

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES L. MOYER,

No. 36154

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

**FILED**

**JUL 12 2001**

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. E. [Signature]*  
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of two counts of lewdness with a child under the age of 14 years. The district court sentenced appellant to two consecutive prison terms of 38 to 96 months. The district court further ordered that appellant be subject to lifetime supervision, and pay restitution in the amount of \$702.89.

Appellant's sole contention is that the district court abused its discretion by admitting prior bad act evidence regarding appellant's 1979 conviction for incest and uncharged acts occurring prior to 1979. In particular, appellant contends that the prior acts were too remote in time to be admissible.

NRS 48.045(1) provides that evidence of other wrongs cannot be admitted at trial solely for the purpose of proving that the defendant acted in a similar manner on a particular occasion. But NRS 48.045(2) provides that such evidence may be admitted for other purposes, "such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." Before admitting such evidence, the trial court must conduct a hearing on the record and determine (1) that the evidence is relevant to the crime charged; (2) that the other act is proven by clear and

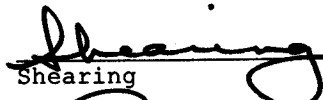
01-11804


convincing evidence; and (3) that the probative value of the other act is not substantially outweighed by the danger of unfair prejudice.<sup>1</sup> On appeal, we will give great deference to the trial court's decision to admit or exclude evidence and will not reverse the trial court absent manifest error.<sup>2</sup>


Here, the trial court conducted a hearing prior to trial regarding the prior bad act evidence offered by the State. At the conclusion of the hearing, the trial court determined that the evidence was relevant as proof of appellant's intent and motive, that the State had proven the other acts by clear and convincing evidence, and that the probative value of the other acts was not substantially outweighed by the danger of unfair prejudice. Based on our review of the record, we conclude that the district court did not commit manifest error in admitting the evidence of appellant's prior sexual misconduct with his daughter.

Having considered appellant's contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Shearing

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

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

<sup>1</sup>Tinch v. State, 113 Nev. 1170, 1176, 946 P.2d 1061, 1064-65 (1997).

<sup>2</sup>See Bletcher v. State, 111 Nev. 1477, 1480, 907 P.2d 978, 980 (1995); Petrocelli v. State, 101 Nev. 46, 52, 692 P.2d 503, 508 (1985).

cc: Hon. Brent T. Adams, District Judge  
Attorney General  
Washoe County District Attorney  
Ohlson & Springgate  
Washoe County Clerk