


IN THE SUPREME COURT OF THE STATE OF NEVADA

PEDRO VARGAS A/K/A PEDRO T.  
VARGAS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 55616

**FILED**

**MAR 17 2011**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

ORDER OF AFFIRMANCE AND LIMITED REMAND TO CORRECT  
THE JUDGMENT OF CONVICTION

This is an appeal from a judgment of conviction entered pursuant to a jury verdict of one count of open or gross lewdness. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

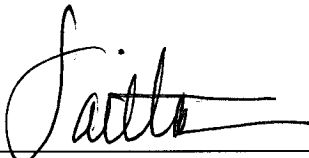
First, appellant Pedro Vargas contends that the district court abused its discretion by admitting evidence of a prior bad act because the bad act was not relevant, was not proven by clear and convincing evidence, and was more prejudicial than probative. We review the district court's decision to admit evidence of other bad acts for an abuse of discretion and will not reverse that decision absent manifest error. Ledbetter v. State, 122 Nev. 252, 259, 129 P.3d 671, 677 (2006). Prior to the trial, the district court conducted a hearing on the State's pretrial motion to admit evidence of a prior bad act and found that the evidence was admissible to prove identity and absence of mistake. See NRS 48.045(2); Petrocelli v. State, 101 Nev. 46, 692 P.2d 503 (1985). During the trial, the district court revisited its ruling and found that the evidence was only admissible to

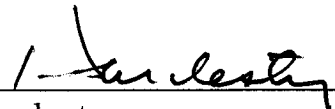
prove identity. We conclude that the factors for determining the admissibility of prior bad act evidence were met, see Tinch v. State, 113 Nev. 1170, 1176, 946 P.2d 1061, 1064-65 (1997), and the district court's decision to admit the prior bad act evidence was not manifest error, see generally Mayes v. State, 95 Nev. 140, 142, 591 P.2d 250, 251 (1979). To the extent that Vargas also claims that the district court should have declared a mistrial after the State presented the bad act evidence in its opening statement, we note that the jury was properly instructed on the limited use of this evidence, see Tavares v. State, 117 Nev. 725, 731, 30 P.3d 1128, 1132 (2001), and we conclude that the district court did not abuse its discretion by denying the motion for mistrial, see Ledbetter, 122 Nev. at 264, 129 P.3d at 680.

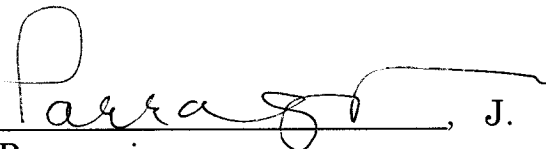
Second, Vargas contends that the district court abused its discretion by instructing the jury on flight because there was insufficient evidence to support this instruction. We review a district court's decision to give a jury instruction for abuse of discretion or judicial error. Grey v. State, 124 Nev. 110, 122, 178 P.3d 154, 163 (2008). Here, the evidence presented supported a conclusion that Vargas fled due to a consciousness of guilt and a desire to avoid apprehension and prosecution, see Rosky v. State, 121 Nev. 184, 199, 111 P.3d 690, 700 (2005), therefore, the district court did not abuse its discretion or err by giving the flight instruction.

Having considered Vargas' contentions, we conclude that he is not entitled to relief. However, our review of the record reveals a clerical error in the judgment of conviction; it states that Vargas was convicted pursuant to a guilty plea when, in fact, he was convicted pursuant to a jury verdict. Accordingly, we

ORDER the judgment of conviction AFFIRMED and REMAND this matter to the district court for the limited purpose of correcting the judgment of conviction.

  
\_\_\_\_\_, J.  
Saitta

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

cc: Hon. Donald M. Mosley, District Judge  
Clark County Public Defender  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk