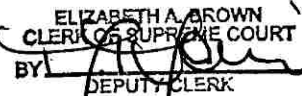
IN THE SUPREME COURT OF THE STATE OF NEVADA

JEFFREY ALLEN STANLEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 84957



FILED

JAN 31 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of lewdness with a child under the age of 14 and luring children or mentally ill persons with the intent to engage in sexual conduct. Eighth Judicial District Court, Clark County; Christy L. Craig, Judge.

The charges in this case arose in 2021 from conduct appellant Jeffrey Allen Stanley engaged in with Z.I., a twelve-year-old boy. Two physicians evaluated Stanley for competency prior to trial and found him competent. After a breakdown in communication between Stanley and his appointed counsel, Stanley asked the district court to waive counsel and represent himself. The district court conducted a thorough canvass pursuant to *Faretta v. California*, 422 U.S. 806 (1975), and permitted Stanley to represent himself at trial with standby counsel from the Special Public Defender's Office. The State called eight witnesses, including the victim, and admitted fourteen exhibits, including text messages wherein Stanley admitted to loving the victim. The police officers who arrested him testified that during the arrest Stanley identified himself as a pedophile and admitted to having a romantic and sexual interest in the victim. During trial, the State also elicited testimony that Stanley told the victim that he was discharged from the military for being a pedophile, and testimony that on the morning of his arrest Stanley had "barged in" a neighbor's home and pushed an elderly resident while looking for the victim.

24-03693

On appeal, Stanley argues that (1) he did not knowingly and intelligently waive his right to counsel and was not competent to represent himself, (2) the State committed reversible prosecutorial misconduct when it elicited prior bad act testimony at trial, (3) the evidence was insufficient to establish sexual intent for both the lewdness and luring counts, and (4) cumulative error warrants reversal.

Stanley's waiver of counsel

Stanley argues that he did not knowingly and voluntarily waive his right to counsel because he did not understand the risks of self-representation, the rights he was waiving, the elements of the crimes he was charged with, or the potential sentencing ranges. We find that Stanley's waiver of counsel was valid.

A criminal defendant may waive their right to counsel and represent themself, so long as the decision is made knowingly and intelligently, and the defendant's eyes have been opened to the dangers and disadvantages of self-representation. *Faretta*, 422 U.S. at 835. We give deference to a district court's determination regarding a waiver of the right to counsel. *Hooks v. State*, 124 Nev. 48, 55, 176 P.3d 1081, 1085 (2008). For a waiver to be constitutionally valid, "the judge need only be convinced that the defendant made his decision with a clear comprehension of the attendant risks." *Graves v. State*, 112 Nev. 118, 124, 912 P.2d 234, 238 (1996). While we encourage the district court to conduct a thorough inquiry, including into the defendant's understanding of the charges and possible penalties, SCR 253, the district court's decision is granted deference regardless of "what specific questions the court asks." *Miles v. State*, 137 Nev. 747, 751, 500 P.3d 1263, 1269 (2021) (citing *Hooks*, 124 Nev. at 55, 176 P.3d at 1085). A defendant's technical knowledge is not relevant to assessing whether they have knowingly chosen to exercise the right to self-

representation, as "[a] *Faretta* canvass is not a law school exam that the defendant must pass or be denied the right to represent oneself." *Id.* at 752, 500 P.3d at 1270; *see Faretta,* 422 U.S. at 835 (holding that "a defendant need not himself have the skill and experience of a lawyer in order [to] competently and intelligently . . . choose self-representation"). Thus, we have emphasized that "[t]he only question is whether the defendant 'competently and intelligently' *chose* self-representation, not whether he was able to 'competently and intelligently' represent himself." *Graves*, 112 Nev. at 124, 912 P.2d at 238.

We examine the record as a whole when reviewing the sufficiency of a waiver. *Id.* at 125, 912 P.2d at 238. Here, the record supports the district court's finding that Stanley knowingly and intelligently waived his right to counsel. The district court conducted a thorough *Faretta* canvass during which it discussed with Stanley the charges he was facing, the potential sentences, and the pitfalls and disadvantages of self-representation. The district court questioned Stanley about any knowledge he had about jury selection, opening statements and closing arguments, trial procedure, the rules of evidence, and potential defenses. The district court also discussed with Stanley the experience his attorney had, and it repeatedly sought to caution Stanley against self-representation while also informing him of the appellate ramifications of self-representation. Moreover, the district court, when appropriate, would pause its canvass to answer Stanley's questions and clarify matters being discussed. The district court inquired about Stanley's continued desire to represent himself on multiple occasions and on each occasion Stanley declined to defer to standby counsel. In fact, at one point Stanley's standby counsel even conceded that Stanley wanted to proceed on his own and that Stanley was capable of doing so.

Stanley further contends that he was incompetent to waive his right to counsel and represent himself because he was evaluated for competency, failed to appropriately answer certain questions during his *Faretta* canvass, and engaged in seemingly illogical behavior during trial.[1] In support, Stanley relies on *Indiana v. Edwards*, 554 U.S. 164 (2008). The *Edwards* court held that "the Constitution permits States to insist upon representation by counsel for those competent enough to stand trial . . . but who still suffer from severe mental illness to the point where they are not competent to conduct trial proceedings by themselves." *Id.* at 178. Nevada has not adopted *Edwards*; instead, a defendant who is competent to stand trial "has an unqualified right to represent himself at trial so long as his waiver of counsel is intelligent and voluntary." *Tanksley v. State*, 113 Nev. 997, 1000, 946 P.2d 148, 150 (1997) (internal quotation marks omitted). We find that there was no evidence in the record regarding Stanley's competency level that would have given rise to prohibiting Stanley from representing himself. The record reflects that Stanley was found competent to stand trial and that his waiver was knowing, intelligent, and voluntary; therefore, we conclude that the district court did not err in granting Stanley's request to represent himself.

Stanley fails to demonstrate reversible prosecutorial misconduct

Stanley argues that the State committed reversible prosecutorial misconduct when it elicited testimony regarding his discharge from the military for being a pedophile, and his barging into a neighbor's

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[1]We note that Stanley's trial was presided over by the Honorable Christy L. Craig, District Judge, who administers the Eighth Judicial District's competency court. While Judge Craig inquired throughout the trial whether Stanley wished to continue to proceed pro se, the record does not reflect Judge Craig ever raising any concerns about Stanley's competency during trial.

home on the day of his arrest, without first seeking a *Petrocelli* hearing. *See Petrocelli v. State*, 101 Nev. 46, 692 P.2d 503 (1985). Stanley failed to object to the testimony, thus his arguments are reviewed for plain error. *Valdez v. State*, 124 Nev. 1172, 1190, 196 P.3d 465, 477 (2008).

A plain error is one that is apparent from a casual inspection of the record and will "not require reversal unless the defendant demonstrates that the error affected his or her substantial rights, by causing 'actual prejudice or a miscarriage of justice.'" *Id.* (quoting *Green v. State*, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003)). A defendant's substantial rights are affected when the error "(1) had a prejudicial impact on the verdict when viewed in context of the trial as a whole, or (2) seriously affects the integrity . . . of the judicial proceedings." *Rowland v. State*, 118 Nev. 31, 38, 39 P.3d 114, 118 (2002) (internal quotation marks omitted). Where there is no indication that the error has affected the outcome of the proceeding, the error is not reversible. *Jeremias v. State*, 134 Nev. 46, 57, 412 P.3d 43, 53 (2018); *see also Miller v. State*, 121 Nev. 92, 99, 110 P.3d 53, 58 (2005) ("We will not order a new trial on the grounds of prosecutorial misconduct unless the misconduct is clearly demonstrated to be substantial and prejudicial." (internal quotation marks omitted)).

The testimony, even if admitted in error, does not warrant reversal

Evidence of a defendant's prior bad acts may be admissible for a nonpropensity purpose such as motive, opportunity, intent, preparation, plan, or knowledge. NRS 48.045(2). Such evidence may be admitted following a *Petrocelli* hearing during which the State establishes that

> (1) the prior bad act is relevant to the crime charged and for a purpose other than proving the defendant's propensity, (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.

Bigpond v. State, 128 Nev. 108, 117, 270 P.3d 1244, 1250 (2012). Prior bad act testimony that is admitted without a *Petrocelli* hearing will not require reversal if the record is sufficient to determine that it would have been admissible under *Bigpond*, or if the result of the proceedings would have been the same without the admitted evidence. *McNelton v. State*, 115 Nev. 396, 405, 990 P.2d 1263, 1269 (1999). Evidence of another uncharged act or crime may be admissible under Nevada's res gestae statute "if it is so closely related to the act in controversy that the witness cannot describe the act without referring to the other uncharged act or crime." *Bellon v. State*, 121 Nev. 436, 444, 117 P.3d 176, 181 (2005); *see* NRS 48.035(3).

The alleged prior bad act testimony given by the victim, Z.I., referenced Stanley's own statements to Z.I., namely that Stanley had been discharged from the military for being a pedophile. A defendant's own statement to someone in a case involving sexual conduct with a minor about being a pedophile is not a prior bad act, but rather an admission. NRS 51.035(3)(a). Such an admission is not subject to a bad act analysis.

The portion of the testimony that references the military discharge, even if arguably a prior bad act admitted in error, is harmless. Stanley argued that there was little evidence beyond this testimony that indicated Stanley's actions were sexually motivated, therefore the jury's verdict must have been tainted. However, other evidence indicating Stanley's sexual proclivities, including testimony about his admission to police officers that he was a pedophile, was admitted notwithstanding the military discharge testimony. Further, Stanley points to nothing in the record that would indicate the jury's verdict was influenced by his alleged discharge from the military. Therefore, we conclude there was no substantial impact on Stanley's rights when Z.I. testified about the reason Stanley provided for his discharge from the military.

The testimony given by a neighbor regarding Stanley barging into her home the morning of his arrest could have been either evidence of a prior bad act or res gestae evidence. NRS 48.045(2); NRS 48.035(3). Accordingly, admission of this evidence should have been addressed in the district court prior to the witness's testimony. Nevertheless, we conclude that the evidence would have been deemed admissible if it had been considered before the trial. The evidence demonstrated Stanley's obsession with the victim, which was relevant to his intent and motive and was highly probative. Additionally, the reference to his barging into the neighbor's home was a collateral issue, and the minor reference could not have unduly influenced the jury's verdict considering the overwhelming evidence of guilt. *Cf. Sherman v. State*, 114 Nev. 998, 1010, 965 P.2d 903, 911 (1998) (holding that testimony regarding a singular collateral prior bad act did not unduly influence the jury).

In sum, we conclude that Stanley's statement to Z.I. that he is a pedophile was a permissible admission. We further conclude that even if the military discharge reference and the reference to Stanley barging into a neighbor's home was admitted in error, neither instance rises to the level of reversible plain error as Stanley fails to demonstrate actual prejudice.

The district court's curative instructions mitigated any error

The district court, believing the references to the military discharge and Stanley barging into the neighbor's home were inadmissible, issued curative instructions to the jury directing them to disregard the testimony in full. Stanley argues that he was prejudiced despite these instructions.

Curative jury instructions are used to address testimony and evidence that has inappropriately come before a jury. Their approval and use are tied to the simple proposition that courts, including this court,

generally presume that a jury will follow its instructions. *Leonard v. State*, 117 Nev. 53, 65-66, 17 P.3d 397, 405 (2001). Trials are often not perfect, and we presume, given no indication in the record otherwise, that the jury followed these instructions. Considering the nature of the complained of testimony, the lack of objection and the overall strength of the evidence of Stanley's guilt, we conclude that Stanley's substantial rights were not impacted.

The jury verdict is supported by sufficient evidence

Stanley argues that there was insufficient evidence to support the jury's verdict because the State could not prove sexual intent. We disagree.

Evidence is sufficient to support a verdict if "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." *Hager v. State*, 135 Nev. 246, 256, 447 P.3d 1063, 1070 (2019) (emphasis and internal quotation marks omitted). As we held in *Rose v. State*, a sexual assault victim's testimony alone may be sufficient to sustain a guilty verdict so long as the victim testifies with some particularity regarding the incident. *Rose v. State*, 123 Nev. 194, 203, 163 P.3d 408, 414 (2007). Thereafter, this court acknowledged the applicability of that proposition in lewdness cases when we held that, "a lewdness victim's testimony need not be corroborated." *Franks v. State*, 135 Nev. 1, 7, 432 P.3d 752, 757 (2019). It is the jury's responsibility alone to assess witness credibility and determine the weight of the testimony, therefore the jury's verdict will not be disturbed on appeal where substantial evidence supports the verdict. *McNair v. State*, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

Stanley was convicted of lewdness with a minor under the age of 14 pursuant to NRS 201.230, and luring children or mentally ill persons with the intent to engage in sexual conduct pursuant to NRS 201.560. Lewdness with a minor under the age of 14 requires the jury to find that there was a lewd or lascivious act, upon or with the child's body, and that the defendant had the "intent to arouse, appeal to, or gratify the lust or passions of [themself] or the child." NRS 201.230. The luring conviction required the jury to find that the defendant knowingly contacted or communicated with a child under the age of 16 with the intent to solicit, persuade, or lure the child to engage in sexual conduct. NRS 201.560. Sexual conduct includes "[a]ny lewd or lascivious act upon or with the body, or any part or member thereof, of another person." NRS 201.520.

The victim's testimony alone is sufficient to establish the elements of each crime, but also testimony from other witnesses further supported the jury's verdict. The victim testified with particularity regarding an instance where Stanley followed the victim to his school bus stop, asked the victim about his sexual orientation, asked the victim to leave his school bus stop with him, and then willfully touched and rubbed the victim's upper thigh near his groin. This testimony establishes that Stanley committed a lewd act upon the body of Z.I., a minor, and that Stanley attempted to lure Z.I. away from his bus stop. Stanely's intent to engage in sexual conduct is also evinced by Z.I.'s testimony, which established that Stanley asked him to leave his school bus stop *again*, after the groping, to accompany him into a nearby secluded desert lot to smoke. Stanley engaged in sexual conduct—the lewd act—in attempting to lure Z.I., thus it can be inferred that the luring was for a sexual purpose. Beyond Z.I.'s testimony, the victim's parents and Henderson Police officers testified that Stanley admitted to being in love with Z.I. and wanting a romantic relationship with

him. Even more telling were Stanley's admissions to police that he is "the perfect pedophile" and that he was "not just" interested in sex with the victim. Thus, Stanley's own statements evince the intent required of both crimes—to gratify his own passions and to engage in sexual conduct. Therefore, we conclude that the State presented sufficient evidence to convict Stanley on both counts beyond a reasonable doubt.

<u>There is no cumulative error warranting reversal</u>

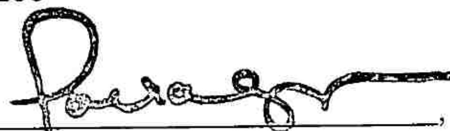
To the extent the district court erred in admitting the military discharge reference and the reference to Stanley barging into a neighbor's home, Stanley fails to demonstrate actual prejudice under our plain error review. Moreover, the errors were appropriately addressed through curative instructions to the jury. Applying harmless-error analysis, we find any errors to be harmless, even in aggregate, and thus find no cumulative error warranting reversal. *See Alfaro v. State*, 139 Nev. Ad. Op. 24, 21, 23-24, 534 P.3d 138, 151-52 (2023) (holding that the erroneous introduction of two uncharged acts were harmless and did not amount to cumulative error.)

Accordingly, we

ORDER the judgment of conviction AFFIRMED.

_______________________________, J.
Herndon

_______________________________, J.
Lee



_______________________________, J.
Parraguirre

cc: Hon. Christy L. Craig, District Judge
Special Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk