

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES HENRY GREEN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51963

FILED

MAY 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 attempted murder with use of a deadly weapon. Eighth Judicial District Court, Clark County; Sally L. Loehrer, Judge. The district court sentenced appellant James Henry Green to serve two consecutive prison terms of 60 to 240 months, to run consecutively to the sentence in another criminal case.

Green contends that the district court erred by permitting the State to present testimony concerning three prior bad acts: (1) a confrontation with a casino security officer during which Green attacked the officer with a box knife and cut or stabbed his face and neck three times; (2) a confrontation with two men during which Green attacked both men with a box knife and cut or stabbed each of them numerous times on the face, head, neck, and hands and, before leaving the scene, threatened to return to kill one of the men; and (3) a confrontation with a downtown Las Vegas security officer in which Green attacked the officer with a box knife and cut his neck.

Evidence of prior bad acts may be admissible to show "proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or

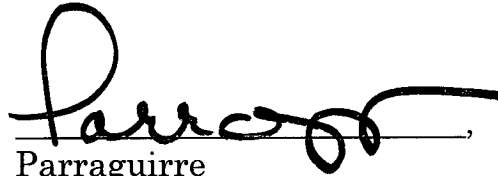
absence of mistake or accident.” NRS 48.045(2). “The trial court’s determination to admit or exclude evidence of prior bad acts is a decision within its discretionary authority and is to be given great deference.” Braunstein v. State, 118 Nev. 68, 72, 40 P.3d 413, 416 (2002). Such determinations “will not be reversed absent manifest error.” Id. A trial court deciding whether to admit evidence of prior bad acts must conduct a hearing outside the presence of the jury. 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). During the Petrocelli hearing, the district court must determine whether “(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 (1997).

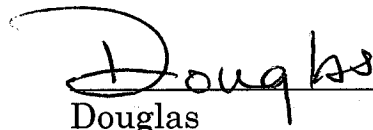
Here, the district court conducted a Petrocelli hearing and found that (1) the evidence regarding Green’s previous attacks on others using a box knife was relevant to the crime charged because they showed identity and lack of mistake and, along with the instant offense, occurred within a 12-month period in the same general location and under the same basic circumstances, i.e. when “someone is attempting to move Mr. Green from somewhere where he shouldn’t be;” (2) Green was convicted for the three prior attacks and the five witnesses who testified regarding the events were credible, so the acts were proven by clear and convincing evidence; and (3) the prejudice to Green from admitting the evidence did not substantially outweigh its probative value. We note that the district court instructed the jury regarding the limited use of the prior bad acts evidence before and after such evidence was admitted. See Tavares v.

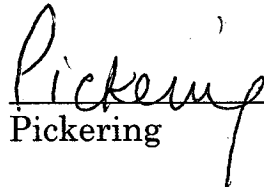
State, 117 Nev. 725, 731-33, 30 P.3d 1128, 1131-33 (2001), modified on other grounds by McLellan v. State, 124 Nev. ___, 182 P.3d 106 (2008). Based on the foregoing, we conclude that the district court's decision to admit this evidence did not constitute manifest error.

Having considered Green's contention and concluded that it lacks merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Parraguirre


_____, J.
Douglas


_____, J.
Pickering

cc: Eighth Judicial District Court Dept. 15, District Judge
John P. Parris
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
James Henry Green
Eighth District Court Clerk