

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRAD ALLEN SLIZESKI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39652

FILED

JUL 02 2003

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of felony nonsupport of a child. The district court sentenced appellant to serve a prison term of 16 to 40 months.

Citing Buschauer v. State,¹ appellant contends that his right to due process was violated when the district court permitted his ex-wife, Anessa, to testify at the sentencing hearing about appellant's prior bad acts. Specifically, appellant contends that his due process rights were violated because he was not given prior notice of the bad act testimony and Anessa was not under oath and subject to cross-examination. Under the circumstances, we agree with appellant that the district court erred in admitting Anessa's bad act testimony, but conclude that the error was harmless.

In Buschauer, this court held that where a victim-impact witness intends to testify at the sentencing hearing about a defendant's prior bad acts, the prosecutor must give the defendant reasonable notice of the bad act testimony and the victim-impact witness must be placed under

¹106 Nev. 890, 804 P.2d 1046 (1990).

oath and subject to cross-examination.² If no notice is given, then the defendant is entitled to a continuance of the sentencing hearing unless the district court disclaims any reliance on the information.³ Errors involving the admission of victim-impact statements, however, are subject to harmless-error analysis.⁴

Applying this court's holding in Buschauer to the instant case, we conclude that the district court erred in admitting Anessa's prior bad act testimony because: (1) the State failed to provide appellant with notice of such testimony; and (2) Anessa was not under oath or subject to cross-examination. We conclude, however, that the error was harmless. In fact, Anessa's testimony was cumulative, at least in part, because the district court had already been informed by the prosecutor and the Division of Parole and Probation that appellant had a prior conviction for misdemeanor stalking involving Anessa. Further, although appellant allegedly did not receive notice of Anessa's testimony about prior threats, appellant did not object to the testimony or request a continuance in order to rebut the additional allegations. Instead, in response to the testimony, appellant's counsel informed the district court:

It also seems that whatever [the victim's] concerns are about his alleged threats at the time they separated are alleviated. He's been convicted of that. He has left the State of Nevada. He has relocated to the middle of the country. In that sense, she's won that battle.

²Id. at 894, 804 P.2d at 1048.


³Id. at 894, 804 P.2d 1049.


⁴See id. at 895, 804 P.2d at 1049; see also Lane v. State, 110 Nev. 1156, 1166, 881 P.2d 1358, 1365 (1994), vacated on other grounds on rehearing, 114 Nev. 299, 956 P.2d 88 (1998).

Finally, on the record, the district court explained its justification for imposing a prison term instead of probation, stating: “[t]his court doesn’t think he’s going to pay, no matter what happens.” Therefore, it appears that the district court decided against probation because it believed that appellant would not comply with the terms of his probation by making the required child support payments. There is no indication that the lack of notice, oath and cross-examination in connection with Anessa’s victim-impact testimony about prior threats affected the sentence imposed by the district court. Thus, we conclude the erroneous admission of that testimony resulted in harmless error.

Having considered appellant’s contention and concluded that it lacks merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Gibbons

cc: Hon. Archie E. Blake, District Judge
Rusty D. Jardine
Attorney General Brian Sandoval/Carson City
Churchill County District Attorney
Churchill County Clerk