

IN THE SUPREME COURT OF THE STATE OF NEVADA

EVODIO SALDIVAR-RAMOS A/K/A
EVODIO S. RAMOS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41776

FILED

FEB 12 2004

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

ORDER AFFIRMING IN PART AND REMANDING IN PART
TO CORRECT JUDGMENT OF CONVICTION

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of 20 counts of sexual assault of a minor under the age of 16. The district court sentenced appellant to a prison term of 5 to 20 years for each count. The district court further ordered that two of the counts run consecutively, and the remainder run concurrently.

Appellant's sole contention is that the district court abused its discretion by admitting prior bad act evidence. Specifically, appellant argues that the district court should not have admitted the victim's testimony that appellant began fondling her breasts and vagina two years prior to the first charged sexual assault.

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 trial 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 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.²

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 was relevant as proof of the victim's lack of consent, that the State had proven the other acts by clear and convincing evidence, and that the probative value of the other 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 sexual misconduct with the victim.

This court notes, however, that the judgment of conviction states that appellant was convicted pursuant to a guilty plea when, in fact, he was convicted pursuant to a jury verdict. Accordingly, we affirm the

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

²See 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).

judgment of conviction and remand this matter to the district court for the limited purpose of entering a corrected judgment of conviction.

It is so ORDERED.

Becker, J.
Becker

Agosti, J.
Agosti

Gibbons, J.
Gibbons

cc: Hon. Michael A. Cherry, District Judge
Clark County Public Defender
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk