IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL LEE JACKSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50151

FILED

MAR 13 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of third-offense domestic violence. Seventh Judicial District Court, White Pine County; Steve L. Dobrescu, Judge. The district court sentenced appellant Michael Lee Jackson to serve a prison term of 12-36 months.

First, Jackson contends that the district court erred by allowing the State to introduce rebuttal evidence of prior bad acts—other instances of domestic violence involving the same victim—without first finding that the acts were proven by clear and convincing evidence as required by Petrocelli v. State, 101 Nev. 46, 51-52, 692 P.2d 503, 507-08 (1985), modified on other grounds by Sonner v. State, 112 Nev. 1328, 930 P.2d 707 (1996). We disagree.

Similar to the situation in Blake v. State, 121 Nev. 779, 789-90, 121 P.3d 567, 574 (2005), Jackson's reliance on Petrocelli is misplaced because the challenged bad acts were not admitted in the State's case-in-chief pursuant to NRS 48.045(2). Jackson proposed to present an expert who would testify that he suffered from a sleep disorder and therefore did not intend to strike the victim. The district court ruled that if Jackson

called the expert to the stand, it would allow the State to confront the expert on cross-examination with specific instances of prior violent behavior by Jackson directed at the instant victim in order to challenge the basis for the expert's opinion. Jackson presented the expert. The district court gave the jury an instruction prior to the cross-examination regarding the limited purpose for which the impending testimony was to be considered. The State subsequently inquired of the expert if he was aware of three other specific instances of violent behavior by Jackson directed at the victim prior to reaching the conclusion that he was sleepwalking and not intending to strike her.

We conclude that the State's reference to the prior instances of domestic violence constituted proper cross-examination of the defense expert. As we stated in Blake, "[i]t is a fundamental principle in our jurisprudence to allow an opposing party to explore and challenge through cross-examination the basis of an expert witness's opinion." 121 Nev. at 790, 121 P.3d at 574; see also Singleton v. State, 90 Nev. 216, 219, 522 P.2d 1221, 1222-23 (1974). We also note that Jackson did not object to the State's line of questioning during its cross-examination of the defense expert. Therefore, we conclude that the district court did not err by allowing the State to challenge the basis of the expert's opinion by referencing prior bad acts committed by Jackson.

Second, Jackson contends that his conviction for third-offense domestic violence should be reversed because his prior convictions "were not proved or entered into evidence" during the sentencing hearing. In a related argument, Jackson contends that "it is pretty clear that when the issue comes before the United States Supreme Court, prior convictions which enhance a sentence beyond a statutory maximum will become

elements of the offense," and therefore, because the prior convictions were not proven or entered into evidence, the proscriptions against double jeopardy bar a future prosecution in the event of a reversal of his conviction.

In Hudson v. Warden, 117 Nev. 387, 394-95, 22 P.3d 1154, 1159 (2001) (footnotes omitted), this court stated that "[i]n order to satisfy the requirements of due process when seeking to enhance an offense, the State must prove the prior convictions at or anytime before sentencing. Additionally, . . . a defendant may stipulate to or waive proof of prior convictions." (Emphasis added.)

At the preliminary hearing, the State offered the two prior certified judgments of conviction for admission and defense counsel responded, "I've seen the convictions and we would have no objections." The justice court's evidence transfer to the district court included the two certified judgments of conviction. After the jury returned its guilty verdict in the district court, the following exchange took place:

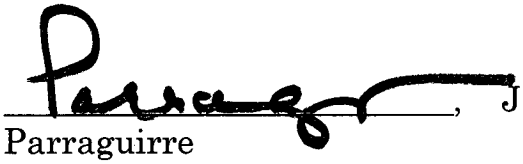
> THE COURT: Alright, so we'll set the sentencing . . . and then Mr. Gaumond [defense counsel], you've examined the priors? Are we going to need a hearing?
>
> MR. GAUMOND: He's represented by counsel, so it doesn't appear there's any infirmaties [sic].
>
> THE COURT: Alright, at this point, there's not an anticipated hearing on that?
>
> MR. GAUMOND: I don't.

Additionally, at the sentencing hearing, Jackson did not object when the district court referred to his two prior domestic violence convictions when explaining the rationale behind its sentencing decision. Therefore, in light of the foregoing, we conclude that Jackson stipulated to proof of the prior

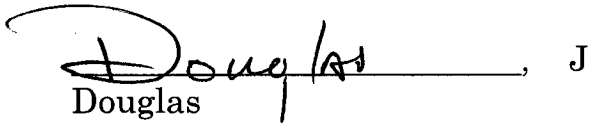
convictions, the State proved the existence of the prior convictions, and the convictions were properly used for enhancement purposes.

Having considered Jackson's contentions and concluded that they are without merit, we

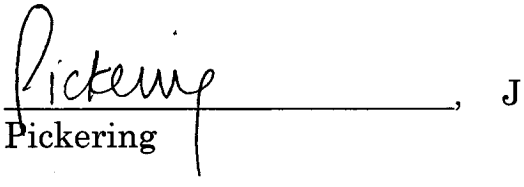
ORDER the judgment of conviction AFFIRMED.



_____, J.
Parraguirre



_____, J.
Douglas



_____, J.
Pickering

cc: Hon. Steve L. Dobrescu, District Judge
State Public Defender/Carson City
State Public Defender/Ely
Attorney General Catherine Cortez Masto/Carson City
White Pine County District Attorney
White Pine County Clerk