

SUPREME COURT OF NEVADA

Abbott v. State, 122 Nev. 715

138 P.3d 462 (2006) · No. No. 44275 · Decided July 13, 2006

SUMMARY

The Nevada Supreme Court held that a criminal defendant may be entitled to an independent psychological examination of an alleged child victim when the requirements of *Koerschner v. State* are met, overruling the more restrictive standard in *State v. District Court (Romano)*. The court also clarified that a clinical forensic interviewer may qualify as an expert witness when the interviewer analyzes interview facts or addresses coaching or bias. The court concluded that the trial court improperly excluded evidence of the victim's prior allegedly false allegations and reversed Abbott's convictions, remanding for a new trial.

CASE DETAILS

COURT	Supreme Court of Nevada
WRITING FOR THE COURT	Rose, C.J.; Maupin, J.; Gibbons, J.; Douglas, J.; Hardesty, J.; Parraguirre, J.; Becker, J.
JURISDICTION	Nevada
DECIDED	July 13, 2006
DOCKET	No. 44275
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Direct appeal from convictions for two counts of lewdness with a minor under the age of fourteen following a jury trial.
STANDARD OF REVIEW	A district court's decision on a request for an independent psychological examination of a child victim is reviewed for abuse of discretion. Evidentiary rulings are generally reviewed for abuse of discretion; the court also reviewed the exclusion of the prior-false-allegation evidence for plain error affecting substantial rights.
PRECEDENTIAL VALUE	Published Nevada Supreme Court opinion; precedential.
PARTIES	Thomas Abbott, a/k/a Thomas Edward Abbott v. The State of Nevada

TOPICS

- criminal procedure
- evidence
- expert testimony
- appellate procedure
- standard of review

PRACTICE AREAS

criminal procedure

evidence

appellate procedure

QUESTIONS PRESENTED

1. Whether the district court abused its discretion by denying Abbott an independent psychological examination of the child victim.
2. Whether the court should overrule or modify *State v. District Court (Romano)* and reinstate the Koerschner standard governing independent psychological examinations of alleged child victims.
3. Whether a clinical forensic interviewer who analyzes an interview and assesses coaching or bias is an expert witness for purposes of the Koerschner standard.
4. Whether the district court erred by excluding evidence of the victim's prior false allegations.
5. Whether *Miller v. State*'s preponderance-of-the-evidence standard and allowance of extrinsic evidence should be revised.
6. Whether Abbott's double-jeopardy argument required relief.

HOLDINGS

1. *State v. District Court (Romano)* impermissibly restricted a criminal defendant's access to an independent psychological examination of an alleged child victim. The court overruled *Romano* and reinstated the Koerschner test.
2. Abbott demonstrated a compelling need for an independent psychological examination because there was no corroborating evidence beyond the victim's testimony and there was a reasonable basis to question whether the victim's mental or emotional state affected her veracity.
3. For purposes of Koerschner, a clinical forensic interviewer is an expert witness when the interviewer does more than recite interview facts and instead analyzes those facts or states whether the victim was coached or biased. *Chapman v. State* was modified to reject its blanket rule excluding such interviewers from expert status.
4. Prior false allegations of sexual abuse or sexual assault are not barred by Nevada's rape-shield statute when they are relevant to the complaining witness's credibility. After the required hearing, the defendant must prove by a preponderance of the evidence that the allegations were made, were false, and that the evidence is more probative than prejudicial.
5. When the defendant satisfies the *Miller* threshold, the defendant may introduce extrinsic evidence of the prior allegations if the victim denies making them or does not remember making them.

KEY QUOTATIONS

"Thus, we conclude that Romano impermissibly infringes on a defendant's fair trial rights, and we return to Koerschner as the appropriate test to determine whether a criminal defendant is entitled to an independent psychological examination of a victim." (122 Nev. at 727)

“To exclude such evidence would strip Miller of all purpose. Therefore, we reject the State’s request to revise Miller.” (122 Nev. at 736)

FACTUAL BACKGROUND

Abbott was accused of fondling his girlfriend's nine-year-old daughter twice while staying at the girlfriend's home. The victim had previously made allegations of sexual abuse against Abbott, her father, and schoolmates, some of which she recanted or described as fabricated for attention, and she had a history of sexualized behavior and exposure to sexual material. The State's investigating detective testified about child-interview techniques, safeguards against coaching, and his assessment that he found no evidence the victim had been coached or was biased. There was no physical evidence corroborating the alleged fondling.

PROCEDURAL HISTORY

Abbott was charged in district court with two counts of lewdness with a minor under fourteen. After a jury convicted him, the district court imposed two concurrent life sentences with parole eligibility after ten years. The district court denied Abbott's requests for an independent psychological examination of the victim and admission of prior false allegations. The Nevada Supreme Court reversed and remanded for a new trial.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse Abbott's convictions and remand for a new trial. On remand, the district court must apply the reinstated Koerschner standard to the request for an independent psychological examination and apply Miller's procedure to the prior-false-allegation evidence.

CASES CITED

- State v. District Court (Romano), 120 Nev. 613, 97 P.3d 594 (2004)
- Koerschner v. State, 116 Nev. 1111, 13 P.3d 451 (2000)
- Chapman v. State, 117 Nev. 1, 16 P.3d 432 (2001)
- Miller v. State, 105 Nev. 497, 779 P.2d 87 (1989)
- Efrain M., a Minor v. State, 107 Nev. 947, 823 P.2d 264 (1991)
- Marvelle v. State, 114 Nev. 921, 966 P.2d 151 (1998)
- Jezdik v. State, 121 Nev. 129, 110 P.3d 1058 (2005)
- Richmond v. State, 118 Nev. 924, 59 P.3d 1249 (2002)
- Allred v. State, 120 Nev. 410, 92 P.3d 1246 (2004)
- Wegner v. State, 116 Nev. 1149, 14 P.3d 25 (2000)
- Neder v. United States, 527 U.S. 1, 119 S. Ct. 1827, 144 L. Ed. 2d 35 (1999)
- Efrain M., a Minor v. State, 107 Nev. 947, 823 P.2d 264 (1991)

- Stamps v. State, 107 Nev. 372, 812 P.2d 351 (1991)
- Brown v. State, 107 Nev. 164, 807 P.2d 1379 (1991)
- Chambers v. Mississippi, 410 U.S. 284, 93 S. Ct. 1038, 35 L. Ed. 2d 297 (1973)
- In re Michael H., 360 S.C. 540, 602 S.E.2d 729 (2004)
- State v. LeBlanc, 558 So. 2d 507 (Fla. Dist. Ct. App. 1990)
- People v. Williams, 220 Ill. App. 3d 297, 581 N.E.2d 228 (1991)
- State v. Little, 260 Mont. 460, 861 P.2d 154 (1993)
- Keeney v. State, 109 Nev. 220, 850 P.2d 311 (1993)
- Smith v. State, 259 Ga. 135, 377 S.E.2d 158 (1989)
- State v. West, 95 Hawai'i 452, 24 P.3d 648 (2001)
- Clinebell v. Commonwealth, 235 Va. 319, 368 S.E.2d 263 (1988)
- State v. Quinn, 200 W. Va. 432, 490 S.E.2d 34 (1997)
- State v. Gordon, 146 N.H. 258, 770 A.2d 702 (2001)
- State v. Wyrick, 62 S.W.3d 751 (Tenn. Crim. App. 2001)
- Hughes v. Raines, 641 F.2d 790 (9th Cir. 1981)
- Little v. State, 413 N.E.2d 639 (Ind. Ct. App. 1980)
- Morgan v. State, 54 P.3d 332 (Alaska Ct. App. 2002)
- State v. Long, 140 S.W.3d 27 (Mo. 2004)
- State v. Guenther, 181 N.J. 129, 854 A.2d 308 (2004)
- People v. Sheperd, 37 Colo. App. 336, 551 P.2d 210 (1976)
- Commonwealth v. Bohannon, 376 Mass. 90, 378 N.E.2d 987 (1978)
- State v. Anderson, 211 Mont. 272, 686 P.2d 193 (1984)