

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SHAUN MICHAEL HERZOG,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 67889

**FILED**

AUG 26 2015

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is an appeal from a judgment of conviction entered pursuant to a guilty plea of aggravated stalking. Second Judicial District Court, Washoe County; David A. Hardy, Judge.

Appellant Shaun Herzog claims the district court erred by denying his request to continue sentencing for a week so he could present a substance-abuse evaluation as mitigating evidence.

We review a district court's decision to grant or deny a motion for continuance for an abuse of discretion. *Higgs v. State*, 126 Nev. 1, 9, 222 P.3d 648, 653 (2010). "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." *Id.* "However, if a defendant fails to demonstrate that he was prejudiced by the denial of the continuance, then the district court's decision to deny the continuance is not an abuse of discretion." *Id.*

Herzog was sentenced 49 days after he entered his guilty plea. A substance-abuse evaluator visited Herzog in jail and conducted her evaluation the day before Herzog's sentencing. Herzog moved to continue sentencing so he could present the evaluator's evaluation and recommendations as evidence in mitigation. Herzog argued the evaluation was necessary to give a fuller picture of him as a person. And Herzog asserted the evaluator's evaluations were unique because they included biographical, social history, and dysfunctional family information.

The district court observed "the best" the evaluator could say was Herzog was an addict, and it noted any ancillary information included in the evaluation would have been provided by Herzog himself. The court accepted the fact Herzog was an addict, determined Herzog's self-reported information was available through the presentence investigation report and allocution, and denied the motion for a continuance.

During sentencing, the district court asked Herzog whether his alcohol or drug use influenced his behavior in this case, it asked Herzog's wife how his use of methamphetamine may have affected his conduct in this case, and it took Herzog's methamphetamine use "into great consideration" when imposing a sentence that was different from the State's recommendation. Given this record, we conclude Herzog has not demonstrated prejudice and therefore the court's decision to deny the continuance was not an abuse of discretion.

Herzog also claims the district court erred by allowing the State to present his daughter's victim-impact statement because it


contained allegations of uncharged misconduct. Herzog argues he was not provided with reasonable notice of the allegations, his daughter was not available for cross-examination, and the court did not expressly disclaim reliance on the statement.

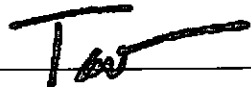
We review the erroneous admission of a victim impact statement for harmless error. *Dieudonne v. State*, 127 Nev. 1, 9 n.3, 245 P.3d 1202, 1207 n.3 (2011). If a victim-impact statement refers to any of the defendant's prior acts, due process requires reasonable notice of the prior acts the statement will reference, that the accuser be placed under oath, and an opportunity for cross-examination. *Buschauer v. State*, 106 Nev. 890, 894, 804 P.2d 1046, 1048 (1990). "If the defense is not given reasonable prior notice of an impact statement which refers to specific prior acts, then the defense will be entitled to a continuance to rebut the impact statement, unless the court can disclaim any reliance on the prior acts in imposing sentence." *Id.* at 894, 804 P.2d at 1049.

A victim advocate read the daughter's impact statement to the district court. Herzog objected to the statement's reference to a prior act of violence, and the court sustained the objection. The court observed, "[i]f there had been broken jaws, and fights, and medical treatment, I would need to hear it from the person who experienced it, subject to the defense observation and ability to confront, not through hearsay observation, or hearsay statements of the child." The court further ruled, "I'm going to allow her voice to be heard. But I am not going to allow her [to declare] renditions of violence without the ability to confront." The remainder of

the statement was read without objection. We conclude the court adequately disclaimed any reliance upon the prior act when imposing sentence and Herzog has failed to demonstrate error in this regard.

Having concluded Herzog is not entitled to relief, we  
ORDER the judgment of conviction AFFIRMED.

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

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Silver

cc: Hon. David A. Hardy, District Judge  
Washoe County Public Defender  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk