IN THE SUPREME COURT OF THE STATE OF NEVADA

SHEILA CHRISTINE EAKEN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 37919

FILED

JUN 18 2003

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

Sheila Christine Eaken appeals from a judgment of conviction entered after a jury found her guilty of two counts of child endangerment for leaving three of her minor children unattended in the family's unsanitary apartment. Eaken appeals on several grounds.

First, Eaken argues that the district court erred in admitting prior bad acts evidence. The district court ruled that evidence relating to an incident where Eaken left her children unattended and the subsequent involvement of the Division of Child and Family Services (DCFS) with the Eaken family was admissible because it demonstrated that Eaken had knowledge that leaving her children unattended was improper and illustrated the "complete story of the crime." We agree, and thus, conclude that the district court did not abuse its discretion in admitting the prior bad act evidence.[1]

[1]See Crawford v. State, 107 Nev. 345, 348, 811 P.2d 67, 69 (1991) ("It is within the trial court's sound discretion whether prior bad acts are admissible, and such decisions will not be disturbed on appeal unless manifestly wrong."); see also NRS 48.045(2) (providing that prior bad acts evidence is admissible to show, among other things, knowledge); NRS 48.035(3) (providing that prior bad acts evidence can be admitted to show the complete story of the crime).

Second, Eaken argues that the State exceeded the parameters of the district court's ruling relating to the admission of the prior bad act evidence. When ruling on the admissibility of the evidence, the district court stated that only evidence of the prior incident and DCFS's subsequent involvement with the Eaken family was admissible, while making clear that evidence of any earlier incidents would be too remote. Because the State did not present any evidence outside of the scope of the district court's ruling, we conclude that Eaken's argument lacks merit.

Third, Eaken argues that substantial evidence does not support her conviction. We disagree. The overwhelming evidence showed that Eaken left her children unattended in an unsanitary apartment,[2] thereby satisfying the elements of child endangerment.[3]

Fourth, Eaken argues that judicial and prosecutorial misconduct deprived her of a fair trial. Although trial counsel failed to object to the alleged instances of misconduct, we will nonetheless address Eaken's arguments under a plain-error standard.[4] Eaken claims that the

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[2]See Koza v. State, 100 Nev. 245, 250, 861 P.2d 44, 47 (1984) (observing that the standard of review for sufficiency of the evidence at a criminal trial is "'whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements beyond reasonable doubt'") (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979)).

[3]NRS 200.058 (providing that a person can be punished for child endangerment if he or she willfully causes a child to suffer unjustifiable physical pain or mental suffering as a result of abuse or neglect or to be placed in a situation where a child may suffer physical pain or mental suffering as the result of abuse or neglect).

[4]See Parodi v. Washoe Medical Ctr., 111 Nev. 365, 368, 370, 892 P.2d 588, 590-91 (1995) (observing that allegations of judicial misconduct

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district court judge committed misconduct by jokingly remarking that he would put a witness in jail if the witness failed to draw a diagram well. We conclude that this comment alone does not rise to the level of judicial misconduct warranting reversal.[5] Eaken also claims that the prosecutor committed misconduct by stating during closing argument that the jury, if true to its oath, should find Eaken guilty. Once again, we conclude that such a statement does not rise to the level of prosecutorial misconduct warranting reversal.[6]

Fifth, Eaken argues that her fundamental right to procreate was infringed. In support, Eaken points to the district court judge's statements during the sentencing hearing where he questioned why Eaken would continue to have children when she was aware that she was

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. . . *continued*
must generally be preserved for appellate review, but this court can review allegations of misconduct under the plain error doctrine where "judicial deportment is of an inappropriate but non-egregious and repetitive nature that becomes prejudicial when considered in its entirety"); Ross v. State, 106 Nev. 924, 928, 803 P.2d 1104, 1106 (1990) (observing that failure to object to a prosecutor's misconduct generally precludes appellate review unless the alleged misconduct is patently prejudicial and requires the court to intervene sua sponte to protect the defendant's right to a fair trial).

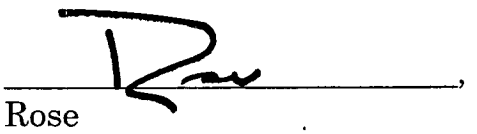
[5]See Rowland v. State, 118 Nev. ___, ___, 39 P.2d 114, 118 (2002) (noting that reversal is required when judicial misconduct has a prejudicial impact on the verdict when viewed in context of the trial as a whole, or seriously affects the integrity or public reputation of the judicial proceedings).

[6]See Ross, 106 Nev. at 928, 803 P.2d at 1106 (observing that when assessing whether prejudicial prosecutorial misconduct occurred, the relevant inquiry is whether without reservation the verdict would have been the same in the absence of the alleged misconduct).

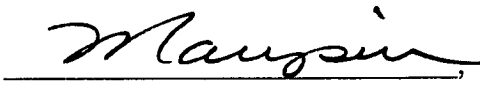
incapable of caring for them. We conclude that this statement in no way infringed Eaken's fundamental right to procreate, and thus, Eaken's argument lacks merit.

Having considered all of Eaken's arguments on appeal and concluding they lack merit, we

ORDER the judgment of the district court AFFIRMED.



_____, J.
Rose



_____, J.
Maupin

_____, J.
Gibbons

cc: Hon. William A. Maddox, District Judge
State Public Defender/Carson City
Attorney General Brian Sandoval/Carson City
Carson City District Attorney
Carson City Clerk