

IN THE SUPREME COURT OF THE STATE OF NEVADA

KELLY YOUNG,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 38736

FILED

AUG 23 2002

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of two counts of gross misdemeanor open or gross lewdness. The district court sentenced appellant Kelly Young to serve two consecutive terms of 12 months in the Clark County Detention Center; he was given credit for 206 days time served.

Young contends the district court erred in admitting two prior bad acts offered into evidence by the State. More specifically, Young contends that the evidence of his prior bad acts -- felony convictions for indecent exposure and open or gross lewdness -- was impermissible character evidence and did not meet any of the enumerated exceptions allowing for admissibility pursuant to NRS 48.045(2). Young argues that the testimonial evidence was irrelevant, unnecessarily cumulative and prejudicial, and that its admission requires a new trial. We disagree with Young's contention.

Evidence of other wrongs cannot be admitted at trial solely for the purpose of proving that a defendant has a certain character trait and acted in conformity with that trait on the particular occasion in question.¹

¹NRS 48.045(2).

Nevertheless, NRS 48.045(2) also states that evidence of other bad acts may be admitted at trial “for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.” Prior to admitting such evidence, the district court must determine during an evidentiary hearing whether the evidence is relevant to the charged offense, is proven by clear and convincing evidence, and whether the probative value is substantially outweighed by the danger of unfair prejudice.² Further, “[t]he decision to admit or exclude evidence rests within the trial court's discretion, and this court will not overturn that decision absent manifest error.”³

After reviewing Young’s contention, we conclude that the district court's determination to admit the evidence of his prior convictions for indecent exposure and open or gross lewdness did not amount to manifest error. The district court conducted a hearing on the State’s motion to admit the evidence and considered the arguments of counsel. The district court concluded that the prior acts were relevant, that they were proven by clear and convincing evidence, and that their probative value was not substantially outweighed by the danger of unfair prejudice. The district court found that the prior convictions were admissible to show identity, modus operandi, common plan or scheme, and absence of mistake or accident.

²Qualls v. State, 114 Nev. 900, 902, 961 P.2d 765, 766 (1998); Tinch v. State, 113 Nev. 1170, 1176, 946 P.2d 1061, 1064-65 (1997).

³Collman v. State, 116 Nev. 687, 702, 7 P.3d 426, 436 (2000), cert. denied, 121 S. Ct. 1617 (2001).

While we disagree that the evidence was admissible for purposes of showing identity, which was never in question, we conclude that the evidence of Young's prior convictions for indecent exposure and open or gross lewdness was properly admitted to show motive, intent, and absence of mistake or accident.⁴ First, the underlying facts of Young's prior and present convictions are similar; in each case, Young's actions were motivated by a need to gratify his sexual impulses.⁵ In the three cases, Young wore women's lingerie under his clothing, sought the attention of women in public, removed his pants to show his lingerie, danced, shook his hips, slapped his buttocks, and eventually removed the lingerie and masturbated. Second, the State was required to show that Young intentionally exposed himself and made obscene sexual gestures. The prior convictions were offered and admissible to show that Young's exposure of his genitals and his gestures in the present case were not unintentional, non-sexual, or accidental.⁶ Therefore, we conclude the

⁴The State also argues in response on appeal that, pursuant to McMichael v. State, 94 Nev. 184, 577 P.2d 398 (1978) and Findley v. State, 94 Nev. 212, 577 P.2d 867 (1978), prior convictions are more liberally admitted when the underlying behavior involves sexual aberration. This court, however, recently overruled McMichael and Findley, concluding that other sex crimes must fall within the parameters of NRS 48.045(2) to be admissible. See Braunstein v. State, 118 Nev. ___, ___, 40 P.3d 413, 418 (2002).

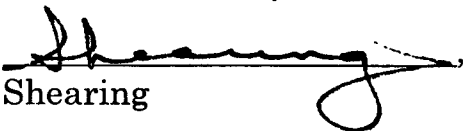
⁵Cf. Darnell v. State, 92 Nev. 680, 682, 558 P.2d 624, 626 (1976) (holding that evidence of prior criminal conduct, offered to show criminal intent, was relevant and admissible).


⁶See generally Petrocelli v. State, 101 Nev. 46, 52, 692 P.2d 503, 508 (1985).

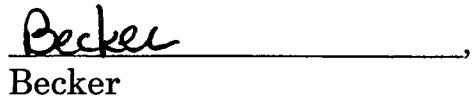
district court did not commit manifest error in admitting evidence of Young's prior convictions.

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

ORDER the judgment of conviction AFFIRMED.


Shearing, J.


Rose, J.


Becker, J.

cc: Hon. John S. McGroarty, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Clark County Clerk