IN THE SUPREME COURT OF THE STATE OF NEVADA

JULIO CESAR GONZALEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43300

FILED

SEP 15 2004

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of leaving the scene of an accident. Eighth Judicial District Court, Clark County; Kenneth C. Cory, Judge. The district court sentenced appellant Julio Cesar Gonzalez to a prison term of 24 to 60 months and then suspended execution of the sentence, placing Gonzalez on probation for a time period not to exceed three years.

Gonzalez contends that the district court abused its discretion by admitting evidence of his intoxication at the time of the alleged commission of the charged offense. Gonzalez argues that the other act evidence was not admissible under the complete story doctrine because intoxication is not an element of the crime, and the witnesses could have described the acts in controversy without reference to Gonzalez's intoxication. We conclude that Gonzalez's contention lacks merit.

The district court has considerable discretion in determining the relevance and admissibility of evidence, and this court will not disturb the trial court's decision to admit or exclude evidence absent manifest error.[1] Here, the district court admitted the evidence under the res gestae doctrine - the complete story of the crime. The "complete story of the

[1]See Lucas v. State, 96 Nev. 428, 431-32, 610 P.2d 727, 730 (1980).

crime" doctrine is set forth in NRS 48.035(3).[2] We have explained that the doctrine allows the State to present a complete picture of the facts surrounding the commission of a crime:

> [T]he State is entitled to present a full and accurate account of the circumstances surrounding the commission of a crime, and such evidence is admissible even if it implicates the accused in the commission of other crimes for which he has not been charged.[3]

But to use the doctrine, "the crime must be so interconnected to the act in question that a witness cannot describe the act in controversy without referring to the other crime."[4]

In this case, we conclude that the district court did not commit manifest error in admitting the other bad act evidence as part of the complete story of the crime. Although it is possible that the witnesses could have described the incident resulting in the charged offense without mentioning that Gonzalez was intoxicated, such an omission would not have provided a full and accurate account of the circumstances surrounding the commission of the charged offense. We acknowledge that

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[2]NRS 48.035(3) states:

> Evidence of another act or crime which is so closely related to an act in controversy or a crime charged that an ordinary witness cannot describe the act in controversy or the crime charged without referring to the other act or crime shall not be excluded, but at the request of an interested party, a cautionary instruction shall be given explaining the reason for its admission.

[3]Brackeen v. State, 104 Nev. 547, 553, 763 P.2d 59, 63 (1988).

[4]Bletcher v. State, 111 Nev. 1477, 1480, 907 P.2d 978, 980 (1995).

this evidence could have had a prejudicial impact, but the probative value of the evidence was not substantially outweighed by the danger of unfair prejudice, and Gonzalez could have requested a limiting instruction.[5] Nonetheless, even assuming the evidence was not admissible under NRS 48.035(3), we conclude that it could have been properly admitted pursuant to NRS 48.045(2) as evidence of Gonzalez's motive for fleeing from the scene of the accident. Accordingly, any error in admitting the evidence for another purpose was harmless.[6]

Having considered Gonzalez's contention and concluded that it lacks merit, we

ORDER the judgment of conviction AFFIRMED.

Becker, J.
Becker

Agosti, J.
Agosti

Gibbons, J.
Gibbons

cc: Hon. Kenneth C. Cory, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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[5]See NRS 48.035(1).

[6]See James v. State, 105 Nev. 873, 874-75, 784 P.2d 965, 966-67 (1989).