IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF N.J. A MINOR CHILD

NARA MIKHAL JOHNSON,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

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Case No: 70220

APPEAL FROM AN ORDER OF THE TENTH JUDICIAL DISTRICT COURT FINDING THAT A MINOR CHILD COMMITED A DELINQUENT ACT

RESPONDENT'S ANSWERING BRIEF

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Rule 26.1 Disclosure

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

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Tenth Judicial District Court

The Honorable Thomas Stockard, District Judge

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JURISDICTIONAL STATEMENT

Respondent is satisfied with Appellant's Jurisdictional Statement.

ROUTING STATEMENT

Respondent is satisfied with Appellant's Routing Statement.

ISSUES PRESENTED FOR REVIEW

I. The District Court properly admitted evidence of other acts of the defendant pursuant to NRS 62D.420 as the evidence was competent, material, and relevant.

II. The District Court is not required to hold a pre-trial hearing to determine the admissibility of other misconduct evidence in juvenile matters.

III. The finding of delinquency was supported by sufficient evidence showing that the defendant battered and harassed the victim.

IV. That any errors committed by the lower court were harmless beyond a reasonable doubt.

STATEMENT OF THE CASE

Respondent is satisfied with Appellant's Statement of the Case.

STATEMENT OF FACTS

On the evening of September 22, 2015, the victim, Gillian Norman, travelled to Oats Park to play volleyball with friends. Appellant's Appendix

(hereinafter AA) at 29. Also present at the park were Nara Johnson, Tierra McQueen, Ruben Gutierrez, Raymond Wilkes, and Bill McHaney. AA at 57. While at the park the victim was accosted by the Defendant, Nara Johnson, who attempted to instigate a fight with the victim. AA at 30. According to the testimony of Katie Weisman, the Defendant was under the impression that the victim had slept with the Defendant's boyfriend True Hanley. AA at 67. The victim did not wish to have a physical confrontation with the Defendant, and left the park with the assistance of her friend. AA at 30.

Later that evening, the victim received a message from True Hanley's phone asking to talk. AA at 32. The victim agreed to go with True and her friend, Ruben Gutierrez, to Walmart in order to purchase pajamas. AA at 31-33. To that end, Ruben and True picked the victim up at her house. AA at 31-33. Unbeknownst to the victim, the Defendant and others from the park had agreed to follow Ruben once he had picked up Gillian so that they could talk to her. AA at 58-59. Instead of traveling to Walmart as agreed with the victim, Ruben Gutierrez drove the victim to a deserted back field in the area behind the Fallon Walmart. AA at 33-34. Moments after parking, two additional vehicles pulled up behind the victim's vehicle. AA at 34. Tierra McQueen and the Defendant, Nara Johnson, immediately exited their

vehicle, ran to the victim's vehicle, and entered inside the vehicle with the victim inside. AA at 35.

Once inside the vehicle, the Defendant and Tierra McQueen argued with the victim and attempted to pull her out of the car. AA at 35. When unsuccessful the Defendant struck the victim in the face, and then threatened to cut Ms. Norman if she did not stay away from True. AA at 37.

Ultimately, Tierra McQueen pulled Ms. Norman from the car by her hair, and continued battering her. AA at 37. Raymond Wilkes videotaped the events following Tierra McQueen pulling the victim from the vehicle. AA at 15-16. At the conclusion of her assault, both Tierra McQueen and the defendant spit on the victim. AA at 38.

SUMMARY OF THE ARGUMENT

The District Court properly admitted all evidence of the defendant's conduct on September 22, 2015 pursuant to NRS 62D.420 as it was competent, material, and relevant evidence. The District Court was entitled to rely on all such evidence to the extent that the court determined that evidence to be probative.

NRS 62D.420 is an unambiguous statute and should be read with its plain meaning. The requirement of a pre-trial hearing on misconduct evidence would unduly burden the court in juvenile cases without any

significant benefit. All juvenile matters are heard by the judge or master of the juvenile court without the use of a jury, thereby allowing the court to appropriately weigh the probative value of the evidence in view of any prejudice.

There was sufficient evidence to adjudicate the defendant delinquent for both Battery and Harassment adduced at the adjudicatory hearing.

Finally, any errors committed by the District Court were harmless beyond a reasonable doubt.

ARGUMENT

I. ADMISSION OF OTHER MISCONDUCT

A. Standard of Review

In reviewing the admissibility of misconduct evidence this Court said "[w]e have consistently held that the decision to admit or exclude such evidence is within the discretion of the trial court and will not be overturned absent a showing that the decision is manifestly incorrect." *Rhymes v. State*, 121 Nev. Adv. Rep. 4, 107 P.3d 1278 (2005).

B. The unique nature of juvenile proceedings ensures that the rights of juveniles are protected without the need for the same procedural safeguards as adults receive.

NRS 62D.420(1) states in pertinent part:

1. In each proceeding conducted pursuant to the provisions of this title, the juvenile court may:
    a. Receive all competent, material and relevant evidence that may be helpful in determining the issues presented, including, but not limited to, oral and written reports; and
    b. Rely on such evidence to the extent of its probative value.

Nev. Rev. Stat. § 62D.420.

By its terms, NRS 62D.420 enables the juvenile court to receive evidence of other misconduct of the defendant so long as such evidence is competent, relevant and material. *Id.* The court may rely on that evidence to the extent of its probative value. *Id.*

NRS 62D.420 accounts for the main concern of misconduct evidence, namely "that bad acts are often irrelevant and prejudicial, and force the accused to defend against vague and unsubstantiated charges." *Tavares v. State*, 117 Nev. 725, 730, 30 P.3d 1128, 1131 (2001). NRS 62A.180 provides that juvenile proceedings are presided over by district judges and masters delegated by the district judge. *NRS 62A.180.* NRS 62D.010 requires that all juvenile proceedings be heard without a jury presided over by the juvenile court. *NRS 62D.010.*

Juvenile proceedings are not subject to the same concerns of prior bad act evidence as adult trials because there is no jury to be swayed by the prejudicial nature of the evidence. The procedural safeguards set forth in adult cases are designed to prevent a jury from hearing prior bad act evidence, and convicting the defendant because it believes the accused is a bad person instead of relying on the evidence. *Tavares*, 117 Nev. 725, 730, 30 P.3d 1128, 1131.

In adult cases, a prior hearing outside the presence of the jury is required prior to the admission of misconduct evidence. *Tinch v. State*, 113 Nev. 1170, 1176, 946 P.2d 1061, 1064–65 (1997). At the hearing, the State must demonstrate (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." *Id.*

Reviewing the requirements set forth in *Tinch*, juvenile proceedings are in a substantially different position for which this process would be unduly burdensome. There is no jury, so a prior hearing outside their presence is unnecessary. Furthermore, because there is no jury, the need to prove the act by clear and convincing evidence and to weigh the probative value of the evidence with the danger of unfair prejudice is unnecessary.

The judge may use his discretion to determine the extent of the admitted evidence's probative value, and adequately resolve any prejudice to the defendant. Accordingly, the juvenile court should admit evidence of other misconduct so long as it is competent, material, and relevant in determining the issue presented. *See NRS 62D.420*.

In the present case, the District Court properly admitted evidence that the Defendant had attempted to instigate a fight with the victim earlier on the evening of September 22, 2015. AA at 30. The victim's testimony establishes that only a couple of hours before she was battered and harassed by the defendant, the defendant attempted to instigate a fight with her at a local park. AA at 30. This evidence is relevant to the ultimate issue presented because it sets the stage for the later battery and shows the motive of the defendant.

Even under the heightened adult standard proposed by Appellant, the evidence would be admissible as *res gestae* as ruled by the District Court. AA at 30. Commonly called *res gestae,* the State may admit evidence of other crimes or acts that are intermixed with the charged act such that an ordinary witness would not be able to tell the complete story of the charged crime without reference to the other wrongful acts. *NRS 48.035(3).* Here, the events at the park are intermixed with the battery that occurred later in

the field such that an ordinary witness could not adequately describe the events in the field without reference to the earlier act in the park. The instigation to fight occurred on the same day between the same defendant and the same victim. AA at 29-30. Furthermore, the same observers were present at the park and the field. AA at 57. The parties at the park, including the Defendant, ultimately agreed for Ruben Gutierrez to pick up the victim and follow him. AA at 57.

The evidence would further be admissible under the adult standard to show the motive of the Defendant to batter and harass the victim. Evidence of other crimes, wrongs, or acts is admissible for specific purposes, including proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. *See NRS 48.045(2).* The victim's testimony tends to prove that the defendant had a motive to batter the Defendant as shown by her earlier attempt at the field. The testimony further tended to prove that all of the persons involved, including the Defendant, planned to follow Ruben once he had picked up the defendant. The evidence was proven by clear and convincing evidence based on the testimony of multiple parties. AA at 30, 77. Finally, any prejudice created by attempting to instigate a fight, at most a breach of the peace, is outweighed by the probative value it provides to the later battery.

The District Court further properly admitted evidence that the Defendant spit on the victim at the conclusion of the battery in the field. The victim testified that the culmination of the battery by the Defendant and another juvenile was that both the other juvenile and the Defendant spit on her. AA at 38. This evidence is relevant to prove that the Defendant had the means and motive to batter the victim.

Even under the adult standard, the Defendant's act of spitting on the victim would be admissible as part of the res gestae of the crime. No ordinary witness could adequately describe the entirety of her battery by the Defendant and another juvenile without referring to the act that signified the end of the physical abuse. The act of spitting on the victim further showed motive on the Defendant's part to commit the battery of striking the victim in the car. The contemporaneous commission of another battery on the same victim is highly probative of the defendant's motive to commit battery and harassment only moments before.

C. Appellant's argument that the District Court lacks the statutory basis to receive evidence of other misconduct is without merit.

Appellant argues that all prior bad act evidence is inadmissible in juvenile proceedings as there is no statutory basis for receiving it. Appellant's Brief pg. 8. Appellant admits that the plain language of NRS

62D.420 would encompass the admission of prior bad act evidence. Appellant's Brief pg. 10. Appellant asks this Court to ignore the plain language of the statute because "there must be a built in understanding in the interpretation of NRS 62D.420(1) that the evidence must otherwise be admissible." Appellant's Brief pg. 10. Appellant asserts that a rationale to ignore the statutory language is the possibility that unconstitutionally obtained evidence would otherwise be admissible under the statute. *Id.* Appellant then suggests that no misconduct evidence of any kind can be presented before the juvenile court because there is no statutory authority to receive evidence outside of NRS 62D.420. Appellant's Brief pg. 12.

When a statute is unambiguous and the words have a definite and ordinary meaning, this Court should not look beyond the plain language of the statute unless it is clear that this meaning is not intended. *State v. Quinn*, 117 Nev. 709, 713, 30 P.3d 1117, 1120 (2001). As admitted by Appellant, the plain meaning of the statute encompasses all evidence, including misconduct evidence, which is relevant, competent and material. The only ambiguity provided by Appellant is that read plainly, the statute would allow for the admission of unconstitutionally obtained evidence.

NRS 62D.420 need not require the suppression of unconstitutionally seized evidence to be entitled to its plain meaning. It is the function of the

judicial remedy of the exclusionary rule to exclude evidence that would otherwise be admissible from use at trial to deter law enforcement from future constitutional violations. *Byars v. State*, 130 Nev. Adv. Op. 85, 336 P.3d 939, 947 (2014). Evidence seized in violation of constitutional provisions is only excluded when the purposes of the exclusionary rule are served. *Id.* Accordingly, unconstitutionally seized evidence is often admitted where the purposes of the exclusionary rule are not served.

There is no ambiguity in NRS 62D.420, and this Court should give the statute its plain meaning. All competent, material, and relevant evidence that may be helpful in determining the issue is admissible in juvenile proceedings. NRS 62D.420.

II. SUFFICIENT EVIDENCE TO ADJUDICATE DELINQUENCY

A. Standard of review

"The standard of review for sufficiency of evidence upon appeal is whether the [trier of fact], acting reasonably, could have been convinced of the defendant's guilt beyond a reasonable doubt." *Palmer v. State*, 112 Nev. 763 (1996), citing *Kazalyn v. State*, 108 Nev. 67, 71 (1992). The Nevada Supreme Court has also said that when sufficiency of the evidence is challenged on appeal, "the relevant inquiry for the court is '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.'" *Palmer*, 112 Nev. 763, citing *Koza v. State*, 100 Nev. 245, 250 (1984) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979))(emphasis in original). "It is for the [trier of fact] to determine what weight and credibility to give various testimony." *Hutchins v. State*, 110 Nev. 103, 107 (1994)(affirming judgments of conviction based primarily on the testimony of a sexual assault victim). "[I]n a case where there is conflicting testimony presented at trial, it is within the province of the [trier of fact] to determine the weight and credibility of the testimony." *Washington v. State*, 112 Nev. 1067 (1996).

B. There was sufficient evidence for the trier of fact to determine that the Defendant had committed the delinquent acts of battery and harassment.

Battery is any willful and unlawful use of force or violence upon the person of another. *NRS 200.481(1)(a)*. Harassment is (1) without lawful authority, the person knowingly threatens: to cause bodily injury in the future to the person threatened or to any other person, and (2) the person the person by words or conduct places the person receiving the threat in reasonable fear that the threat will be carried out. NRS 200.571(1). The

evidence adduced at trial was more than sufficient to show that the Defendant unlawfully used force or violence upon the person of the victim and threatened the victim with future bodily injury. The trial court heard the following testimony:

While at the Oats Park the victim was accosted by the Defendant, Nara Johnson. AA at 30. According to the testimony of Tierra McQueen, the Defendant was under the impression that the victim had slept with the Defendant's boyfriend True Hanley. AA at 77.

Later that evening, Ruben Gutierrez drove the victim to a deserted back field in the area behind the Fallon Walmart. AA at 33-34. Moments after parking, two additional vehicles pulled up behind his vehicle. AA at 34. Ruben told the victim to run. AA at 43. The Defendant, Nara Johnson, and another juvenile, Tierra McQueen exited their vehicle, ran to the victim's vehicle, and entered inside the victim's vehicle. AA at 35.

The victim testified as follows to the events in the car:

Q. And did Nara ever touch you?"

A: Yes.

Q. What did she do?

A She hit me right here in the temple. She had rings on.

Q Okay.

A And she told me to stay away from True or she would cut me.

AA at 37.

The evidence adduced at trial clearly showed that the Defendant was upset with the victim over allegations of infidelity with her boyfriend. AA at 67. The testimony showed that the Defendant followed the victim to a field behind Walmart and entered into the vehicle with the victim and another juvenile to confront the victim about the allegations. While in the vehicle, the Defendant struck the defendant in the temple and attempted to pull her from the vehicle. AA at 37. The Defendant further threatened to cut the victim if the she ever went near True. AA at 37. The threat made during the commission of a battery reasonably put the victim in fear that the threat would be carried out.

Appellant argues that there was insufficient evidence because the video does not capture the Defendant striking the victim. Appellant Brief pg. 20. The victim testified that the strike by the Defendant occurred prior to being removed from the vehicle when the video started. AA at 49.

Appellant argues that the other witnesses testified that the Defendant did not strike the victim. Appellant Brief pg. 20. Katie Weisman described that the Defendant was trying to get the victim out of the car, but she could not see exactly how because she was on the other side. AA at 61. The other

juvenile present in the car Tierra McQueen testified she was "zoned into what I was doing. So I cannot really say that Nara punched her, because I didn't like, peripherally see it because I was focused on hitting her myself." AA at 74. Accordingly, the witnesses other than the victim testified that they did not see the defendant punch the victim, but they could not rule it out.

Viewing the evidence in the light most favorable to the prosecution, the trier of fact could have reasonably found the essential elements of the crime of battery and harassment to be proven beyond a reasonable doubt.

III. HARMLESS ERROR

The adjudication of delinquency should be affirmed regardless of any error in the admission of evidence because such admission was harmless beyond a reasonable doubt. The appropriate standard for harmless-error review is whether it appears beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained. *Cortinas v. State* 124 Nev. 1013 1027, 195 P.3d 315, 324.

The Court found that the testimony of the victim was credible and highly probative. AA at 106-107. The Court found the testimony of the remaining bystanders to not be credible. AA at 106. Furthermore, the Court specifically found that the defendant struck the victim to have been proven

beyond a reasonable doubt. AA at 106. The Court made clear that it considered the spitting battery complained of in this appeal to be a separate offense that was not charged, and that its findings of battery by striking were separate from the spitting battery. AA at 106.

RELIEFT SOUGHT

This court should affirm the decision of the District Court finding that the defendant committed the delinquent acts of Battery and Harassment.

CERTIFICATION OF COMPLIANCE

1. I hereby certify that this answering brief complies with the formatting requirement of NRAP 32(a)(4), the typeface requirement of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because: This answering brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 using Times New Roman in 14 font size.

2. I further certify that this answering brief complies with the page- or type- volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionally spaced, has a typeface of 14 points or more, and does not exceed 30 pages.

3. Finally, I hereby certify that I have read this answering brief and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure including NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 20th day of October, 2016

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CERTIFICATE OF SERVICE

I hereby certify that I, Joseph Sanford, on the 20th day of October, 2016 served the foregoing Respondent's Answering Brief by electronically filing the document with notice to:

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