

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDDIE JAMES THOMAS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49486

FILED

DEC 10 2007

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of statutory sexual seduction (counts I-V). Eighth Judicial District Court, Clark County; Valorie Vega, Judge. The district court adjudicated appellant Eddie James Thomas as a habitual criminal and sentenced him to serve three consecutive prison terms of 96-240 months (counts I-III) and two prison terms of 96-240 months (counts IV-V) to run concurrently with counts I-III.

Thomas contends that the district court committed manifest error by admitting prior bad act evidence at trial. Specifically, Thomas claims that his 1995 conviction for sexual assault was too remote in time, and that the more recent allegation, for conduct involving the instant victim in Texas, was not proven by clear and convincing evidence. Thomas further argues that the prior bad acts were admitted, in violation of NRS

48.045(2), to prove that he was “acting in conformity therewith,” and that the prejudicial nature of the evidence outweighed any potential probative value. We disagree with Thomas’ contention.

The record reveals that the district court conducted a Petrocelli hearing¹ and determined that the prior bad acts were relevant to motive, proven by clear and convincing evidence, and more probative than prejudicial.² We agree. We note that the district court did not provide the jury with a limiting instruction prior to the introduction of the evidence, 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), because defense counsel objected to the State’s proffered instruction and expressly requested, for tactical reasons, that the district court not provide such an instruction at that time.³ And

¹Petrocelli 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).

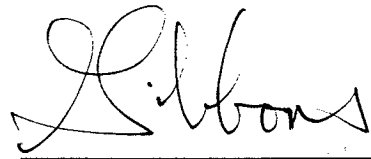
²See Tinch v. State, 113 Nev. 1170, 1176, 946 P.2d 1061, 1064-65 (1997); see also Ledbetter v. State, 122 Nev. 252, 261-62, 129 P.3d 671, 678-79 (2006); Rhymes v. State, 121 Nev. 17, 21, 107 P.3d 1278, 1281 (2005).

³See Tavares v. State, 117 Nev. 725, 30 P.3d 1128 (2001).

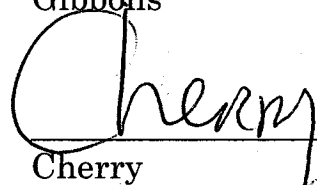
Thomas does not allege on appeal that the jury was not properly instructed prior to deliberations. Accordingly, we conclude that the district court did not err in admitting the prior bad act evidence.

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

ORDER the judgment of conviction AFFIRMED.⁴


_____ J.

Gibbons


_____ J.

Cherry


_____ J.

Saitta

⁴Because Thomas is represented by counsel in this matter, we decline to grant him permission to file documents in proper person in this court. See NRAP 46(b). Accordingly, this court shall take no action and shall not consider the proper person documents Thomas has submitted to this court in this matter.

cc: Hon. Valorie Vega, District Judge
The Pariente Law Firm, P.C.
Yampolsky, Ltd.
Eddie James Thomas
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk