

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEITH DEWAYN PETTREY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 37012

FILED

JUL 10 2002

ORDER OF REVERSAL AND REMAND

JAMES E. BLOOM
CLERK OF SUPREME COURT
J. Smith
DEPUTY CLERK

Appellant Keith Dewayn Pettrey appeals from a judgment of conviction entered after a jury found him guilty of indecent or obscene exposure, a gross misdemeanor. Pettrey challenges his conviction on various grounds. We conclude that all of Pettrey's arguments lack merit except one—the district court erred regarding Pettrey's character evidence.

Pettrey contends that the district court erred in concluding that he failed to lay the proper foundation for the admission of character evidence. At trial, Pettrey offered the testimonies of Haley Pettrey and Kim Nielson as character evidence to substantiate his defense that he lacked the intent to commit obscene or indecent exposure. The district court concluded that there was insufficient foundation that the proposed character witnesses had knowledge of Pettrey's sexual or moral propensities or any knowledge of his reputation in the community at the time the offense was committed.

The accused is permitted to offer character evidence to establish his good character through reputation testimony or opinion

testimony.¹ An adequate foundation must be laid for the introduction of character evidence through a showing that the character witness is sufficiently familiar with the defendant's reputation in the community.² We conclude that the district court's ruling that there was insufficient foundation was manifestly wrong because Pettrey's character witnesses were sufficiently acquainted with Pettrey to express an opinion regarding his reputation in the community.³

We have noted that "the proof [of character evidence] must be confined to the particular traits of character that are relevant to the conduct with which the accused has been charged."⁴ Certainly though, a defendant is permitted to proffer character evidence regarding his general

¹See Daley v. State, 99 Nev. 564, 571, 665 P.2d 798, 803 (1983) (stating that character evidence is generally not admissible to prove that the person acted in conformity therewith, except when such evidence is offered by the accused); see also NRS 48.055 (providing that the method of proving character is by testimony as to reputation or in the form of an opinion).

²See United States v. Torbert, 496 F.2d 154, 158 (9th Cir. 1974) (upholding the district court's determination that no adequate foundation was laid for introducing character evidence because none of the witnesses were sufficiently acquainted with defendant's reputation in the community to express an opinion).

³See Petty v. State, 116 Nev. 321, 325, 997 P.2d 800, 802 (2000) (stating that the district court's determination whether to admit evidence will not be disturbed on appeal unless manifestly wrong).

⁴Daley, 99 Nev. at 571, 665 P.2d at 803 (upholding the district court's decision to exclude the proffered character evidence because evidence of appellant's character trait of truthfulness was not relevant to a crime of sexual assault)

reputation, his law-abidingness reputation, or his morality reputation.⁵ Also, we note that several courts have permitted testimony of a witness to the effect that he has never heard anything against the defendant's character, provided that the witness's knowledge of the defendant is intimate enough that he would have heard any relevant bad information concerning the defendant.⁶ Notably though, testimony involving specific acts or courses of conduct are inappropriate methods of proving character.⁷

Recognizing this, we conclude that the district court did not abuse its discretion when it decided that Haley Pettrey's testimony that

⁵See id. (noting that the appellant, in a sexual assault case, failed to offer proof of admissible character evidence such as law-abidingness or morality).

⁶See, e.g., United States v. Webb, 625 F.2d 709, 711 (5th Cir. 1980) (noting that character testimony that the witness never heard that the defendant harmed anyone was admissible character evidence); Hinson v. State, 52 So. 194, 195 (1910) (noting that a witness who has been personally acquainted with the defendant for a considerable length of time is permitted to testify that the defendant's character has never been questioned, provided the witness would have been in the position to hear the defendant's character questioned); State v. Hobbs, 172 N.W.2d 268, 276 (Iowa 1969) (permitting a character witness's statement that he heard nothing against the defendant); State v. McClellan, 98 P. 209, 211 (Kan. 1908) (allowing negative evidence of good character); State v. Lambert, 71 A. 1092, 1094 (Me. 1908) ("It is accordingly a rule of evidence that a witness to good reputation may testify that he has never heard anything said against the person."); Sinclair v. State, 39 So. 522, 523 (Miss 1905) (concluding that a witness may testify that he never heard the defendant's character questioned); State v. Cavener, 202 S.W.2d 869, 875 (Mont. 1947) ("Negative evidence is viewed as cogent evidence of a person's character and reputation, because in the absence of any discussion about character, it may reasonably be presumed that the person's reputation is good.").

⁷See NRS 48.055(1); see also Michelson v. United States, 335 U.S. 469, 477 (1948).

she was not aware of any specific allegation of her husband making obscene or indecent exposures of his body when he had previously stayed in motels was inadmissible character evidence.⁸ However, we conclude that the district court abused its discretion in excluding Pettrey's character evidence because Haley Pettrey and Nielson offered to testify regarding Pettrey's general reputation and morality reputation in the community, which is admissible character evidence.⁹ Also, Nielson offered to testify that she never heard anything against Pettrey's character.

We have noted that an improper ruling with respect to character evidence may be harmless if we can conclude that the result would have been the same if the district court had not erred.¹⁰ Because this case was heavily dependent on the jury's assessment of the defendant's and witnesses' credibility, we conclude that the district court's error was harmful.¹¹ Thus, we reverse Pettrey's conviction and remand the case for a new trial.

We have considered Pettrey's remaining contentions and conclude that they are without merit. Accordingly we,

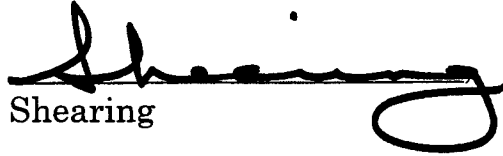
⁸We reject Pettrey's contention that this is admissible evidence of habit.

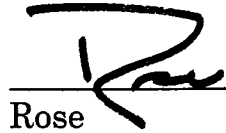
⁹Because we conclude that the district court erroneously excluded Pettrey's character evidence, we also concluded that it was error for the district court to refuse Pettrey's character-evidence instruction.

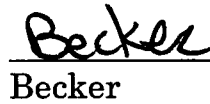
¹⁰Smith v. State, 111 Nev. 499, 506, 894 P.2d 974, 978 (1995).

¹¹See Rembert v. State, 104 Nev. 680, 683, 766 P.2d 890, 892 (1988) ("As the jury's verdict in this case was dependent on its assessment of the witnesses' credibility, we cannot say that the district court's error was harmless beyond a reasonable doubt.").

ORDER the judgment of the district court REVERSED AND
REMAND this matter to the district court for proceedings consistent with
this order.


_____, J.
Shearing


_____, J.
Rose


_____, J.
Becker

cc: Hon. Richard Wagner, District Judge
State Public Defender/Carson City
Attorney General/Carson City
Humboldt County District Attorney
Humboldt County Clerk