IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES BLAIN WHITE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43223

FILED

APR 0 7 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY J. Richards
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of two counts of unauthorized, surreptitious intrusion of privacy by device, and two counts of possession of a visual presentation depicting the sexual portrayal of a person under the age of 16 years. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge. The district court sentenced appellant to a prison term of 12 to 48 months for each count. The district court suspended the sentence as to each count and placed appellant on probation for a period not to exceed 5 years.

Appellant first contends that the district court erred by admitting evidence of other bad acts. Specifically, appellant argues that the district court should not have admitted evidence of additional pornography found on his work computer.

NRS 48.045(2) provides that evidence of other wrongs cannot be admitted at trial solely for the purpose of proving that the defendant acted in a similar manner on a particular occasion. But the statute provides that such evidence may be admitted for other purposes, "such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." Before admitting such evidence, the trial court must conduct a hearing on the record and

determine (1) that the evidence is relevant to the crime charged; (2) that the other act is proven by clear and convincing evidence; and (3) that the probative value of the other act is not substantially outweighed by the danger of unfair prejudice.[1] On appeal, we will give great deference to the trial court's decision to admit or exclude evidence and will not reverse the trial court absent manifest error.[2]

Here, the trial court conducted a hearing outside the presence of the jury regarding the prior bad act evidence offered by the State. At the conclusion of the hearing, the trial court determined that the evidence was relevant as proof of appellant's intent, that the State had proven that the pornography belonged to appellant by clear and convincing evidence, and that the probative value of the evidence was not substantially outweighed by the danger of unfair prejudice. Based on our review of the record, we conclude that the district court did not commit manifest error in admitting the evidence that the computer used by appellant contained photographs available on the Internet of women in situations very similar to the photographs taken of the victims.

Appellant next contends that the district court erred by not allowing one of the victims to be cross-examined as to why the other victim was "grounded" by her parents. Appellant argued that he had set up the video camera in order to show that one of the victims, who was appellant's stepdaughter, was having friends visit her even though she was grounded.

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[1]Tinch v. State, 113 Nev. 1170, 1176, 946 P.2d 1061, 1064-65 (1997).

[2]See Bletcher v. State, 111 Nev. 1477, 1480, 907 P.2d 978, 980 (1995); Petrocelli v. State, 101 Nev. 46, 52, 692 P.2d 503, 508 (1985), modified on other grounds by Sonner v. State, 112 Nev. 1328, 930 P.2d 707 (1996).

Trial courts have considerable discretion in determining the relevance and admissibility of evidence.[3] Accordingly, we will not disturb the trial court's decision to admit or exclude evidence absent manifest error.[4]

In the instant case, the trial court allowed evidence that the victim was grounded, but did not allow cross-examination as to why she was grounded. The district court ruled that the reason for the punishment was not relevant. We conclude that the district court's decision to limit the witness's testimony was not manifest error, and that this issue is therefore without merit.

Finally, appellant argues that: "The statues [sic] are vague and overbroad and therefore unconstitutional under the United State's [sic] Constitution, 5th and 6th Amendments, violating Due Process, the Right to a Jury and to Counsel; [sic]."

Appellant has failed to provide relevant authority or cogent argument, and this court is therefore not required to address this issue on its merits.[5] Nonetheless, to the extent that appellant is attempting to argue on appeal, as he did below, that NRS 200.730 is unconstitutionally vague and overbroad, we disagree.

Due process does not require impossible standards of specificity in statutory language, especially when, if viewed in the context of the entire statutory provision, there are well settled and ordinary

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[3]See Sterling v. State, 108 Nev. 391, 395, 834 P.2d 400, 403 (1992).

[4]See Lucas v. State, 96 Nev. 428, 431-32, 610 P.2d 727, 730 (1980).

[5]Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987).

meanings for the words used.[6] The term "sexual portrayal" in NRS 200.730 is not unconstitutionally vague when examined in light of the specific definition provided under NRS 200.700(4): a "depiction of a person in a manner which appeals to the prurient interest in sex and which does not have serious literary, artistic, political or scientific value."

Moreover, the statute provides a specific standard by which police can judge whether an individual possesses a "sexual portrayal" and thus does not leave absolute discretion in the hands of the police or encourage arbitrary enforcement. In sum, we conclude that NRS 200.730 is not unconstitutionally vague.

As to appellant's argument that the statute is overbroad, this court has recognized that, "'the overbreadth doctrine permits the facial invalidation of laws that inhibit the exercise of First Amendment rights if the impermissible applications of the law are substantial when 'judged in relation to the statute's plainly legitimate sweep.'"[7]

In the present case, NRS 200.730 has a plainly legitimate purpose of protecting children from sexual exploitation. The scope and extent of the statutory protection do not impermissibly burden areas of protected speech or conduct and do not unconstitutionally reach a broad range of innocent conduct. The statute does not forbid possession of

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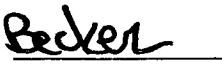
[6]Woofter v. O'Donnell, 91 Nev. 756, 762, 542 P.2d 1396, 1400 (1975) (citing United States v. Brown, 333 U.S. 18, 25-26 (1948); United States v. Sullivan, 332 U.S. 689, 693-94 (1947)).

[7]City of Las Vegas v. Dist. Ct., 118 Nev. 859, 862, 59 P.3d 477, 479 (2002) (quoting Chicago v. Morales, 527 U.S. 41, 52 (1999)) (quoting Broadrick v. Oklahoma, 413 U.S. 601, 612-15 (1973)).

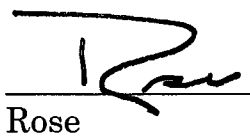
material that has serious literary, artistic, political or scientific value. We therefore conclude that NRS 200.730 is not unconstitutionally overbroad.[8]

Having considered appellant's contentions and concluded that they are without merit, we

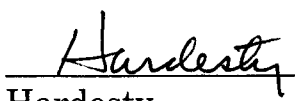
ORDER the judgment of conviction AFFIRMED.



_____, C.J.
Becker



_____, J.
Rose



_____, J.
Hardesty

cc: Hon. Steven P. Elliott, District Judge
Robert Bruce Lindsay
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

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[8]See New York v. Ferber, 458 U.S. 747, 756 (1982); Miller v. California, 413 U.S. 15, 24 (1973).