

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN JACOB BUSCH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 57034

FILED

MAY 10 2011

TRACIEK. LINDEMAN
CLERK OF SUPREME COURT
BY: J. Moore
DEPUTY CLERK

ORDER OF AFFIRMANCE

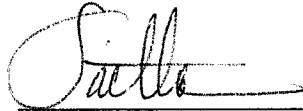
This is an appeal from a judgment of conviction, pursuant to a jury verdict, of battery with a deadly weapon. Seventh Judicial District Court, Lincoln County; Dan L. Papez, Judge.

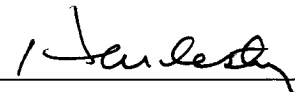
Appellant John Jacob Busch contends that the district court erred by failing to hold a Petrocelli hearing, see Petrocelli v. State, 101 Nev. 46, 51-52, 692 P.2d 503, 507-08 (1985), modified on other grounds by Sonner v. State, 112 Nev. 1328, 133-34, 930 P.2d 707, 711-12 (1996), and give a limiting instruction before admitting evidence of a prior bad act, see Tavares v. State, 117 Nev. 725, 731-33, 30 P.3d 1128, 1131-33 (2001). It appears from the record that the district court admitted the evidence as part of the res gestae pursuant to NRS 48.035(3). The district court is not required to conduct a Petrocelli hearing prior to admitting evidence pursuant to NRS 48.035(3). See Bellon v. State, 121 Nev. 436, 444, 117 P.3d 176, 180 (2005). Further, when evidence is admitted pursuant to NRS 48.035(3), a limiting instruction must be given only if requested, and Busch did not request a limiting instruction. See NRS 48.035(3). Accordingly, Busch has failed to demonstrate any error.

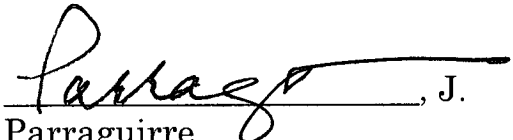
To the extent Busch contends that the district court erred by admitting the evidence because it was not proven by clear and convincing

evidence, this contention lacks merit as there is no requirement that evidence introduced pursuant to NRS 48.035(3) be proven by clear and convincing evidence. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Saitta


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. Dan L. Papez, District Judge
State Public Defender/Ely
State Public Defender/Carson City
Attorney General/Carson City
Lincoln County District Attorney
Lincoln County Clerk