

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN K. O'KEEFE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44644

FILED

JAN 23 2006

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of misdemeanor battery and one count of burglary. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge. Appellant Brian O'Keefe was sentenced to a time served disposition for the battery, and a prison term of 24-120 months for the burglary. The district court suspended the sentence and placed O'Keefe on probation.

O'Keefe's sole ground for appeal is his assertion that the district court erred in its decision to admit other bad acts into evidence. Specifically, O'Keefe contends the district court abused its discretion in its decision to admit a photograph taken of the victim after a previous battery by O'Keefe. O'Keefe admitted under cross-examination that he was arrested twice for domestic violence battery against the same victim, and that one case was dismissed in exchange for his plea to the other. O'Keefe asserts the prior bad acts committed against the victim were not relevant, nor admissible. In the alternative, O'Keefe suggests even if relevant, the prejudicial value of the prior bad acts substantially outweigh the probative value.

NRS 48.045(1) 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 NRS 48.045(2) further 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 that: (1) the evidence is relevant to the crime charged; (2) the other act is proven by clear and convincing evidence; and (3) 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 prior to trial regarding the prior bad act evidence offered by the State. At the conclusion of the hearing, the trial court determined that the evidence of the prior uncharged battery was relevant as proof of appellant's intent, knowledge, and the absence of mistake, that the State had proven the act by clear and convincing evidence, and that the probative value of the acts 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


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


²See 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), holding modified on other grounds by Sonner v. State, 112 Nev. 1328, 930 P.2d 707 (1996).


commit manifest error in admitting the evidence of O'Keefe's prior battery of the victim.

Having considered appellant's contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.

 _____, J.
Douglas

 _____, J.
Becker

 _____, J.
Parraguirre

cc: Hon. Stewart L. Bell, District Judge
James L. Buchanan II
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk