

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANNAMARIE ZIRKEL A/K/A ANA  
MARIA ELIZABETH ZIRKEL,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 39499

FILED

AUG 21 2002

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of battery with a deadly weapon. The district court sentenced appellant Annamarie Zirkel to serve a prison term of 24-60 months; she was given credit for 261 days time served.

Zirkel contends the district court erred in admitting a prior bad act offered into evidence by the State. More specifically, Zirkel contends that the evidence of her prior bad act was impermissible character evidence and did not meet any of the enumerated exceptions allowing for admissibility pursuant to NRS 48.045(2). We disagree with Zirkel'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.<sup>1</sup> 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

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<sup>1</sup>NRS 48.045(2).

mistake or accident.” Prior to admitting evidence of uncharged bad acts, the district court must conduct a Petrocelli hearing<sup>2</sup> and determine 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.<sup>3</sup> 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.”<sup>4</sup>

The district court conducted a Petrocelli hearing on the State's motion to admit the evidence and concluded that the prior act was relevant, proven by clear and convincing evidence, and that its probative value was not substantially outweighed by the danger of unfair prejudice. After reviewing Zirkel's contention, we conclude that the district court's determination to admit the evidence of her prior bad act did not amount to manifest error. The prior bad act involved a confrontation occurring six days before the battery between Zirkel and the victim regarding the whereabouts of a lost dog. During the confrontation, the victim accused Zirkel of stealing the dog, and Zirkel subsequently threatened the victim at knife-point. In the instant matter, Zirkel claimed self-defense, and the State offered the evidence to rebut Zirkel's claim and demonstrate the intent and motive behind her battery of the victim. We therefore conclude

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<sup>2</sup>Petrocelli v. State, 101 Nev. 46, 692 P.2d 503 (1985).

<sup>3</sup>Qualls 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).


<sup>4</sup>Collman v. State, 116 Nev. 687, 702, 7 P.3d 426, 436 (2000), cert. denied, 121 S. Ct. 1617 (2001).

that the evidence of the prior uncharged bad act was properly admitted to prove Zirkel's intent and motive.

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

ORDER the judgment of conviction AFFIRMED.

 \_\_\_\_\_ J.  
Young

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

 \_\_\_\_\_ J.  
Leavitt

cc: Hon. Jerry V. Sullivan, District Judge  
State Public Defender/Carson City  
Attorney General/Carson City  
Humboldt County District Attorney  
Humboldt County Clerk