IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RICHARD ALEXANDER JENKINS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 83465-COA

FILED

JUN 22 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY [signature]
DEPUTY CLERK

ORDER OF AFFIRMANCE

Richard Alexander Jenkins appeals from a judgment of conviction, pursuant to a jury verdict, of four counts of lewdness with a minor under 16 years of age. Ninth Judicial District Court, Douglas County; Thomas W. Gregory, Judge.

Jenkins coached a recreational volleyball team in Douglas County, and G.W., a 14-year-old minor, played on another team.[1] The two teams would often practice at the same time in the Douglas County Community Center (Center); eventually, G.W. and Jenkins met. Jenkins had a daughter that spent time at the Center as well, and G.W. and Jenkins's daughter soon became friends. In addition, G.W.'s stepfather, with whom she was close, passed away earlier that summer. By all accounts, Jenkins stepped into a father figure role for G.W. and Jenkins's daughter was G.W.'s best friend.

By late summer, G.W. and Jenkins were exceptionally close. When at the Center, the two would often be close to one another; they were not secretive about their close relationship. The two could be seen walking into Center rooms alone, playfully bumping into one another on the courts,

[1]We recount the facts only as necessary to our disposition.

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and leaving the Center while holding hands. Around September 2018, Ashley Gosney, a patron at the Center, noticed a long hug between Jenkins and G.W. near the interior stairs. Security footage from inside the Center captured the hug. Just before the hug, Jenkins can be seen looking over his shoulders. The hug itself lasted nine seconds. After about six seconds, both Jenkins and G.W. nuzzle their faces into one another's necks. During the hug, Jenkins's right arm goes over G.W.'s shoulder, and his left hand is visible wrapping around G.W.'s body in the middle of her back. As they break, Jenkins gives G.W. a pat on the middle of the back and, according to G.W.'s testimony, he touched her buttocks. Concerned by this interaction, Gosney told her then-boyfriend and fitness instructor at the Center, Nicholas Lonnegren of the hug. Lonnegren himself had witnessed interactions between Jenkins and G.W., and he shared Gosney's concerns. Together, Gosney and Lonnegren decided to bring the information to Center staff.

Lonnegren reported the concerns to Jennifer Calabrese, a Center employee. From there, Calabrese and other Center employees informed their supervisors. Lonnegren's report was provided to Scott Doerr and Georgiana Drees-Wasmer, and finally to Community Services Director Scott Morgan. In addition to Lonnegren's report, Center staff also supplied clips of surveillance video showing interactions between G.W. and Jenkins. The individuals reviewing Lonnegren's initial report agreed that the interactions were inappropriate. As a result, Center personnel told Jenkins he was not allowed on the premises during the investigation. Jenkins objected and told the Center of his close relationship with G.W.

The Center permitted Jenkins to return after just one day of investigation; however, around the same time, the Center passed the report

and select footage from inside the building to law enforcement. From there, the Douglas County Sheriff's Office (DCSO) started its own investigation. G.W. gave a few interviews to law enforcement. In her first, she did not describe any inappropriate conduct. In her second, she told law enforcement of Jenkins's inappropriate touching. With G.W.'s allegations and the other evidence, a DCSO detective arrested Jenkins. Thereafter, the State charged Jenkins with four counts of lewdness with a minor under the age of 16, each a category B felony, occurring over a three-month period. Each count corresponded to a location of an alleged lewd act between Jenkins and G.W. Count one stemmed from Jenkins's home. Counts two and three stemmed from the Center's equipment room and "Squishy Room," respectively. And count four stemmed from the interaction in the "nook" by the stairs.

During pretrial litigation, the State filed a motion to admit prior bad act evidence under NRS 48.045(2) and (3). Jenkins opposed this motion. The district court granted that motion under NRS 48.045(2), which allows for the admission of evidence of prior crimes, wrongs or acts for relevant purposes other than a propensity to commit crimes or bad acts, such as motive, opportunity, intent, preparation, or plan. Jenkins filed his own motion seeking to preclude testimony from the State's expert witness, Blake Carmichael, Ph.D. The district court denied this motion and permitted Dr. Carmichael's testimony.

At trial, the State offered evidence, through numerous witnesses like Gosney and Lonnegren, describing other interactions between Jenkins and G.W. where the two playfully bumped into one another, hugged, or held hands. G.W. testified as well, and she stated that Jenkins would touch her buttocks and put his hand slightly inside the front

of her pants, around her waistline. She said this happened in Jenkins's home when she was there for a sleepover. She went on to testify that she and Jenkins would go into the Squishy Room or the equipment room where Jenkins would kiss her and touch her buttocks. Finally, G.W. testified generally that Jenkins would engage in this conduct "every chance he could."

Later in its case-in-chief, the State put Dr. Carmichael on the stand. During his testimony, he opined generally on the phenomenon of "grooming," the idea that sex offenders may condition a child before sexual misconduct to allow and accept touching and to decrease the likelihood that the child will report the crimes. On cross-examination, Dr. Carmichael admitted he knew nothing of the specific case involving Jenkins; he did not even know G.W.'s name or the nature of her accusations.

Jenkins testified in his own defense. He offered context for the "unique" relationship between himself and G.W. He also denied any inappropriate touching of G.W. Jenkins then called numerous witnesses, all of whom were familiar with G.W.'s relationship with the Jenkins family. Because they knew the context of the relationship between G.W. and the Jenkins family, these witnesses discounted the oddness of G.W.'s relationship with Jenkins. With that, the evidence portion of trial concluded. The district court then instructed the jury on the law, including the definition of "lewd" as established by the Nevada Supreme Court.

The jury returned a guilty verdict on all four counts. In its judgment of conviction, the district court ran all four sentences consecutive to one another. Each count carried a minimum term of four years and a maximum term of ten years. In the aggregate, the district court sentenced Jenkins to 16-40 years. Jenkins appealed.

On appeal, Jenkins concedes that he touched G.W. as she alleged during the private interactions in the Center and Jenkins's home, including placement of his hand inside the front of her pants. He is careful to note, however, that the touches of G.W.'s buttocks were always over clothing. Moreover, he stresses he did not reach her vaginal area or skin when he put his hand down the front of G.W.'s pants. These concessions align with G.W.'s trial testimony, and the State does not allege his touches were more explicitly sexual.

Despite this concession, Jenkins first argues that the touches were insufficient to prove he acted with the specific intent proscribed by statute. Jenkins has denied a sexual intent at all points of the prosecution; therefore, he argues that his over-the-clothes contact with G.W. is insufficient to prove he acted with that culpable intent. He asserts that, "in the absence of a sexual touching, the statute requires . . . a knowing commission of a sexual act such that the child sees or senses that a sexual act is taking place."[2] (emphasis omitted). The State emphasized the fact that intent can be inferred. With that, the State points to Jenkins's other actions, like when Jenkins looked over his shoulders before his extended hugging and touching of G.W., arguing that his actions and touching of G.W. could support a reasonable jury's inference that he acted with the proscribed intent. We agree with the State.

When reviewing the sufficiency of the evidence, this court must decide "whether, after viewing the evidence in the light most favorable to

[2]Jenkins cites *State v. Interiano*, 868 So. 2d 9, 15-16 (La. 2004), for this proposition. That case analyzed a "sexual display," not a sexual touching. *Id.* at 16. In fact, that case concerned "the absence of a physical touching upon the person of the child." *Id.* Jenkins concedes physical touching here; thus, *Interiano* is inapposite.

the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *Origel-Candido v. State*, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998). It is the jury's place "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). Thus, "a verdict supported by substantial evidence will not be disturbed by a reviewing court." *Id.* Moreover, "circumstantial evidence alone may support a conviction." *Hernandez v. State*, 118 Nev. 513, 531, 50 P.3d 1100, 1112 (2002). Sufficiency-of-the-evidence challenges raise difficult issues when the accused's mental state is at issue. *Valdez v. State*, 124 Nev. 1172, 1197, 196 P.3d 465, 481 (2008) (approving of juries inferring mental state of defendant). Indeed, "intent can rarely be proven by direct evidence." *Sharma v. State*, 118 Nev. 648, 659, 56 P.3d 868, 874 (2002).

NRS 201.230 requires that the act be performed "with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of that person or of that child." Because circumstantial evidence is sufficient to support a conviction, *Hernandez*, 118 Nev. at 531, 50 P.3d at 1112; and because on appeal all inferences must favor the State, *Jackson*, 443 U.S. at 319; the question is whether any reasonable jury could have inferred Jenkins acted with the specific intent to gratify his sexual desire.

Here, Jenkins has not demonstrated that the jury was unreasonable when it inferred Jenkins acted with the proscribed intent on all four charged occasions. G.W.'s testimony, which we must credit in favor of the State, placed Jenkins's hand inside the front of her pants and on her buttocks in Jenkins's home and the Squishy Room. She also testified that he touched her buttocks and kissed her in the equipment room. Finally,

with respect to the nook, the State emphasized Jenkins's nervous, over-the-shoulder glances before the extended hugging and his touching on G.W.'s buttocks in that location. Based on this evidence, the jury could reasonably infer that Jenkins acted with the intent to gratify a sexual desire for each count.

Because "intent can rarely be proven by direct evidence," *Sharma*, 118 Nev. at 659, 56 P.3d at 874, the jury was not unreasonable to infer he acted with the specific intent to gratify a sexual desire on all four occasions charged.

In addition to the above argument on intent, Jenkins offers a second theory of insufficient evidence in his opening brief. He argues that "[t]ouching that is innocuous on its face, such as a warm embrace among relatives, does not violate the statute—regardless of the defendant's intent." In other words, Jenkins argues that his touching, regardless of his intent, was not a "lewd" act.[3]

To warrant punishment under NRS 201.230, conduct must be lewd. "Lewd has an ordinary, well-established definition: (1) pertaining to sexual conduct that is obscene or indecent; tending to moral impurity or wantonness, (2) evil, wicked or sexually unchaste or licentious, and (3) preoccupied with sex and sexual desire; lustful." *Shue v. State*, 133 Nev. 798, 808, 407 P.3d 332, 340 (2017). In *Shue*, the Nevada Supreme Court reversed a conviction for open and gross lewdness with a minor apparently

[3]We acknowledge that Jenkins offers this point under his argument on both touching and intent. We have considered this point in the context of his intent argument, but for the reasons stated herein, we find it unpersuasive.

17-years old where Shue kissed the minor on the mouth without the minor's consent because a "kiss on the mouth, without more," is not lewd. *Id.*

Here, Jenkins has not demonstrated that the jury was unreasonable when it concluded Jenkins's actions fit the "lewd" element, and the facts here are distinguishable from *Shue*. G.W. testified that Jenkins would hug her, kiss her, and touch her buttocks. In addition, G.W. testified that he put his hand inside the front part of her pants beneath her underwear first when she was at Jenkins's home for a sleepover and later in the Squishy Room. These facts separate this case from *Shue*; the evidence features more than a kiss on the mouth. Take, for example, the interaction between the two captured on camera by the stairs. G.W. testified that the two only interacted by the stairs once, and Jenkins is charged in count four with lewd acts in nook by the Center's interior stairs. On that video, Jenkins can be seen nuzzling his face into G.W.'s neck. That, combined with a nine-second, body-to-body hug, and G.W.'s testimony that he also touched her buttocks is more than the "kiss on the mouth" found in *Shue*. And again, G.W. testified to more explicit sexual touching in the other locations, like kissing and Jenkins placing his hand inside the front waistband of her pants.

Accordingly, we find no reason to disturb the jury's conclusion that Jenkins's actions fit the definition of "lewd" set forth in *Shue,* after the district court instructed the jury on that definition. The jury possessed sufficient evidence to find beyond a reasonable doubt that Jenkins both acted with the proscribed intent and committed lewd acts as defined by the Nevada Supreme Court.

We next address Jenkins's argument that the State's expert should not have been permitted to testify. Jenkins argues that the State's

expert, Dr. Carmichael, did not assist the trier of fact because he testified to general information on grooming instead of offering an opinion specific to this case. We disagree.

This court reviews the admission of expert testimony, when the issue is preserved below, for an abuse of discretion. *Perez v. State*, 129 Nev. 850, 856, 313 P.3d 862, 866 (2013). Expert testimony must feature "specialized knowledge [that] will assist the trier of fact to understand the evidence or to determine a fact in issue." NRS 50.275. It is true that general opinions do not assist the trier of fact if they go to simple concepts understandable to a jury of laypersons. *Porter v. State*, 94 Nev. 142, 148, 576 P.2d 275, 278 (1972) (cautioning against an expert's general testimony on eyewitness reliability). However, general opinions are permissible if it is probable that the jury is not well-informed on the subject matter. *Pineda v. State*, 120 Nev. 204, 213, 88 P.3d 827, 833-34 (2004) (reversing for district court's error in precluding general expert testimony based on gang culture because it was "quite probable that the average juror" knew little of the concept). The Nevada Supreme Court has identified "grooming" as a technical subject appropriate for expert testimony. *Perez v. State*, 129 Nev. 850, 856-57, 313 P.3d 862, 866-67 (2013).

Here, the district court properly acted within its discretion when admitting Dr. Carmichael's expert opinion. Dr. Carmichael testified on the phenomenon of "grooming," and that concept is far from generally understood. It is reasonable that the trier of fact benefitted from additional context and background information on grooming when evaluating this case. The import of this information is significant because the trial focused on the relationship between Jenkins and G.W. Dr. Carmichael's general

opinions, based on his education and extensive experience working with child sexual assault perpetrators and victims, assisted the trier of fact.

Because of the facts of this case, the jury likely benefitted from Dr. Carmichael's general explanation of grooming and the district court did not abuse its discretion when admitting Dr. Carmichael's testimony.

Finally, we address Jenkins's argument that the district court erred when it permitted "prior bad act" evidence under NRS 48.045(2). He vaguely argues that the evidence was propensity evidence and he more specifically argues that unfair prejudice was brought on by the prior bad act testimony because the prejudice substantially outweighed the probative value of the testimony. He further argues that the testimony became the "centerpiece" of the State's closing argument.[4] We disagree because the evidence carried notable probative value that was not substantially outweighed by the danger of unfair prejudice.

"The admissibility of prior bad acts evidence under NRS 48.045 is within the discretion of the trial court and its decisions will not be disturbed on appeal unless it is manifestly wrong." *Phillips v. State*, 121 Nev. 591, 601, 119 P.3d 711, 718 (2005), *overruled on other grounds by Cortinas v. State*, 124 Nev. 1013, 1026-27, 195 P.3d 315, 324 (2008). When analyzing evidence under this rule, "the district court must determine that (1) the incident is relevant to the crime charged; (2) the act is proven by clear and convincing evidence; and (3) the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice." *Collman*

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[4]We note that the appendix on appeal does not contain all of the State's closing argument, and it omits Jenkins's closing argument entirely. That said, the portion of the State's closing we possess does mention the prior bad act evidence admitted through several of the State's witnesses.

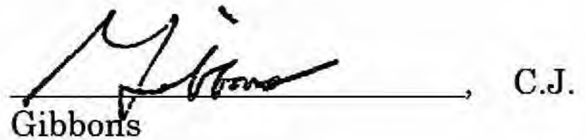
v. State, 116 Nev. 687, 701-02, 7 P.3d 426, 435 (2000) (internal quotation marks omitted); *see also Taylor v. State*, 109 Nev. 849, 852-53, 858 P.2d 843, 846 (1993) (finding error in admitting propensity evidence because evidence was not otherwise relevant).

The district court conducted this mandatory analysis here, and it reached a decision within the bounds of its discretion. First, the court found the evidence was relevant to issues at trial as to Jenkins's motive, intent, plan and to show the relationship between GW and Jenkins. The witnesses testified to prior interactions between Jenkins and G.W. showing an intimate relationship. The court also disallowed evidence as to other acts not related to G.W. This case is dissimilar to *Taylor v. State*, where the supreme court found error in the district court's decision to admit evidence that the defendant had a *different* minor girl on his lap before the incident for which he was prosecuted. 109 Nev. at 852-53, 858 P.2d at 846. Here, the prosecution had to show that Jenkins's close relationship with G.W. was motivated for reasons other than being father figure or coach. Thus, the district court did not manifestly err in determining that the State presented this evidence for relevant non-propensity purposes.

For similar reasons, the evidence also possessed significant probative value. Jenkins's motives and intent were key issues in the trial as well as whether he had a plan to take advantage of G.W. The testimony of the State's prior act witnesses offered context to the relationship between G.W. and Jenkins. And because this case turned on the dynamic between the two, this evidence possessed great probative value, and any prejudicial effect was mitigated by the limiting instructions given by the district court.

Accordingly, the district court did not manifestly error when it concluded the probative value was not substantially outweighed by the danger of unfair prejudice.

Having considered all of Jenkins's arguments, we ORDER the judgment of conviction AFFIRMED.



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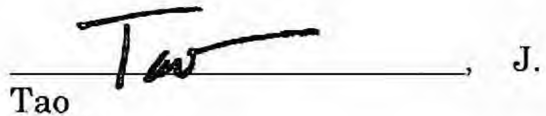

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