

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDWARD MILES,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 35126

FILED

DEC 18 2000

LETITIA M. BLOOM  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court judgment of conviction, pursuant to a jury verdict, of three counts of sexual assault. Appellant Edward Miles makes four assignments of error: (1) that the district court abused its discretion in denying Miles' two motions to continue trial; (2) that the district court abused its discretion in denying Miles' motion to suppress his videotaped confession; (3) that the district court erred by not holding a hearing prior to allowing cross-examination of Miles regarding prior bad acts pursuant to *Petrocelli v. State*, 101 Nev. 46, 692 P.2d 503 (1985); and (4) that the State committed prosecutorial misconduct during its rebuttal closing argument.

Miles first argues that his videotaped confession was obtained in violation of Nevada's wiretap law and therefore should have been suppressed. We disagree.

The admission of evidence falls within the trial court's sound discretion and will not be disturbed unless it is "manifestly wrong." *Petrocelli*, 101 Nev. at 52, 692 P.2d at 508, quoting *Brown v. State*, 81 Nev. 397, 400, 404 P.2d 428, 430 (1965).

The relevant portion of NRS 179.505 states:

1. Any aggrieved person in any trial, hearing or proceeding in or before any court . . . may move to suppress the contents of any intercepted wire or oral

communication, or evidence derived therefrom, on the grounds that:

- (a) The communication was unlawfully intercepted.

NRS 179.440 defines an "oral communication" as "any verbal message uttered by a person exhibiting an expectation that such communication is not subject to interception, under circumstances justifying such expectation."

We conclude that police officers interviewing Miles in the Sahara Hotel's security office does not amount to circumstances justifying an expectation of privacy under NRS 179.505. Therefore, we conclude that Miles' argument is without merit and that the district court did not err in admitting the videotaped interview and confession into evidence.

Miles also argues that the district court abused its discretion in denying his motion to continue trial to prepare for and defend against the videotaped confession. We disagree.

"The decision to grant or deny trial continuances is within the sound discretion of the district court and will not be disturbed absent a clear abuse of discretion." *Wesley v. State*, 112 Nev. 503, 511, 916 P.2d 793, 799 (1996).

The record clearly reflects that Miles and his defense counsel were cognizant of the existence of the videotape and had a plethora of opportunities to observe it before trial. On July 16, 1998, at calendar call, the State told the district court, with Miles' counsel present, that "we have a video tape of the defendant which I know the defense has not seen . . . [;] the defense was told to provide us with a copy of a video tape and we would provide them a copy." The police report inventory sheet dated March 17, 1998, provided to Miles during discovery contained a clear description of a

"VHS tape" of a "suspect interviewed at the Sahara Hotel security office, interview videotaped." The record also reveals several electronic mailings sent to Miles' counsel, from the State, regarding the videotape's existence. Accordingly, we conclude that the district court properly denied Miles' motion to continue trial.

Next, Miles contends that the trial court committed reversible error by not conducting a Petrocelli hearing, prior to allowing the State to cross-examine him, regarding prior bad acts. We disagree.

In pertinent part, NRS 48.045, states:

1. Evidence of a person's character or a trait of his character is not admissible for the purpose of proving that he acted in conformity therewith on a particular occasion, except:

(a) Evidence of his character or a trait of his character offered by an accused, and similar evidence offered by the prosecution to rebut such evidence[.]

During direct examination, Miles testified that he (1) has "a great marriage"; (2) has "sort of a high standard for myself and my family"; (3) "respect[s] the people that [he] works with"; and (4) "[was not] just somebody that went out and had sex with somebody."

We conclude that the district court did not abuse its discretion in allowing the questioning of Miles regarding the contents of, and circumstances surrounding the filing of, the sexual harassment claims. Miles testified to his morally sound character and the manner in which he conducted himself and treated his colleagues at the Sahara Hotel. He effectively "opened the door" and placed his character in issue. Therefore, we conclude that cross-examination based upon the records contained within Miles' employee file was permissible, under NRS 48.045(1)(a), for the purpose of rebutting his good character testimony.

Miles also argues that the district court erred in denying his motion to continue trial to prepare for his cross-examination regarding his prior bad acts. Miles failed to cite any relevant authority to support his assertion. Contentions unsupported by legal authority need not be considered on appeal. See *Cunningham v. State*, 94 Nev. 128, 130, 575 P.2d 936, 937 (1978). Accordingly, we conclude that that this court need not address this issue.


Lastly, Miles asserts that the State committed prosecutorial misconduct during closing arguments. We disagree.

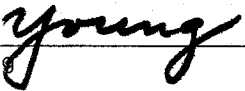
"It is well established that improper remarks made by the prosecutor in closing argument will not be considered on appeal if not objected to at the time of trial." *Pray v. State*, 114 Nev. 455, 459, 959 P.2d 530, 532 (1998), quoting *Dearman v. State*, 93 Nev. 364, 368, 566 P.2d 407, 409 (1977). Further, "this court will not reverse a verdict on the basis of prosecutorial misconduct when the defendant failed to object, there was overwhelming evidence of guilt, and the offensive remarks did not contribute to the verdict." *Jones v. State*, 107 Nev. 632, 635, 817 P.2d 1179, 1181 (1991).


Miles did not object to the alleged instance of misconduct at trial. Additionally, the record contains overwhelming evidence of Miles' guilt. In particular, the court notes the testimony of a registered nurse certified in sexual assault and the victim's numerous vaginal lacerations, gouges and divots. Further, Miles presents no evidence that the remark in question in any way contributed to the verdict.

Having considered Miles' contentions and concluded that they are void of merit, we affirm the order of the district court.

It is so ORDERED.

  
\_\_\_\_\_, C.J.  
Rose

  
\_\_\_\_\_, J.  
Young

  
\_\_\_\_\_, J.  
Becker

cc: Hon. Michael L. Douglas, District Judge  
Attorney General  
Clark County Public Defender  
Clark County District Attorney  
Clark County Clerk