

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICKIE LEE HILL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 34740

FILED

MAY 14 2002

BY CHARITTE M. BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal by Rickie Lee Hill from a judgment of conviction for indecent exposure. At trial, three minors, R.O., C.F. and C.R., testified against Hill. On appeal, Hill asserts that: (1) the district court erred by questioning one of the State's witnesses in front of the jury; (2) he was deprived of his right to a speedy trial due to the delay before his trial; (3) he was deprived of his right to a speedy trial due to the delay before his sentencing; and (4) the district court abused its discretion by admitting evidence of a previous incident where he allegedly exposed his penis to the same group of minors. We conclude that none of Hill's arguments has merit and that Hill's conviction should be affirmed.

First, Hill asserts that the district court erred by questioning one of the minors, R.O., in the presence of the jury because the jury was unduly influenced by what amounted to advocacy by the court. Although Hill did not object to the testimony at trial, Hill argues that R.O.'s testimony, which had been inconsistent prior to the court's questioning, became extremely detrimental to Hill through the series of questions asked by the court. We disagree.

The district court did not commit plain error by questioning R.O. because the questions it posed were unbiased and were designed to

elicit the truth as to what R.O. witnessed on the night of the crime.¹ While a district court must not become an advocate for either party and must scrupulously avoid the impression of bias, this prohibition does not preclude a district court from examining witnesses in order to help establish the truth or to clarify testimony.² Here, the district court never commented upon the substance of R.O.'s testimony nor did the district court give any indication of its own feelings in regard to R.O.'s testimony.³ Moreover, the substance of R.O.'s responses, although made with greater clarity, mirrored R.O.'s earlier responses during direct and cross-examination.⁴ Accordingly, we conclude that the district court did not commit plain error when it questioned R.O.

Second, Hill asserts that the district court deprived him of his right to a speedy trial under NRS 178.556 because he was not brought to trial within sixty days of his arraignment. NRS 178.556(1) provides, in pertinent part:

1. . . . If a defendant whose trial has not been postponed upon his application is not brought to trial within 60 days after the arraignment on the indictment or information, the

¹See Azbill v. State, 88 Nev. 240, 249, 495 P.2d 1064, 1070 (1972) (holding that it was permissible for a trial court to question an expert witness in order to elicit the truth and make that witness's conclusions more understandable).

²Id.

³See id. (holding that the trial court's conduct was appropriate because the court did not comment on the evidence and gave no indication of its own feelings).

⁴For instance, R.O. repeatedly testified about seeing the defendant through the window and that he had exposed himself.

district court may dismiss the indictment or information.

Hill argues that dismissal was mandatory in this case because the State lacked good cause for the delay.⁵ We disagree.

The district court did not err by rejecting Hill's motion to dismiss because the State established that there was good cause for the delay.⁶ While a case may be dismissed under NRS 178.556 when it has not been brought to trial within sixty days of the arraignment, dismissal is only mandatory when the State fails to establish good cause for the delay.⁷ Here, the district court's minutes clearly state that the trial date had to be rescheduled due to lack of courtroom space.⁸ Nevada case law has

⁵See Huebner v. State, 103 Nev. 29, 31, 731 P.2d 1330, 1332 (1987) (holding that dismissal for the denial of a speedy trial is mandatory when there is a lack of good cause shown for the delay).

⁶Since the underlying facts pertaining to the delay are undisputed, determining whether Hill's right to a speedy trial was violated presents a question of law subject to de novo review. See Daniels v. State, 114 Nev. 261, 270, 956 P.2d 111, 116 (1998).

⁷Huebner, 103 Nev. at 31, 731 P.2d at 1332.

⁸Although Hill correctly notes that unintentional delays are generally afforded less weight when determining whether a speedy trial violation exists, he misapplies the rule in this context. Unintentional delays are given less weight when determining when a speedy trial violation exists, not when determining whether good cause exists. Strunk v. United States, 412 U.S. 434, 436 (1973) (emphasis added) (stating that "[u]nintentional delays caused by overcrowded court dockets or understaffed prosecutors are among the factors to be weighed less heavily than intentional delay, calculated to hamper the defense, in determining whether the Sixth Amendment has been violated). This rule reflects an underlying rationale, namely, that intentional delays should be treated more severely than unintentional delays when deciding whether to punish the State by dismissing the case. Hill's argument actually supports our conclusion that the district court acted appropriately by not dismissing the

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repeatedly recognized that the condition of a court's calendar is good cause for delay.⁹ Accordingly, Hill's right to a speedy trial was not violated by the delay between the date of Hill's arraignment and the date of his trial.

Third, Hill asserts that the district court erred when it failed to dismiss his case in light of the seven-month delay between the date of his conviction and date of his sentencing. Hill argues that the delay prejudiced his right to due process because it deprived him of the possibility of only serving the minimum sentence. We disagree.

The Sixth and Fourteenth Amendments of the United States Constitution guarantee an individual's right to a speedy trial. Although not conclusively established, the United States Supreme Court has assumed for the sake of argument that the right to a speedy trial applies to post-conviction delays as well.¹⁰ This court has held that when determining whether an individual's right to a speedy trial has been violated the following four factors must be balanced: (1) the length of the delay; (2) the reason for the delay; (3) the defendant's assertion of his right; and (4) the prejudice to the defendant.¹¹ Moreover, unless the delay

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case because courts should be less willing to dismiss a case when a delay was unintentional.

⁹See, e.g., Shelton v. Lamb, 85 Nev. 618, 619-20, 460 P.2d 156, 157 (1969); Oberle v. Fogliani, 82 Nev. 428, 430, 420 P.2d 251, 252 (1966); Ex Parte Hansen, 79 Nev. 492, 496, 387 P.2d 659, 660 (1963); Ex Parte Groesbeck, 77 Nev. 412, 416, 365 P.2d 491, 493 (1961).

¹⁰Pollard v. United States, 352 U.S. 354, 361 (1957).

¹¹Byford v. State, 116 Nev. 215, 230, 994 P.2d 700, 710 (2000).

is long enough to be presumptively prejudicial, inquiry into the other factors is unnecessary.¹²

We conclude that Hill's constitutional right to a speedy trial was not violated by the delay between the date of his conviction and the date of his sentencing.¹³ Although the seven-month delay between Hill's conviction and his sentencing is sufficient to warrant consideration of the other factors, we conclude that the remaining factors do not support the conclusion that Hill's right to a speedy trial was violated. The reason for the delay was the State's inability to timely obtain a psychosexual evaluation of Hill. In other words, the delay was unintentional and, therefore, should be accorded less weight when determining whether Hill's right to a speedy trial was violated.¹⁴ Most significantly, although Hill did assert his right to a speedy trial in a timely fashion, he has failed to demonstrate that there was a prejudice attributable to the delay. Since Hill was serving time for another offense for a portion of the seven-month delay, he was not deprived of the possibility of serving the minimum sentence. Moreover, Hill's argument that his ability to defend himself in the future may be hampered by the delay is too speculative to support a finding of prejudice.¹⁵ Accordingly, Hill's constitutional right to a speedy trial was not violated by the post-conviction delay.

¹²Id. at 230, 994 P.2d at 711.

¹³Since the underlying facts of delay in sentencing are undisputed, determining whether Hill's right to a speedy trial was violated presents a question of law subject to de novo review. See Daniels, 114 Nev. at 270, 956 P.2d at 116.

¹⁴See Strunk, 412 U.S. at 436.

¹⁵See Scott v. State, 84 Nev. 530, 532, 444 P.2d 902, 903 (1968) (holding that the appellant's claim of prejudice was too speculative to
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Finally, Hill asserts that the district court abused its discretion by allowing R.O. to testify about the first encounter with Hill in order to establish his identity and by allowing C.F. to testify that Hill exposed his penis during the first encounter. Hill argues that this evidence should have been excluded based upon the general prohibition against admitting prior bad acts. We disagree.

As mandated by NRS 48.045(2), evidence of a defendant's other wrongs or prior bad acts is not admissible to prove the character of the defendant in order to show that he acted in conformity therewith. However, NRS 48.045(2) also provides that such evidence may be admitted for other purposes, such as "proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." Before evidence of prior bad acts may be admitted, the trial court must first determine that: (1) the prior act is relevant to the crime charged; (2) the act was proven by clear and convincing evidence; and (3) the danger of unfair prejudice does not substantially outweigh the probative value of the evidence.¹⁶ This determination must be conducted outside the presence of the jury.¹⁷ This court will not reverse a trial court's decision regarding the admissibility of prior bad acts unless the decision is manifestly wrong.¹⁸

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support a finding that the appellant's right to a speedy trial had been violated).

¹⁶Tinch v. State, 113 Nev. 1170, 1176, 946 P.2d 1061, 1064-65 (1997).

¹⁷Armstrong v. State, 110 Nev. 1322, 1323, 885 P.2d 600, 600 (1994).

¹⁸Crawford v. State, 107 Nev. 345, 348, 811 P.2d 67, 69 (1991).

First, we conclude that the evidence of Hill's prior exposure was probative of a common plan and intent. The crime of indecent exposure under NRS 201.220 requires that the State prove that the defendant's conduct was intentional.¹⁹ Here, the fact that Hill allegedly exposed his penis on two separate nights to the same group of minors, in the same place and within a short period of time creates a strong inference that his conduct was both intentional and part of a common plan.

Second, we conclude that clear and convincing evidence supported the district court's conclusion that Hill had previously exposed himself on July 18. While C.F. was the only witness who saw Hill's penis during the first encounter,²⁰ C.F.'s testimony was consistent and unequivocal. Moreover, the circumstances surrounding Hill's alleged exposure to C.F. were corroborated by R.O. and C.R. in their own testimony at the Petrocelli hearing.²¹

Finally, we conclude that the danger of unfair prejudice did not substantially outweigh the probative value of the evidence of Hill's prior indecent exposure. The State's case against Hill focused upon establishing that Hill was guilty of indecent exposure for his conduct on the night of July 28, 1998. The State called four witnesses to testify about the events of July 28, 1998. In contrast, only C.F. and, to a lesser extent, R.O. testified about Hill's conduct on July 18, 1998. The jury appears to

¹⁹Young v. State, 109 Nev. 205, 215, 849 P.2d 336, 343 (1993) (holding that although NRS 201.220 does not require proof of an intent to offend, the exposure itself must be intentional).


²⁰See Jones v. State, 85 Nev. 4, 5-6, 448 P.2d 702, 703 (1969) (holding that the testimony of one witness provided clear and convincing evidence for the admission of other offenses).

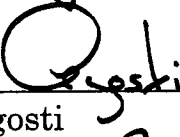
²¹Petrocelli v. State, 101 Nev. 46, 692 P.2d 503 (1985).


have mirrored this focus when it requested to review R.O.'s testimony about the events of July 28, 1998. Therefore, the danger of unfair prejudice did not substantially outweigh the probative value of Hill's prior exposure because neither the State nor the jury placed undue emphasis upon the earlier exposure.

Based on the above, we conclude that the district court did not abuse its discretion by admitting evidence of Hill's prior bad acts.²² Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

cc: Hon. Lee A. Gates, District Judge
Christopher R. Oram
Attorney General/Carson City
Clark County District Attorney
Clark County Clerk

²²To the extent that Hill challenges the propriety of the Petrocelli hearing, we conclude that Hill's arguments lack merit because the record does not support such a challenge.