IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY DWAYNE PRENTICE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43178

FILED

JUN 15 2005

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

ORDER OF AFFIRMANCE

Appeal from a judgment of conviction, upon jury verdict, of one count each of conspiracy to commit murder, and murder with the use of a deadly weapon. Eighth Judicial District Court, Clark County; John S. McGroarty, Judge.

FACTS AND PROCEDURAL HISTORY

In September 2002, Officer John Campor of the Las Vegas Metropolitan Police Department (Las Vegas Metro) found Daniel Miller dead in his apartment while performing a welfare check at the request of Miller's sister. According to the Clark County Coroner's Office, Miller had been stabbed 128 times, suffered blunt force trauma to the head, and had a large swastika carved into his back. The Coroner's Office determined that Miller bled to death from his multiple stab wounds.

While documenting the crime scene, investigators located a hammer on the bedroom floor of the apartment at the foot of the bed where Miller's body was discovered. Investigators found items belonging to Anthony Prentice in the living room of the apartment including: a backpack, an appointment book, and scholarship application papers. Investigators also found fingerprints in the apartment matching those of both Prentice and James Harrison.

Prentice befriended Miller after his release from county jail, and began living with Miller about six months after they met.

Prentice, Harrison and Ashley Ratelle each gave different accounts of the events occurring on the day of the murder.

Ashley Ratelle testified that on the day of the murder she overheard Prentice ask Harrison if Harrison would like to "kill Dan Miller." Ratelle testified that she overheard Harrison and Prentice discuss various methods of killing Miller, including a suggestion by Prentice that they hit the victim "over the head with the hammer [at] about the right temple and stab him [in the throat] and drag the knife." Prentice had a pocket knife, which he claimed he did not like carrying any longer, so he sold it to Harrison a couple of days prior to the murder. Several people testified as to the distinct appearance of this knife, and it is believed to be the murder weapon. Prentice also told officers that Harrison always carried a hammer in his backpack.

Ratelle testified the group loitered around the steps outside of Miller's apartment while Prentice entered and exited the apartment for approximately two to three hours to see if Miller was asleep. Prentice then came out and indicated that Miller was asleep, at which point Prentice handed over the knife and hammer to Harrison. Ratelle testified that Prentice then asked Harrison, "if he was ready to kill Dan." Ratelle testified that Prentice described the layout of the apartment to Harrison, and told Harrison that he needed to close his eyes for a few seconds when he first entered so that his eyes would adjust to the dark. Ratelle also testified that Prentice said, "[i]f there's any screaming, I'll go in and help you finish off Dan." Ratelle and Prentice walked around the apartment complex for about fifteen minutes to allow Harrison some time in the

apartment with Miller. Prentice then re-entered the apartment in order to see if Harrison had killed Miller. Ratelle next saw Prentice running from the apartment repeatedly shouting to her, "Dan has [Harrison]." Ratelle testified that the two then ran in the direction of the University of Nevada Las Vegas, avoiding major streets because Prentice told her the cops would be looking for them.

Prentice's version of that night's events varied from Ratelle's. According to Prentice, Miller was openly homosexual, and Prentice had informed Miller that Harrison was bisexual. Prentice testified that the reason the three went to Miller's apartment that night was so Miller and Harrison could become more intimately acquainted. Prentice testified that after introducing Harrison and Miller, he left the apartment and went outside to meet Ratelle. Prentice testified that it was an unspoken rule between Miller and himself that when another man was over, Prentice was to wait outside for "like, twenty minutes to thirty minutes." At some point Prentice re-entered the apartment and heard noises emanating from the bedroom, which he interpreted as an argument. Prentice testified that he was disturbed by the noises coming from the bedroom and took off running from the apartment.

The State filed a motion to admit evidence of other bad acts, which included a third account of the events of that evening. According to the State, Harrison told detectives that he and Prentice walked to Miller's apartment to smoke a little marijuana. Miller came out of the bedroom complaining that the light and the noise awoke him. Prentice and Miller then got into an argument and a physical confrontation ensued. Harrison told detectives that Prentice then grabbed a knife and started stabbing Miller. Harrison entered the altercation by grabbing Miller and hitting

him about the head and ribs. Harrison claims that during the altercation, Prentice accidentally sliced Harrison's arm.

The parties' stories reunite to indicate that after fleeing Miller's apartment, Prentice and Ratelle took off running eastbound toward the University of Nevada, Las Vegas. Prentice and Ratelle caught a bus to Henderson, where Prentice's friend, Diana Gumucio, resided. Once at Gumucio's residence, Ratelle dyed Prentice's hair black. While at Gumucio's, Ratelle heard Prentice ask another man if he could borrow a gun "[t]o go finish Dan off."

After several days, the Las Vegas Metro and Henderson Police apprehended Prentice in Henderson at Gumucio's apartment. The police asked if they could question Prentice, and he readily agreed to go to the station for questioning. Initially, Detective Long did not indicate to Prentice that they wanted to question him about the suspicious death of Miller. Detective Long testified that while in the car, it became apparent to Prentice that the police were homicide detectives at which point an unprovoked Prentice blurted out, "he was like my dad."

Upon arrival at the station, the officers indicated to Prentice they were investigating Miller's murder, and Prentice immediately stated, "I can tell you who did it. I'll tell you right now who killed him." Prentice told the officers that Harrison had killed Miller. When the station house interview concluded, Prentice accompanied Detective Long in his car on a search for Harrison. During this car ride, prior to learning any details of the murder from the police, Prentice told Detective Long, "if Dan Miller has a swastika carved in his forehead or in his back, then the National Socialist Regime (NSR) would be the ones responsible for this murder," indicating the NSR was setting Prentice up. Further investigation

revealed Prentice was a member of the "Hammerskins," a skinhead organization; an ordained minister in the World Church of the Creator;[1] and an initiator of an Aryan army in Las Vegas.

While in jail awaiting trial, Prentice wrote a letter to Harrison indicating that he had found a way for both men to beat the charges against them. Prentice testified he wrote to Harrison in order to get his trial severed from Harrison's trial. Prentice's prior motion for severance was denied, and he testified that he wanted Harrison to think they were still friends, so he could get close enough to attack him and the trials would have to be bifurcated. In May 2003, Prentice was involved in an altercation with a fellow inmate. Prentice beat the inmate about the head and body with his fists after the inmate indicated he did not approve of Prentice's racist ideologies. After this altercation, racist paraphernalia was found in Prentice's cell, and the State moved to introduce this paraphernalia. The court admitted the evidence despite defense counsel's objection.

The jury trial commenced in February 2004. During the cross-examination of Ratelle, defense counsel attempted to elicit testimony that Ratelle supported herself as a prostitute. This line of questioning was excluded subsequent to a bench conference. The court ruled the prostitution evidence was inadmissible after determining that her conviction was a misdemeanor because Ratelle was a juvenile when it occurred.

In April 2004, the jury convicted Prentice of one count of conspiracy to commit murder and one count of murder with use of a deadly

---

[1]Subsequently renamed the Creativity Movement.

weapon. Prentice was sentenced to a minimum of 48 months and a maximum of 120 months in connection with the conspiracy to commit murder. He was also sentenced to life without the possibility of parole for the murder and another sentence of life without the possibility of parole for the use of a deadly weapon.

DISCUSSION

The district court did not improperly admit evidence

Prentice argues that the district court erred when it admitted evidence relating to a fight between Prentice and another inmate while Prentice was incarcerated awaiting trial. We disagree.

NRS 48.045(2) states in pertinent part, "[e]vidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes." Those other purposes include: proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.[2] The use of prior bad acts evidence to convict a defendant is "heavily disfavored" "because bad acts are often irrelevant and prejudicial and force the accused to defend against vague and unsubstantiated charges."[3]

The decision to admit evidence tending to show racial or gang related motives rests within the sound discretion of the trial court and will not be reversed absent manifest error.[4] The trial court must determine

---

[2]NRS 48.045(2).

[3]Tavares v. State, 117 Nev. 725, 730, 30 P.3d 1128, 1131 (2001).

[4]See Butler v. State, 120 Nev. ____, ____, 102 P.3d 71, 78 (2004); see also Vallery v. State, 118 Nev. 357, 371, 46 P.3d 66, 76 (2002).

whether the evidence is relevant, is proven by clear and convincing evidence, and that its probative value is not substantially outweighed by the danger of unfair prejudice.[5] "This court has repeatedly held that gang-affiliation evidence may be relevant and probative when it is admitted to prove motive."[6]

We take note and direction from the federal courts, which have allowed the admittance of evidence of bad acts subsequent to arrest to show motive or racial animus. In United States v. McInnis, the Ninth Circuit Court of Appeals upheld the admission of evidence demonstrating Nazi or racist beliefs as evidence of motive.[7] The Ninth Circuit also had previously held that various racist items found in a defendant's garage, after he was incarcerated, were properly admissible as evidence of other bad acts tending to show racist beliefs.[8]

While in custody, Prentice was involved in a fight with another inmate, stemming from the other inmate's rejection of Prentice's racist ideologies. After the melee, Officer Alexander Gonzalez investigated the incident, and found racist and gang paraphernalia relating to Prentice's beliefs and his involvement with the "Hammerskins." Prentice also testified that he holds racist beliefs. Prentice testified that he was an

---

[5]See 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).

[6]See, e.g., Butler, 120 Nev. at ____, 102 P.3d at 78; Lara v. State, 120 Nev. 177, 180, 87 P.3d 528, 530 (2004); Lay v. State, 110 Nev. 1189, 1195-96, 886 P.2d 448, 452 (1994).

[7]976 F.2d 1226, 1232 (9th Cir. 1992).

[8]U.S. v. Skillman, 922 F.2d 1370, 1373-74 (9th Cir. 1991).

ordained minister in a white supremacy organization and that he had started a "neo-Nazi Reich" or Aryan army in Las Vegas. Miller was discovered face down on the floor of his apartment with a swastika carved into his back.

Evidence existed as to Prentice's racial beliefs, with much of that evidence coming from Prentice's own testimony. The swastika carved into Miller's back tends to indicate a motive for the killing.

Evidence of motive, related to racial beliefs or gang involvement, will be allowed at the discretion of the district court. The district court did not abuse its discretion in admitting evidence from the prison fight and subsequently discovered racist propaganda.

The State did not violate Brady v. Maryland

Prentice argues the State violated Brady v. Maryland[9] by failing to provide a copy of the police interview with Julie Fasick prior to trial. We disagree.

A prosecutor is required to disclose evidence favorable to the defense when that evidence is material either to guilt or to punishment.[10] "[T]here are three components to a Brady violation: the evidence at issue is favorable to the accused; the evidence was withheld by the state, either intentionally or inadvertently; and prejudice ensued, i.e., the evidence was material."[11] Due process requires more than the disclosure of simply

---

[9]373 U.S. 83 (1963).

[10]See Brady, 373 U.S. 83, 86; see also Mazzan v. Warden, 116 Nev. 48, 66, 993 P.2d 25, 36 (2000).

[11]Mazzan, 116 Nev. at 67, 993 P.2d at 37.

"exculpatory" evidence.[12] The prosecution must also disclose evidence that provides grounds for the defense, among other things, to impeach the credibility of prosecution witnesses.[13] The standard for analyzing whether a Brady violation has occurred is whether there exists a reasonable possibility that the claimed evidence would have affected the judgment of the trier of fact, and thus the outcome of the trial.[14] "In determining its materiality, the undisclosed evidence must be considered collectively, not item by item."[15] This court reviews that determination de novo.[16]

The State failed to provide the defense with a copy of the police report of the interview with Julie Fasick, who was called as a witness at trial. At trial, Fasick recounted how she knew Harrison, and that Harrison came to her apartment in early September 2002 with a male and a female she did not know. Fasick testified that the three showed up at her house carrying backpacks and stayed for approximately two or three hours.

Fasick testified to everything that she had mentioned to the police in her initial 35-45 minute interview. Fasick did not offer any exculpatory evidence as to Prentice, for Fasick did not testify to anything material. The State's failure to provide Prentice with a copy of Fasick's police interview does not rise to the level of a violation requiring reversal

---

[12]Id.

[13]Id.

[14]Id. at 66, 993 P.2d at 36.

[15]Id.

[16]Id.

based on Brady. Prentice is not able to show that he suffered any prejudice from the State's failure to present the interview prior to trial.

The district court did not improperly exclude evidence regarding Ratelle's prior arrests

Prentice argues he should have been able to cross-examine Ratelle regarding her alleged prostitution activities. We disagree.

The decision to admit or exclude evidence rests within the sound discretion of the trial court, and will not be reversed absent manifest error.[17] Impeachment techniques may consist of the use of evidence of prior convictions, prior inconsistent statements, specific incidents of conduct and ulterior motives for testifying.[18] NRS 50.095(1) states, "[f]or the purpose of attacking the credibility of a witness, evidence that he has been convicted of a crime is admissible but only if the crime was punishable by death or imprisonment for more than 1 year under the law under which he was convicted." A witness may not be impeached by the use of extrinsic evidence on a collateral matter.[19] Extrinsic evidence of a prior bad act, such as an arrest not resulting in a conviction, is always collateral and therefore inadmissible.[20] The court in Drake v. State noted that if the defendant sought to ask a witness about an arrest record for prostitution, he would not be able to introduce extrinsic evidence of the

---

[17]See Vallery, 118 Nev. at 371, 46 P.3d at 76.

[18]Lobato v. State, 120 Nev. ____, ____, 96 P.3d 765, 770 (2004).

[19]Butler, 120 Nev. at ____, 102 P.3d at 79-80.

[20]Lobato, 120 Nev. at ____, 96 P.3d at 770.

record if the only purpose of the evidence was to challenge the witness's credibility.[21]

Immediately following the examination of Ratelle, the defense proffered an objection for the record regarding their inability to pursue a line of questioning demonstrating that Ratelle supported herself through prostitution. The district court ruled that because Ratelle was a juvenile when she was cited for prostitution, she would have only been adjudicated delinquent, not convicted of prostitution. Therefore, Prentice could not introduce that evidence.

Prentice relies heavily on the Sixth Amendment right to confrontation as well as case law indicating background information on a witness is admissible.[22] Prentice did have the opportunity to confront his accuser and cross-examine her. Prentice was also able to admit evidence attacking Ratelle's credibility, including the facts that Ratelle was a street kid, she had slept with Prentice the first night she met him, and that she did not leave the group when she found out the two men were planning to kill Miller.

We conclude that the district court acted within its discretion when it excluded the evidence of Ratelle's juvenile citation for prostitution. There was no evidence relating to the citation. Furthermore, the citation

---

[21]108 Nev. 523, 527, 836 P.2d 52, 55 (1992).

[22]U.S. v. McVeigh, 153 F.3d 1166, 1201 (10th Cir. 1998) (stating reasonable background information is always admissible to provide the jury a more reliable view of the witness); Wilson v. Vermont Castings, 977 F. Supp. 691, 699 (M.D. Pa. 1997) (stating information about witnesses' background is appropriate and admissible in every action, for it is necessary for the jury to assess credibility).

for prostitution would not be admissible, for it does not bear on truthfulness, nor is it a felony conviction.

The district court properly admitted Prentice's letter to Harrison

Prentice argues that the admission of the letter he wrote to Harrison, while the two were incarcerated awaiting trial, was not properly authenticated, and is thus inadmissible. We disagree.

NRS 48.015 allows for the admission of evidence "having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence." Nevertheless, even if evidence is relevant, evidence is "not admissible if its probative value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues or of misleading the jury."[23] With regard to the authentication of a letter, "[t]he requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence or other showing sufficient to support a finding that the matter in question is what its proponent claims."[24] NRS 52.055 states, "[a]ppearance, contents, substance, internal patterns or other distinctive characteristics are sufficient for authentication when taken in conjunction with [other] circumstances." This court has stated, "[a] district court's

---

[23]NRS 48.035(1).

[24]NRS 52.015(1) (emphasis added); see also Lopez v. State, 105 Nev. 68, 75, 769 P.2d 1276, 1281 (1989) ("trial court has the discretion to determine whether, by 'other showing,' the requirement of authentication has been met").

decision to admit or exclude evidence rests within its sound discretion and will not be disturbed unless it is manifestly wrong."[25]

Here, the district court allowed evidence relating to a letter Prentice wrote to Harrison while both were incarcerated. The letter indicated Prentice had a plan to beat the charges against the two men, and asked if he could count on Harrison's cooperation in the matter. The letter was also signed "Popeye," which was Prentice's nickname.

Danielle Hunt, Prentice's ex-girlfriend, testified that she had received approximately 15 letters from Prentice in a month while he was in jail, and that she was familiar with his handwriting. Hunt further testified that the letter written to Harrison appeared to be in Prentice's handwriting.

Also, Detective Long testified that he impounded the letter in question at the request of the district attorney. Long testified that the letter appeared to be a letter from Prentice to Harrison. At trial, Prentice admitted writing the letter.

Clearly, there was sufficient authentication of the letter and the district court did not abuse its discretion in admitting the letter into evidence.

The State adequately proved the deceased was Daniel Miller

Prentice next claims the State failed to prove that the deceased is the victim named in the information charged against Prentice. We disagree.

---

[25]Vallery, 118 Nev. at 371, 46 P.3d at 76 (quoting Libby v. State, 115 Nev. 45, 52, 975 P.2d 833, 837 (1999)).

The information in this case charged, "[Prentice] did then and there willfully, unlawfully, feloniously, without authority of law, and with malice aforethought, kill DANIEL MILLER." The prosecution did not want to show grisly autopsy photos of the deceased to witnesses and the jury, so the parties stipulated to the issue of identification. When the State rested, Prentice moved to dismiss the charge of murder with a deadly weapon based on failure by the State to identify the deceased in its case in chief. The stipulation was never entered into the record or memorialized, but it is clear that counsel for Prentice agreed to the stipulation. Prentice's motion for directed verdict was denied.

Further, the coroner identified the body of the deceased as that of Daniel Miller. Miller was also identified as the victim through the testimony of Detective Long and Ratelle. Additionally, Prentice testified that he, Harrison, and Ratelle went over to Miller's residence, the same residence where Miller's body was found, on the evening of the murder.

There is sufficient evidence to demonstrate that the deceased was Miller.

There is sufficient evidence to uphold Prentice's conviction

Prentice argues there was not sufficient evidence to uphold the jury's verdict against him. This assertion is clearly belied by the record.

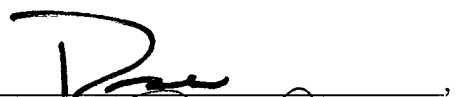
"The question for the reviewing court 'is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime

beyond a reasonable doubt.'"[26] "The jury determines the weight and credibility to give conflicting testimony."[27]

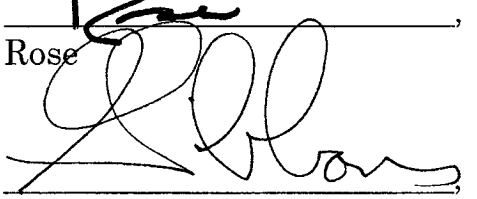
Here, Ratelle testified to Prentice's planning of the killing with Harrison, as well as to the fact that all three went to Miller's apartment that night. Ratelle also testified that while at Miller's apartment, Prentice handed Harrison the weapons used and promised to help if needed. Further testimony demonstrated Prentice's knowledge of Miller's murder prior to being informed of such by the police. Finally, evidence of Prentice's racist beliefs, coupled with the fact that a swastika was carved into the back of the deceased, supports the jury's verdict. Sufficient evidence supports Prentice's convictions.

Accordingly we,

ORDER the judgment of the district court AFFIRMED.



_____, J.
Rose



_____, J.
Gibbons

_____, J.
Hardesty

---

[26]Mason v. State, 118 Nev. 554, 559, 51 P.3d 521, 524 (2002) (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979)).

[27]Id.

cc: Hon. John S. McGroarty, District Judge
Paul E. Wommer
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk