IN THE SUPREME COURT OF THE STATE OF NEVADA

AARON CASTRO,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 34686

FILED

JAN 26 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of sexual assault of a minor under sixteen years of age, one count of attempted sexual assault of a minor under sixteen years of age, four counts of lewdness with a child under fourteen years of age, and two counts of child abuse and neglect. The district court sentenced appellant to life in prison with the possibility of parole after twenty years, and lifetime supervision. The district court also sentenced appellant to consecutive and concurrent terms totaling an additional twenty to fifty years in prison, and one year confinement in county jail. Appellant was ordered to pay $1,510.00 in restitution, $925.00 for a psycho-sexual evaluation, and $250.00 for genetic marker/DNA testing. Appellant was given credit for 496 days served.

Appellant contends that the district court abused its discretion in admitting evidence of appellant's 1990 arrest for masturbating in public while watching little children. We disagree. The determination of whether to admit evidence is within the sound discretion of the district court, and that determination will not be disturbed unless manifestly wrong. See Petrocelli v. State, 101 Nev. 46, 52, 692 P.2d 503, 508 (1985), modified on other grounds by Sonner v. State, 112 Nev. 1328, 930 P.2d 707 (1996). Prior bad acts are

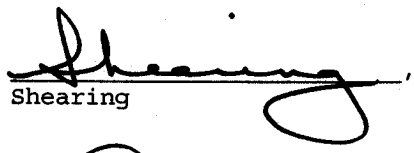
admissible when three conditions are met: "(1) the incident is relevant to the crime charged; (2) the act is proven by clear and convincing evidence; and (3) the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice." Tinch v. State, 113 Nev. 1170, 1176, 946 P.2d 1061, 1064-65 (citing Walker v. State, 112 Nev. 819, 824, 921 P.2d 923, 926 (1996)). After reviewing the record, we conclude that the district court properly considered these factors and was not manifestly wrong in its determination to allow the evidence in rebuttal. Given the greater latitude in admitting evidence presented to show aberrant sexual propensity outlined in Berner v. State, 104 Nev. 695, 697, 765 P.2d 1144, 1146 (1988) (modified on other grounds by Tinch), we conclude that the evidence of appellant's prior act was probative of appellant's propensity for sexual aberration, and that this probative value was not substantially outweighed by the danger of unfair prejudice. We also conclude that the prior act was proven by clear and convincing evidence.

Appellant also contends that the district court abused its discretion in denying his motion to continue the trial. This argument also lacks merit. "It is well settled that the granting of a motion to continue is within the sound discretion of the trial court." Doleman v. State, 107 Nev. 409, 416, 812 P.2d 1287, 1291 (1991) (citing McCabe v. State, 98 Nev. 604, 655 P.2d 536 (1982); Johnson v. State, 90 Nev. 352, 526 P.2d 696 (1974)). "Whether the denial of a continuance is arbitrary must be determined from the circumstances present in every case, particularly those presented to the trial judge at the time the request is denied." Johnson, 90 Nev. at 353, 526 P.2d at 697 (citing Ungar v. Sarafite, 376 U.S. 575, 589 (1964)). This court is not inclined "to allow last-minute proceedings to delay the

commencement of a trial." Id. (citing Howard v. Sheriff, 83 Nev. 150, 153, 425 P.2d 596, 598 (1967)). After reviewing the record, we are not persuaded that a continuance was warranted. Accordingly, we conclude that the district court did not abuse its discretion in denying the motion to continue.

Having reviewed all of appellant's contentions and concluded that they lack merit, we affirm appellant's conviction.

It is so ORDERED.



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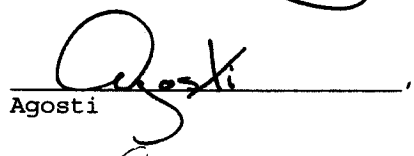

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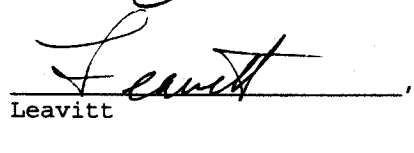

_____, J.
Leavitt

cc: Hon. Michael L. Douglas, District Judge
Attorney General
Clark County District Attorney
Kerr & Associates
Clark County Clerk