

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHESTER A. STILES,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 54038

**FILED**

**SEP 19 2011**

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of 11 counts of sexual assault of a minor under 14 years of age, 10 counts of lewdness with a child under 14 years of age, and one count of attempted sexual assault of a minor under 14 years of age. Eighth Judicial District Court, Clark County; Jennifer Togliatti, Judge.

Appellant Chester Stiles was convicted of multiple sexual offenses involving two young females. The first set of charges pertained to acts that occurred between April and August 2003 and were recorded on a VHS videotape that was found in a vacant field in May 2007. The victim, M.M., was two years of age. The second set of charges pertained to acts committed in December 2003. The victim, S.B., was six years of age. Stiles gained access to both M.M. and S.B. because his girlfriend was a houseguest of the girls' parents.<sup>1</sup>

On appeal, Stiles argues that the district court abused its discretion in denying his motion to sever counts relating to the two child

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<sup>1</sup>The parties are familiar with the facts, and we do not recount them further except as necessary to our disposition.

victims—he maintains that he was subject to one trial based on two completely distinct and unrelated criminal cases. Specifically, Stiles argues that evidence of the M.M. allegations should not have been admitted into evidence to show his motive with respect to the S.B. allegations and that evidence of the S.B. allegations should not have been admitted into evidence to show his motive in with respect to the M.M. allegations. Stiles also argues that the district court abused its discretion in denying his February 3, 2009, motion to continue, and that the district court abused its discretion in excluding evidence of S.B.’s alleged prior sexual knowledge. Further, Stiles argues that the district court erred in denying his motion to dismiss multiplicitous counts. We conclude that these arguments lack merit.<sup>2</sup> Therefore, we affirm the judgment of conviction.

Motion to sever

Stiles argues that joinder was improper under NRS 173.155(2). We disagree.

“The decision to join or sever charges is within the discretion of the district court, and an appellant carries the heavy burden of showing that the court abused that discretion.” Weber v. State, 121 Nev. 554, 570, 119 P.3d 107, 119 (2005).

NRS 173.115(2) provides that multiple offenses may be charged in the same indictment or information if the offenses charged are

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<sup>2</sup>Additionally, Stiles argues that the district court abused its discretion in admitting hearsay statements by S.B.’s parents and family friends, and that the district court erred in denying his motion to suppress. We have reviewed these arguments and conclude that they lack merit.

“[b]ased on two or more acts or transactions connected together or constituting parts of a common scheme or plan.” Offenses are “connected together” if the evidence of either offense is cross-admissible to prove the other offense. Weber, 121 Nev. at 573, 119 P.3d at 120. We conclude that the M.M. and S.B. sexual allegations are connected together because evidence of each “would have been relevant and admissible at separate trials of the other crimes.” Id.

“NRS 48.045(2) prohibits the introduction of evidence of other crimes, wrongs, or acts as proof of a person’s character, but allows such evidence to prove motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or accident.” Rhymes v. State, 121 Nev. 17, 21, 107 P.3d 1278, 1280 (2005). Separate acts of pedophilia or other forms of sexual aberration are admissible to show motive under NRS 48.045(2). Ledbetter v. State, 122 Nev. 252, 262, 129 P.3d 671, 678 (2006).<sup>3</sup> “The mental aberration that leads a person to commit a sexual assault upon a minor child, while not providing a legal excuse to criminal liability, does explain why the event was perpetrated.” Id. (quoting Richmond v. State, 118 Nev. 924, 939 n.14, 59 P.3d 1249, 1259 n.14 (2002)). Nonetheless, in order to admit evidence of Stiles’ motivation to commit sexual assault, “the evidence must be relevant, be proven by clear and convincing evidence, and have probative value that is not substantially outweighed by the risk of unfair prejudice.” Weber, 121 Nev.

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<sup>3</sup>Because we have determined that evidence of the child sexual assaults is cross-admissible under the motive exception of NRS 48.045(2), we decline to address whether Stiles’ conduct is within the parameters of any other exception under NRS 48.045(2).

at 573, 119 P.3d at 120; see Tinch v. State, 113 Nev. 1170, 1176, 946 P.2d 1061, 1064-65 (1997).

We conclude that evidence of the M.M. and S.B. allegations would have been relevant in separate trials to demonstrate Stiles' motive in sexually assaulting young females. There is a strong similarity between the sexual acts committed upon the young female victims. The charges with respect to both victims involved situations where Stiles used his relationship with his girlfriend to gain sexual access to females under the age of seven. In addition, the sexual acts performed upon the young females were similar in nature and close in time, further demonstrating Stiles' motive to commit sexual offenses. See Rhymes, 121 Nev. at 22, 107 P.3d at 1281. We also conclude that the State offered clear and convincing evidence that Stiles committed a multitude of sexual acts on M.M., as the acts were recorded on VHS videotape. Moreover, the State offered clear and convincing evidence that Stiles sexually assaulted S.B., as S.B. testified that Stiles kissed and touched her inappropriately, as well as corroborating testimony by S.B.'s parents and family friends.

"The only question remaining is whether the evidence's probative value was substantially outweighed by the danger of unfair prejudice to [Stiles]." Ledbetter, 122 Nev. at 262, 129 P.3d at 679. To establish that joinder was unfairly prejudicial requires more than a mere showing that severance might have made acquittal more likely; rather, the defendant carries the heavy burden of showing an abuse of discretion by the district court. Weber, 121 Nev. at 574-75, 119 P.3d at 121. We conclude that the probative value of explaining to the jury what motivated Stiles to commit sexual acts on two young females was very high. In addition, we conclude Stiles failed to demonstrate that he was unfairly

prejudiced by the joinder of charges as the jury was properly instructed to consider each charge separately. Id. at 575, 119 P.3d at 121-22. Further, given the overall strength of the State's case against Stiles, including the VHS videotape and the overwhelming testimony, we conclude that the danger that the admission of this evidence was unfairly prejudicial was minimal. Ledbetter, 122 Nev. at 263, 129 P.3d at 679. Because evidence related to the charges involving M.M. would have been relevant and admissible at a separate trial of the charges involving S.B., and vice versa, and the charged offenses were connected together, we conclude that the district court did not abuse its discretion in denying Stiles' motion to sever the counts.

Motion to continue

Stiles contends that the district court abused its discretion in denying his February 3, 2009, motion to continue. Stiles argues that he filed this motion in order to allow him to investigate evidence related to the S.B. counts, including a State of Washington child protective services report and medical evidence.

"This court reviews the district court's decision regarding a motion for continuance for an abuse of discretion." Rose v. State, 123 Nev. 194, 206, 163 P.3d 408, 416 (2007). "Each case turns on its own particular facts, and much weight is given to the reasons offered to the trial judge at the time the request for a continuance is made." Higgs v. State, 126 Nev. \_\_\_, \_\_\_, 222 P.3d 648, 653 (2010). The district court's decision to deny the continuance is not an abuse of discretion when a defendant fails to demonstrate that he was prejudiced by the denial of the continuance. See Rose, 123 Nev. at 206, 163 P.3d at 416.

We conclude that the district court did not abuse its discretion when it denied Stiles' motion to continue the trial as Stiles failed to demonstrate he was prejudiced—instead, the record reveals that he had ample opportunity to prepare for trial. In particular, we note that Stiles did not investigate the child protective services report that he received in September 2008 in a timely manner.<sup>4</sup> In addition, Stiles had adequate time to consult with an expert regarding S.B.'s medical records. Moreover, the record demonstrates that the trial, originally scheduled to begin in April 2008, was delayed until February 2009, in part, because Stiles filed four motions to continue, three of which were filed after Stiles received the child protective services report. Further, Stiles' fourth attempt to delay the trial occurred two weeks before the trial. The granting of another continuance at such a late date would have prejudiced the district court and the administration of justice. Mulder v. State, 116 Nev. 1, 9, 992 P.2d 845, 850 (2000). Accordingly, we conclude that the district court did not abuse its discretion when it denied Stiles' motion to continue the trial because he failed to demonstrate that any prejudice resulted from the denial.

Prior sexual conduct as a source of sexual knowledge

Stiles further contends that the district court abused its discretion in excluding evidence of S.B.'s prior sexual conduct as a source of her sexual knowledge in violation of Summitt v. State, 101 Nev. 159, 697 P.2d 1374 (1985). Stiles sought to elicit testimony from S.B.'s mother

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<sup>4</sup>Stiles' investigator was not scheduled to travel to the State of Washington to investigate the child protective services report until after the trial commenced.

and M.C., a friend of S.B.'s family, regarding S.B.'s prior sexual experiences and her exposure to sexual acts and discussions about sex. During an evidentiary hearing, M.C. testified that S.B.'s parents had sex while their children were in bed, and that S.B.'s mother talked about incest with her children. The district court ruled that Stiles was not entitled to inquire about S.B.'s sexual knowledge based on M.C.'s testimony because her testimony "grows, [it] changes and is somewhat fluid." Further, the district court determined that there was no evidence that S.B. was old enough to appreciate, comprehend, or understand M.C.'s allegations such that it would form a basis of knowledge.

"A child-victim's prior sexual experiences may be admissible to counteract the jury's perception that a young child would not have the knowledge or experience necessary to describe a sexual assault unless it had actually happened." Chapman v. State, 117 Nev. 1, 5, 16 P.3d 432, 434 (2001); see Summitt, 101 Nev. at 163-64, 697 P.2d at 1377. However, the district court "should limit the admission of evidence of specific instances of the [victim's] sexual conduct to the extent that it is possible without unduly infringing upon the defendant's constitutional right to confrontation." Summitt, 101 Nev. at 164, 697 P.2d at 1377 (internal quotations omitted). Additionally, the district court "must undertake to balance the probative value of the evidence against its prejudicial effect, and that the inquiry should particularly focus upon 'potential prejudice to the truthfinding process itself,' i.e., 'whether the introduction of the victim's past sexual conduct may confuse the issues, mislead the jury, or cause the jury to decide the case on an improper or emotional basis.'" Id. at 163, 697 P.2d at 1377 (internal citation and footnote omitted) (quoting State v. Hudlow, 659 P.2d 514, 521 (Wash. 1983)); see also NRS 48.035(1).

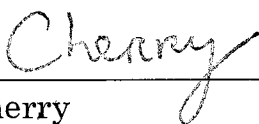
We conclude that the evidence Stiles attempted to present regarding S.B.'s supposed familiarity with sexual conduct was neither specific nor indicative of any ability to contrive the charges against Stiles. As such, no evidence was provided that would suggest that S.B. had ever been exposed to or had any knowledge of the specific types of acts Stiles subjected her to. Thus, we conclude that the district court did not abuse its discretion in excluding testimony relating to M.C.'s allegations.


Multiplicitous counts


Lastly, Stiles contends that the district court erred in denying his motion to dismiss multiplicitous counts. Stiles asserts that some of the counts should be vacated as every act of sexual assault against M.M. occurred during a single encounter. We disagree and conclude that the sexual acts performed upon M.M. were separate and distinct acts that each support their respective convictions. See Deeds v. State, 97 Nev. 216, 217, 626 P.2d 271, 272 (1981).

Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Pickering

cc: Hon. Jennifer Togliatti, District Judge  
Clark County Public Defender  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk