IN THE SUPREME COURT OF THE STATE OF NEVADA

TONY DEANGELO SWANSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41111

FILED

MAY 19 2005

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of sexual assault of a minor under fourteen years of age and one count of lewdness with a minor under the age of fourteen. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge. The district court sentenced appellant Tony Swanson to two consecutive terms of life imprisonment with the possibility of parole. Swanson asks this court to reverse his conviction.

Swanson first claims that the district court erred in admitting prior bad acts evidence showing that he had previously lured a 9-year-old girl into his apartment, falsely imprisoned her, and touched her in an inappropriate sexual way. He further contends that the district court's limiting instruction was inadequate. We disagree.

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) 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 district court must conduct a hearing on the record and

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

The district court conducted a hearing on the admissibility of the prior bad act evidence. It determined that the evidence was relevant as proof of Swanson's intent, Swanson had previously testified that he committed the other acts, and the probative value of the other acts was not substantially outweighed by the danger of unfair prejudice. Before the evidence was presented to the jury, the district court properly instructed the jury that the prior bad act evidence could be considered only for the limited purpose of proving intent. The district court repeated this instruction when charging the jury. Based on our review of the record, we conclude that the district court did not commit manifest error in admitting the evidence.

Second, Swanson claims that the district court erred in determining that he was capable of representing himself. We disagree. The district court actually concluded that Swanson's decision was "ill

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

[2]See Rhymes v. State, 121 Nev. ___, ___, 107 P.3d 1278, 1282 (2005).

[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), modified on other grounds by Sonner v. State, 112 Nev. 1328, 1333-34, 930 P.2d 707, 711-12 (1996).

advised," but it was not required to determine whether Swanson had the ability to adequately defend himself at trial.

"A criminal defendant has the right to self-representation under the Sixth Amendment of the United States Constitution and [article 1, section 8 of] the Nevada Constitution."[4] His "'ability to represent himself has no bearing upon his competence to choose self-representation.'"[5] If he knowingly and voluntarily waives counsel and chooses self-representation with an understanding of its dangers, including the difficulties presented by a complex case, the court must honor his request.[6] To do otherwise is a reversible error, unless the defendant's request is untimely, equivocal, or made solely for the purposes of delay or he abuses his right by disrupting the judicial process.[7] We "will give deference to the district court's determination that the defendant waived his or her right to counsel with a full understanding of the disadvantages and clear comprehension of attendant risks."[8]

Our review of the record reveals that Swanson unequivocally requested self-representation, whereupon the district court conducted a Faretta[9] hearing in accordance with SCR 253. The district court informed

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[4]Vanisi v. State, 117 Nev. 330, 337, 22 P.3d 1164, 1169 (2001); see Gallego v. State, 117 Nev. 348, 356, 23 P.3d 227, 233 (2001).

[5]Vanisi, 117 Nev. at 341, 22 P.3d at 1172 (quoting Godinez v. Moran, 509 U.S. 389, 400 (1993)).

[6]Id. at 341-42, 22 P.3d at 1172.

[7]Id. at 338, 22 P.3d at 1170.

[8]Harris v. State, 113 Nev. 799, 802, 942 P.2d 151, 153-54 (1997).

[9]Faretta v. California, 422 U.S. 806 (1975).

Swanson of the dangers, disadvantages, and consequences of self-representation through its line of questioning. It warned Swanson that he would be starting out in the middle of a jury trial, against two seasoned prosecutors, without the assistance of advisory counsel, and without the benefit of additional library hours. And it canvassed Swanson regarding his education and familiarity with legal proceedings, knowledge of the elements of each crime, the possible punishments, and the possible defenses. Swanson's responses during this canvass showed that his decision was knowing and voluntary. The district court found that Swanson had opted to exercise his right to represent himself and there was no palpable reason for refusing his right. We conclude that the district court did not err in allowing Swanson to exercise his right to self-representation.

Third, Swanson claims that the district court abused its discretion in denying him advisory counsel. "However, a defendant does not have a constitutional right to advisory counsel," and the district court does not have a duty to appoint advisory counsel.[10] Therefore, we conclude that Swanson's claim is without merit.

Finally, Swanson claims that the district court failed to ensure he was afforded his right to compulsory process. A defendant representing himself in a criminal action has a constitutional right to use the compulsory process.[11] We conclude that the district court correctly

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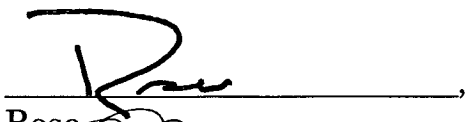
[10]Harris, 113 Nev. at 804, 942 P.2d at 155.

[11]Id. at 803, 942 P.2d at 155.

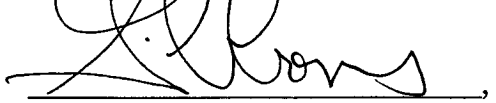
informed Swanson that he was responsible for obtaining subpoenas for his own witnesses.[12]

Having considered Swanson's contentions and concluded that they are without merit, we

ORDER the judgment of the district court AFFIRMED.



_____, J.
Rose



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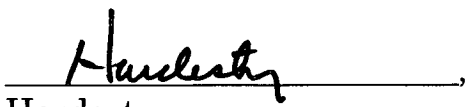

_____, J.
Hardesty

cc: Hon. Donald M. Mosley, District Judge
Warhola & Brooks, LLP
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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[12]See NRS 174.305.