

IN THE SUPREME COURT OF THE STATE OF NEVADA

JUAN MANUEL VALENZUELA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 34830

**FILED**

**MAR 13 2002**

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a conviction, pursuant to a jury verdict, of first-degree murder with the use of a deadly weapon. The district court sentenced appellant Juan Manuel Valenzuela to serve two consecutive prison terms of life without the possibility of parole. Valenzuela now appeals, asserting that: (1) there was insufficient evidence to sustain a conviction; (2) the district court never held a proper Petrocelli<sup>1</sup> hearing before admitting evidence of prior altercations between Valenzuela and the victim; and (3) the district court abused its discretion by not continuing the penalty hearing upon Valenzuela's motion for continuance. After reviewing the record on appeal, we conclude that none of Valenzuela's contentions have merit. Accordingly, we affirm the judgment of conviction.

First, Valenzuela contends that all of the State's witnesses were either felons, drug addicts, drug dealers or thieves, and therefore were neither reliable nor credible. Further, Valenzuela contends that there were no eyewitnesses to the murder. Valenzuela therefore contends

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<sup>1</sup>Petrocelli 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).

that the evidence presented, taken in whole, was not sufficient to sustain a conviction for first-degree murder.

The standard of review for sufficiency of the evidence is "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt."<sup>2</sup> It has long been established in Nevada that "it is exclusively within the province of the trier of fact to weigh evidence and pass on the credibility of witnesses and their testimony."<sup>3</sup> Further, although there were no eyewitnesses, one witness did testify that Valenzuela confessed responsibility for the murder. Additionally, several other witnesses established a motive for the murder. Although many of the witnesses were admitted drug users, this court has stated that "the uncorroborated testimony of one addict, if believed by the jury, will sustain a conviction."<sup>4</sup> Moreover, this court has consistently upheld convictions based on circumstantial evidence.<sup>5</sup> Accordingly, we conclude there was sufficient evidence to sustain the conviction.

Second, Valenzuela contends that the district court never held a proper Petrocelli hearing before admitting evidence of prior altercations between Valenzuela and the victim. The State sought to introduce

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<sup>2</sup>Lay v. State, 110 Nev. 1189, 1192, 886 P.2d 448, 450 (1994) (quoting Guy v. State, 108 Nev. 770, 776, 839 P.2d 578, 582 (1992)).

<sup>3</sup>Id. (citing Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981)).

<sup>4</sup>Lujan v. State, 85 Nev. 16, 18, 449 P.2d 244, 245 (1969).

<sup>5</sup>See Crawford v. State, 92 Nev. 456, 457, 552 P.2d 1378, 1379 (1976).

evidence of three fights between Valenzuela and the victim that occurred in the weeks leading up to the murder. NRS 48.045 prohibits "[e]vidence of other crimes, wrongs or acts . . . to prove the character of a person in order to show that he acted in conformity therewith."<sup>6</sup> However, evidence of other acts may be admissible as "proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident."<sup>7</sup> The State claims that the prior incidents introduced at trial evidenced Valenzuela's motive for killing the victim, and therefore were admissible under NRS 48.045(2).

For prior acts evidence to be admissible the district court "must determine, outside the presence of the jury, that: (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."<sup>8</sup> After voir dire on May 4, 1999, the district court excused the jury and held a Petrocelli hearing. After hearing both parties' arguments, the district court specifically stated that the prior acts were relevant to show motive and intent. The court further found that the acts were proven by clear and convincing evidence because Valenzuela admitted to the police that he participated in two of the fights and witnesses observed the third fight. Finally, the court balanced the probative nature of the evidence against its prejudicial effect. The district court's determination in admitting or excluding evidence is to

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<sup>6</sup>NRS 48.045(2).

<sup>7</sup>Id.

<sup>8</sup>Tinch v. State, 113 Nev. 1170, 1176, 946 P.2d 1061, 1064-65 (1997).

be given great deference, and is not to be reversed absent manifest error.<sup>9</sup> Accordingly, the district court did not err in admitting the prior acts evidence.

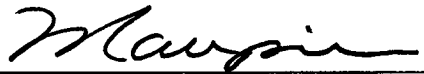
Finally, Valenzuela contends that the district court abused its discretion by refusing to grant his motion for a continuance of the penalty hearing scheduled for May 10, so that he could secure witnesses to testify on his behalf. On April 29, 1999, the State had informed Valenzuela's counsel that it wished to proceed with the penalty hearing. Valenzuela contends that until April 29, 1999, his counsel was under the impression that the penalty hearing would be waived and that the court would impose the penalty. When this did not happen, Valenzuela claims that he did not have enough time to secure witnesses who lived out of the state or country to testify on his behalf. Valenzuela contends that he moved for a continuance, but that the motion was denied and that the penalty hearing then proceeded on May 10, 1999, without Valenzuela's witnesses. The record belies Valenzuela's contentions.

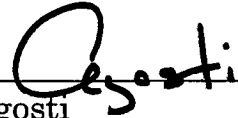
The record reflects that on May 7, 1999, Valenzuela filed a motion for continuance with the district court. At the penalty hearing on May 10, 1999, Valenzuela's counsel again requested a two-week continuance to secure witnesses, which the court granted. The penalty hearing was continued until May 27, 1999, at which time the hearing was held. We conclude that Valenzuela had ample opportunity from April 29, 1999, until May 27, 1999, to procure witnesses on his behalf. Accordingly, the district court did not abuse its discretion during the penalty hearing phase of trial.

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<sup>9</sup>Qualls v. State, 114 Nev. 900, 902, 961 P.2d 765, 766 (1998).

After reviewing the record on appeal, we conclude that none of Valenzuela's contentions have merit. Accordingly, we ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Maupin

  
\_\_\_\_\_, J.  
Agosti

  
\_\_\_\_\_, J.  
Leavitt

cc: Hon. Joseph T. Bonaventure, District Judge  
Michael V. Cristalli  
Attorney General/Carson City  
Clark County District Attorney  
Clark County Clerk