

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL LAMAR RHYMES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44463

FILED

SEP 23 2005

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

ORDER OF AFFIRMANCE AND LIMITED REMAND TO CORRECT
THE JUDGMENT OF CONVICTION

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of two counts of sexual assault. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge. The district court sentenced appellant Michael Lamar Rhymes to serve two consecutive prison terms of 10 to 25 years.

Rhymes' sole contention is that reversal of his conviction is warranted because the district court erred in admitting evidence of other bad acts. In particular, Rhymes contends that the district court should have excluded evidence that he committed a lewd act upon a girl under fourteen years old, approximately nine months after the alleged incidents of sexual assault, because it was "much more prejudicial than probative." We conclude that Rhymes' contention lacks merit.

Evidence of other wrongs cannot be admitted at trial solely for the purpose of proving that a defendant has a certain character trait and acted in conformity with that trait on the particular occasion in question.¹ Nevertheless, NRS 48.045(2) also states that evidence of other bad acts may be admitted to prove "motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." Prior to admitting

¹NRS 48.045(2).

such evidence, the district court must determine during an evidentiary hearing whether the evidence is relevant to the charged offense, is proven by clear and convincing evidence, and whether the probative value is substantially outweighed by the danger of unfair prejudice.² Further, “[t]he decision to admit or exclude evidence rests within the trial court's discretion, and this court will not overturn that decision absent manifest error.”³

In this case, the record indicates that the district court conducted a Petrocelli hearing⁴ and considered the factors required by Tinch.⁵ The district court granted the State's motion to admit the other act evidence, ruling that the probative value was not substantially outweighed by the danger of unfair prejudice. We conclude that the district court did not commit manifest error in so ruling. The evidence of the lewd act upon the child-victim consisted of testimony that Rhymes pulled down the child-victim's pants, massaged her, and informed her that he was attending school to become a masseur. The evidence was admissible in this case to show lack of mistake and intent, more specifically, that Rhymes intended to use his skills as a masseur to facilitate unwanted sexual contact upon potential victims.⁶ Additionally,

²See, e.g., Qualls v. State, 114 Nev. 900, 902, 961 P.2d 765, 766 (1998); see also Tinch v. State, 113 Nev. 1170, 1176, 946 P.2d 1061, 1064-65 (1997).

³Collman v. State, 116 Nev. 687, 702, 7 P.3d 426, 436 (2000).

⁴Petrocelli v. State, 101 Nev. 46, 692 P.2d 503 (1985), modified on other grounds by Sonner v. State, 112 Nev. 1328, 930 P.2d 707 (1996).

⁵113 Nev. at 1176, 946 P.2d at 1064-65.

⁶See Rhymes v. State, 121 Nev. ___, ___, 107 P.3d 1278, 1281 (2005) (holding that the evidence of the prior sexual assaults was admissible at a
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any danger of unfair prejudice was alleviated when the district court gave the jurors a limiting instruction informing them that the evidence could not be considered to show criminal predisposition but only for the limited purposes allowable under NRS 48.045(2).⁷ Accordingly, we conclude that the district court did not err in granting the State's motion to admit other bad act evidence.

Having considered Rhymes' contention and concluded that it lacks merit, we affirm the judgment of conviction. However, our review of the judgment of conviction reveals a clerical error. The judgment of conviction states that Rhymes was convicted pursuant to a guilty plea when, in fact, he was convicted pursuant to a jury verdict. Accordingly, we

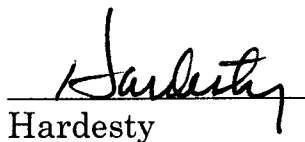
ORDER the judgment of the district court AFFIRMED and REMAND this matter to the district court for the limited purpose of correcting the clerical error in the judgment of conviction.

 J.

Maupin

 J.

Gibbons

 J.

Hardesty

... continued

subsequent trial for the offense of lewdness with a minor, because it "demonstrat[ed] Rhymes' intent to use his skills as a masseur to facilitate sexual contact with his potential victims").

⁷See Tavares v. State, 117 Nev. 725, 30 P.3d 1128 (2001) (discussing the importance of a limiting instruction).

cc: Hon. Donald M. Mosley, District Judge
Stanley A. Walton
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk