IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSEPH A. WOZNICK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39826

DEC 31 2002

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of battery causing substantial bodily harm. The district court sentenced appellant to a prison term of 24 to 60 months.

Appellant contends that the district court abused its discretion by admitting prior bad act evidence. Specifically, appellant challenges: (1) the admission of evidence of an incident in 1998 wherein appellant pushed the victim in this case, flipping her over a couch and injuring her shoulder; and (2) the admission of evidence that appellant failed to appear in justice court on a misdemeanor charge of battery against the victim in this case.[1]

NRS 48.045(1) provides that evidence of other wrongs cannot be admitted at trial solely for the purpose of proving that the defendant acted in a similar manner on a particular occasion. But NRS 48.045(2) further provides that such evidence may be admitted for other purposes, "such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." Before admitting such evidence, the trial court must conduct a hearing on the record and

[1]The misdemeanor charge was subsequently recharged as a felony as Count II of the information filed in the instant case.

determine that: (1) the evidence is relevant to the crime charged; (2) the other act is proven by clear and convincing evidence; and (3) the probative value of the other act is not substantially outweighed by the danger of unfair prejudice.[2] On appeal, we will give great deference to the trial court's decision to admit or exclude evidence and will not reverse the trial court absent manifest error.[3]

Here, the trial court conducted a hearing prior to trial regarding the prior bad act evidence offered by the State. At the conclusion of the hearing, the trial court determined that the evidence of the prior uncharged battery was relevant as proof of appellant's intent and motive, that the State had proven the act by clear and convincing evidence, and that the probative value of the acts was not substantially outweighed by the danger of unfair prejudice. Based on our review of the record, we conclude that the district court did not commit manifest error in admitting the evidence of appellant's prior battery of the victim.

As to the evidence of appellant's failure to appear, we conclude that appellant failed to preserve this issue for appellate review. Although appellant objected to the admission of the evidence at the Petrocelli hearing, he did not renew his objection at trial. This court has held that "[a] ruling on a motion in limine is advisory, not conclusive; after denial of a pretrial motion to exclude evidence, a party must object at the time the

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[2]Tinch v. State, 113 Nev. 1170, 1176, 946 P.2d 1061, 1064-65 (1997).

[3]See Bletcher v. State, 111 Nev. 1477, 1480, 907 P.2d 978, 980 (1995); Petrocelli v. State, 101 Nev. 46, 52, 692 P.2d 503, 508 (1985), holding modified on other grounds by Sonner v. State, 112 Nev. 1328, 930 P.2d 707 (1996).

evidence is sought to be introduced in order to preserve the objection for appellate review."[4]

Even if appellant had preserved this issue, we conclude that it is without merit. At the conclusion of the Petrocelli hearing, the trial court determined that the evidence of the failure to appear was relevant as proof of appellant's consciousness of guilt, that the State had proven the act by clear and convincing evidence, and that the probative value of the acts was not substantially outweighed by the danger of unfair prejudice. Based on our review of the record, we conclude that the district court did not commit manifest error in admitting the evidence of appellant's failure to appear.[5]

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

ORDER the judgment of conviction AFFIRMED.

_____, C.J.
Young

_____, J.
Rose

_____, J.
Agosti

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[4]Staude v. State, 112 Nev. 1, 5, 908 P.2d 1373, 1376 (1996) (citing Teegarden v. State, 563 P.2d 660, 662 (Okla. Crim. App. 1977)).

[5]See Abram v. State, 95 Nev. 352, 356-57, 594 P.2d 1143, 1145 (1979) (explaining that evidence showing consciousness of guilt, although prejudicial, is relevant and may be admissible).

cc: Hon. Connie J. Steinheimer, District Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk