IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DARWYN ROSS YOWELL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 83577-COA

FILED

MAY 18 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Darwin Ross Yowell appeals from a judgment of conviction, entered pursuant to a jury verdict, of battery constituting domestic violence resulting in substantial bodily harm. Fourth Judicial District Court, Elko County; Mason E. Simons, Judge.

First, Yowell argues the district court violated his right to confront witnesses against him by limiting his ability to cross-examine the victim concerning a prior violent act in which she stabbed her father. "[T]rial judges retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on . . . cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or only marginally relevant." *Farmer v. State*, 133 Nev. 693, 702-03, 405 P.3d 114, 123 (2017) (quoting *Delaware v. Van Arsdall*, 475 U.S. 673, 679 (1986)). "We review a trial court's evidentiary rulings for an abuse of discretion and the ultimate question of whether a defendant's Confrontation Clause rights were violated de novo." *Id.* at 702, 405 P.3d at 123.

During trial, Yowell questioned the victim concerning the incident involving her father. After repeated questioning concerning the

incident, the State objected because the questions had already been asked and answered. The district court sustained the State's objection. Our review of the record reveals that the district court merely ruled that counsel's questions had been asked and answered. We conclude that the trial court's limitation on already-asked questions did not unconstitutionally restrain counsel's cross-examination of the victim. Therefore, Yowell fails to demonstrate he is entitled to relief based on this claim.

Second, Yowell argues the district court abused its discretion by admitting a video recording depicting the victim's conversation with a sheriff's deputy at a hospital. The Nevada Supreme Court has previously explained that "when a trial witness fails, for whatever reason, to remember a previous statement made by that witness, the failure of recollection constitutes a denial of the prior statement [and] makes it a prior inconsistent statement . . . [that] may be admitted both substantively and for impeachment." *Crowley v. State*, 120 Nev. 30, 35, 83 P.3d 282, 286 (2004). We review a district court's decision to admit or exclude evidence for an abuse of discretion. *Id.* at 34, 83 P.3d at 286.

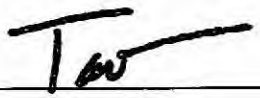
During trial, the victim testified that she had no memory of her conversation with the sheriff's deputy at the hospital. The district court admitted the recording having found the victim's statements contained within the recording were admissible as prior inconsistent statements because the victim could not remember them. The record supports the district court's decision. Accordingly, we conclude that Yowell did not

demonstrate that the district court abused its discretion by admitting the recording into evidence.[1]

Third, Yowell argues that he is entitled to relief due to cumulative error. However, Yowell failed to demonstrate any error, and therefore, he is not entitled to relief. Accordingly, we

ORDER the judgment of conviction AFFIRMED.

_____, C.J.
Gibbons



_____, J.
Tao

_____, J.
Bulla

cc: Hon. Mason E. Simons, District Judge
Elko County Public Defender
Elko County District Attorney
Attorney General/Carson City
Elko County Clerk

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[1]Yowell also argues that the district court erred by admitting the victim's statements to the sheriff's deputy as excited utterances, present sentence impressions, and for rehabilitation purposes. Because we conclude that the district court did not abuse its discretion by admitting her statements as prior inconsistent statements, we need not consider whether her statements were admissible under any additional theories.