd acts upon Z.C. as described under NRS 201.230.

It is a felony to sexually penetrate a child under fourteen years of age. NRS 200.366. "Sexual penetration" is "any intrusion, however slight, of any part of a person's body." NRS 200.364. The testimony of the victim, if believed by the jury, is sufficient to convict a defendant of sexual assault and no corroboration is required. *Nordine v. State*, 95 Nev. 425, 426, 596 P.2d 245, 246 (1979).

Here, as the victim, Z.C. testified that Benavides slid his hand under her clothing and underwear and put "his fingers inside" her private area. This testimony, by itself, establishes a sexual assault on a child under fourteen. See NRS 200.364; NRS 200.366. Z.C. also testified that Benavides licked his fingers after penetrating her. Although Z.C.'s testimony was not corroborated by a physical examination, it was somewhat corroborated by N.J.'s testimony, who testified that Z.C. told her that Benavides was touching Z.C.'s private area under a blanket immediately after it happened. Regardless, the jury could have still convicted Benavides based solely on Z.C.'s testimony without any corroboration. *Nordine*, 95 Nev. at 426, 596 P.2d at 246. It is the jury's function to assess the credibility of witnesses, and a rational jury could find Z.C. credible in light of all of the evidence. *McNair*, 108 Nev. at 56, 825 P.2d at 573. We conclude that sufficient evidence was presented to convict Benavides of sexual assault on a child under age fourteen, so Benavides's sufficiency-of-the-evidence claims fail.

Finally, Benavides claims that Whipple's representation was ineffective because Whipple coerced Benavides into waiving his right to a preliminary hearing. Typically, a timely postconviction petition for a writ of habeas corpus is the proper vehicle for raising an ineffective-assistance-

of-counsel claim. *Belcher v. State*, 136 Nev., Adv. Op. 31, 464 P.3d 1013, 1030 (2020). The claim of coercion cannot be ascertained from the record on appeal, and therefore we will not entertain this claim on appeal. *Id.* (providing that appellate courts will generally not address ineffective-assistance-of-counsel claims on direct appeal unless there has been an evidentiary hearing or an evidentiary hearing is unnecessary). Accordingly, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Jacqueline M. Bluth, District Judge  
The Gersten Law Firm PLLC  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk