

IN THE SUPREME COURT OF THE STATE OF NEVADA

MANUEL REJESUS AVILA-LAZARDO  
A/K/A MANUEL REJESUS AVILA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 45254

**FILED**

**JUL 12 2006**

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, upon a jury verdict, of four counts of sexual assault of a minor under the age of fourteen. Eighth Judicial District Court, Clark County; Jackie Glass, Judge. The district court sentenced appellant Manuel Rejesus Avila-Lazardo, aka Manuel Rejesus Avila, to two consecutive life sentences of imprisonment, with parole eligibility in twenty years, and two concurrent life sentences, with parole eligibility in twenty years. The district court imposed an additional special sentence of lifetime supervision because of Avila-Lazardo's conviction as a sex offender.

We conclude that the district court did not abuse its discretion by not permitting Avila-Lazardo to introduce extrinsic evidence of a prior allegation of sexual abuse the minor victim made against another individual. Furthermore, the criminal complaint and amended information are legally sufficient and do not require reversal of the conviction.

Avila-Lazardo was not entitled to a Miller hearing

Avila-Lazardo contends that the district court improperly precluded him from cross-examining witnesses, including the victim, regarding alleged prior false allegations of sexual abuse made by the minor victim. Avila-Lazardo asserts that the district court should have

held a hearing under the procedure set forth in Miller v. State as to the minor victim's prior allegation of sexual abuse.<sup>1</sup> We disagree.

In a sexual assault prosecution, NRS 50.090 generally prohibits the defense from introducing evidence of a victim's prior sexual conduct to impeach the victim's credibility. However, under the exception set forth in Miller, the defense may cross-examine a testifying sexual assault victim about prior false accusations of sexual abuse. Prior to cross-examination, the defendant must file a written notice of intent to cross-examine.<sup>2</sup> The district court must then conduct a hearing outside the presence of the jury, at which the defendant must establish, by a preponderance of the evidence, that (1) the accusation of prior sexual abuse was in fact made; (2) the accusation was in fact false; and (3) the evidence of the false accusation is more probative than prejudicial.<sup>3</sup> The district court must make these three threshold determinations before it may permit the defendant to cross-examine the victim on the falsity of the prior allegation. On cross-examination, if the victim denies or fails to recall that he or she made the prior allegation or its falsity, the defendant may then introduce extrinsic evidence of the false accusation to impeach the victim's credibility.<sup>4</sup>

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<sup>1</sup>105 Nev. 497, 501, 779 P.2d 87, 89 (1989).

<sup>2</sup>Id. at 502, 779 P.2d at 90. We note that Avila-Lazardo's trial counsel did not file a notice of intent requesting a Miller hearing in writing. However, the district court permitted a hearing outside the presence of the jury.

<sup>3</sup>Id.

<sup>4</sup>Id.

At a hearing outside the presence of the jury, Avila-Lazardo did not make an offer of proof to the district court to establish a factual basis for the falsity of the minor victim's alleged prior allegation of sexual abuse. Without a sufficient evidentiary basis presented at a Miller hearing, Avila-Lazardo was not entitled to cross-examine the minor victim or other witnesses as to the alleged falsity of the victim's prior allegation of sexual abuse. Therefore, the district court did not abuse its discretion by prohibiting the defense from introducing extrinsic evidence of the victim's alleged prior false accusation of abuse.<sup>5</sup>

The criminal complaint and information were not defective

We also disagree with Avila-Lazardo's contention that the criminal complaint and amended information were defective because they provided an inadequate factual basis for the four counts of sexual abuse.

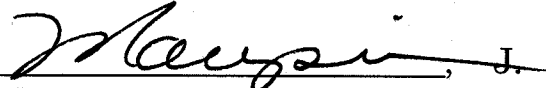
An indictment or information must include a "plain, concise and definite written statement of the essential facts constituting the offense charged."<sup>6</sup> Avila-Lazardo does not contend that any alleged deficiency in the criminal complaint and amended information caused prejudice to his substantial rights. Therefore, we conclude that the criminal complaint and amended information set forth a sufficient factual basis to have put Avila-Lazardo on notice of the charges against him and the time frame in which the conduct occurred.

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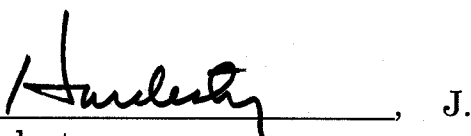
<sup>5</sup>The district court has "considerable discretion in determining the relevance and admissibility of evidence." Castillo v. State, 114 Nev. 271, 277, 956 P.2d 103, 107-08 (1998).

<sup>6</sup>NRS 173.075(1).

We have considered each of Avila-Lazardo's arguments on appeal and conclude that they are without merit.<sup>7</sup> Accordingly, we ORDER the judgment of the district court AFFIRMED.

  
Maupin

  
Gibbons

  
Hardesty

cc: Honorable Jackie Glass, District Judge  
Robert M. Draskovich, Chtd.  
Attorney General George Chanos/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

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<sup>7</sup>Avila-Lazardo waived his right to appeal the district court's admission of testimony that he traveled to Mexico and California immediately after his wife confronted him about the abuse because he did not object to this testimony at trial. "When an appellant fails to specifically object to questions asked or testimony elicited during trial, but complains about them, in retrospect upon appeal, we do not consider his contention a proper assignment of error." Greene v. State, 113 Nev. 157, 176, 931 P.2d 54, 65-66 (1997) (quoting Wilson v. State, 86 Nev. 320, 326, 468 P.2d 346, 350 (1970)). Even if Avila-Lazardo had objected to the admission of this testimony at trial, evidence of his flight from the jurisdiction did not constitute evidence of prior bad acts. The testimony was probative of his consciousness of guilt, not his character, and thus did not require a hearing under Petrocelli v. State, 101 Nev. 46, 692 P.2d 503 (1985), prior to admission at trial. Moreover, the flight instruction submitted by the court to the jury was proper.