

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE
JOSEPH T. BONAVENTURE,
DISTRICT JUDGE, AND THE CLARK
COUNTY HEALTH DISTRICT,

Respondents,

and

REGINALD FRANKLIN,
Real Party in Interest.

No. 46253

FILED

JUL 07 2006

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

ORDER GRANTING PETITION IN PART AND DENYING IN PART

Original petition for a writ of mandamus. Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Judge.

The parties are familiar with the facts, and we do not recount them except as pertinent to our discussion.

The State filed a petition for a writ of mandamus based upon four pre-trial evidentiary rulings. This court may issue a writ of mandamus to compel the performance of an act that the law requires as a duty or to control a manifest abuse of discretion.¹ We conclude that evidence of Reginald Franklin's prior plea agreement in Texas should have been admitted, and thus we grant the State's petition in part.

¹NRS 34.160; State v. Dist. Ct. (Riker), 121 Nev. __, __, 112 P.3d 1070, 1074 (2005).

Evidence of Texas plea agreement

The district court denied the State's motion to admit evidence that Franklin had entered into a plea agreement for sexual misconduct with a minor in an unrelated incident. In 2000, Franklin pled no contest to charges filed in Texas stemming from Franklin's sexual contact with a 13-year-old boy he encountered on the Internet and eventually met in person. The State argues that this evidence should have been admitted as relevant to prove Franklin's intent or motive in the present case.

NRS 48.045(2) provides:

Evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

Evidence of separate acts of pedophilia or other forms of sexual aberration is not character evidence, but may be admissible for the purpose of explaining why a crime of sexual deviance was committed.² This court has noted that any evidence demonstrating what might motivate a person to commit a criminal act can be used to prove motive under NRS 48.045(2).³ Such evidence may also be admissible to prove intent.⁴ To be admissible, however, such evidence must be relevant, clear and convincing, and its probative value not substantially outweighed by

²Ledbetter v. State, 122 Nev. __, __, 129 P.3d 671, 678 (2006).

³Id.

⁴See Richmond v. State, 118 Nev. 924, 937, 59 P.3d 1249, 1258 (2002) (Maupin, J., concurring in part and dissenting in part).

the danger of unfair prejudice.⁵ We conclude that evidence of the plea agreement satisfies these requirements.

First, this evidence is certainly relevant because it tends to show Franklin's intention for contacting the victim in this case. Second, the records of the Texas criminal investigation demonstrate this evidence is clear and convincing. Third, the evidence's probative value is not outweighed by the danger of unfair prejudice. Evidence of Franklin's prior attempts to seduce young boys demonstrates his motive and intent in contacting the victim in the present case. The danger of unfair prejudice is relatively low, given the overall strength of the State's evidence against Franklin—including the victim's eyewitness testimony and records of e-mail communication between the two.

Therefore, we conclude that evidence of Franklin's Texas conviction is admissible to prove motive and intent in the present case.

The State's remaining claims

We conclude the State's three remaining claims are meritless.

First, the district court correctly granted Franklin's motion to exclude evidence that he was HIV-positive. Although Franklin's HIV status at the time of the alleged abuse is certainly relevant to the State's case, this blood test was not taken until October 2005, some thirty months after the incident. The test is too remote in time to assist the jury and is therefore irrelevant.

Second, the district court did not abuse its discretion by granting Franklin's motion to exclude all reference to the victim's HIV

⁵See Tinch v. State, 113 Nev. 1170, 1176, 946 P.2d 1061, 1064-65 (1997).

status. The introduction of this evidence is clearly aimed at creating the innuendo that the victim contracted the virus from Franklin. However, no reliable and admissible evidence indicates Franklin was HIV-positive at the time of the alleged incident. As a result, the district court did not abuse its discretion in excluding this evidence because its probative value is clearly outweighed by the danger of unfair prejudice.

Finally, the district court acted properly in denying the State's motion to compel the Clark County Health Department to disclose records referring to Franklin's HIV status. Under NRS 441A.220, information disclosed to a public health organization by anyone with a communicable disease "is confidential medical information and must not be disclosed to any person under any circumstances, including pursuant to any subpoena," subject to ten narrow exceptions. The State failed to demonstrate why NRS 441A.220 should not apply to Franklin's medical records, nor did it demonstrate how any of the exceptions apply. As a result, the district court properly refused to compel disclosure of Franklin's confidential medical records.

Accordingly, we

ORDER the petition GRANTED IN PART, AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to allow the State to introduce evidence of

Franklin's Texas conviction to prove motive and intent.

Douglas, J.
Douglas

Becker, J.
Becker

Parraguirre, J.
Parraguirre

cc: Hon. Joseph T. Bonaventure, District Judge
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Stephen R. Minagil
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Clark County Clerk