

IN THE SUPREME COURT OF THE STATE OF NEVADA

SHIRLEY M. WILLIAMS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43475

FILED

APR 22 2005

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count each of aggravated stalking and extortion. Eighth Judicial District Court, Clark County; Michael A. Cherry, Judge. The district court sentenced appellant Shirley M. Williams to two consecutive prison terms of 12-36 months, suspended execution of the sentence, and placed her on probation with several conditions for an indeterminate period not to exceed 5 years.

First, Williams contends that the district court abused its discretion in granting the State's motion to admit evidence of prior bad acts. The State filed a successful motion in limine requesting that the district court allow at trial the admission of: (1) threatening letters written by Williams to the victim after she was taken into custody; and (2) testimony regarding Williams' violent behavior towards a neighbor. On appeal, Williams is not challenging the admission of the letters. Williams argues that evidence of her attack of a neighbor is "totally irrelevant" and "unduly prejudicial and highly inflammatory." Williams also characterizes as "other crimes or wrongs" evidence admitted at trial regarding her violent behavior and threatening statements made at the time of her arrest. We conclude that Williams' contention is without merit.

Evidence of other wrongs cannot be admitted at trial solely for the purpose of proving that a defendant has a certain character trait and acted in conformity with that trait on the particular occasion in question.¹ NRS 48.045(2) states that evidence of other bad acts may be admissible for other purposes, such as “motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.” Nevertheless, the admission of uncharged bad acts evidence is heavily disfavored.² Prior to admitting such evidence, the district court must determine during an evidentiary hearing whether the evidence is relevant to the charged offense, is proven by clear and convincing evidence, and whether the probative value is substantially outweighed by the danger of unfair prejudice.³ Further, “[t]he decision to admit or exclude evidence rests within the trial court's discretion, and this court will not overturn that decision absent manifest error.”⁴

We conclude that the district court did not commit manifest error in admitting evidence of Williams’ previous attack of a neighbor. The record reveals that the district court conducted a Petrocelli hearing,⁵

¹NRS 48.045(1).

²Braunstein v. State, 118 Nev. 68, 73, 40 P.3d 413, 417 (2002).

³See, e.g., Qualls v. State, 114 Nev. 900, 902, 961 P.2d 765, 766 (1998); see also Tinch v. State, 113 Nev. 1170, 1176, 946 P.2d 1061, 1064-65 (1997).

⁴Collman v. State, 116 Nev. 687, 702, 7 P.3d 426, 436 (2000).

⁵Petrocelli v. State, 101 Nev. 46, 692 P.2d 503 (1985), modified on other grounds by Sonner v. State, 112 Nev. 1328, 930 P.2d 707 (1996).

considered the factors required by Tinch v. State,⁶ and granted the State's motion, finding that the evidence of the attack was admissible to show the reasonableness of the victim's fear. We conclude that the evidence was properly admitted.

We also conclude, however, that the district court erred in failing to give a limiting instruction to the jury prior to the admission of the testimony.⁷ As this court held in Tavares v. State, "to maximize the effectiveness of the instructions, . . . the trial court should give the jury a specific instruction explaining the purposes for which the evidence is admitted immediately prior to its admission and should give a general instruction at the end of trial."⁸ The reason for instructing the jury prior to the admission of the evidence is so the limiting instruction "can take effect before the jury has been accustomed to thinking of it in terms of the inadmissible purpose."⁹

In the instant case, however, the district court instructed the jury immediately after the neighbor-witness' testimony, thus undermining the rationale behind the holding of Tavares. Nevertheless, this court recently stated that "under Tavares we consider the failure to give such a limiting instruction to be harmless if the error did not have a substantial

⁶113 Nev. at 1176, 946 P.2d at 1064-65.

⁷Although Williams fails to raise this issue in her direct appeal, we, nevertheless, elect to address it sua sponte.

⁸117 Nev. 725, 733, 30 P.3d. 1128, 1133 (2001) (emphasis added).

⁹Id. (quoting 21 Charles Alan Wright & Kenneth W. Graham, Jr., Federal Practice and Procedure § 5066 (1977 & Supp. 2001)).

and injurious effect or influence the jury's verdict."¹⁰ Here, the jury received the appropriate limiting instruction after the witness' testimony and then again prior to the jury's deliberations. Because of the overwhelming evidence of Williams' guilt, we conclude that the failure of the State to request and the district court to provide a limiting instruction prior to the testimony in question was harmless error.¹¹

The district court also properly admitted at trial what Williams characterizes as "other crimes or wrongs" evidence – her violent behavior and the threatening statements she made at the time of her arrest. The admission of this evidence was not sought by the State in its motion in limine, yet the matter was argued during the hearing on the motion. During her arrest, Williams threatened the victim and informed Utah Deputy Sheriff Dave Mott that she had guns at her house; this information was later revealed to the victim. The State argued that this was not "other bad act" evidence, but "just the circumstances of the case." The district court did not expressly rule on this issue during the hearing, but at trial, prior to the deputy's testimony, the district court gave a limiting instruction, informing the jury that it "may not consider this evidence to determine if the defendant is generally a person of bad character. Instead, it has been admitted for the purpose of showing the defendant's intent and for determining the reasonableness of [the victim's]

¹⁰Rhymes v. State, 121 Nev. ___, ___, ___ P.3d ___, ___ (Adv. Op. No. 4, March 24, 2005) (citing Tavares, 117 Nev. at 732, 30 P.3d at 1132).

¹¹See NRS 178.598 ("Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded."); see also U.S. v. Vgeri, 51 F.3d 876, 882 (9th Cir. 1995) (holding that the State must show "that the error more probably than not was harmless").

fear.” We conclude that the district court did not commit manifest error in allowing Deputy Mott’s testimony.

Finally, Williams contends that the district court erred in denying her motion for a mistrial based on the fact that three of the jurors saw her in the hallway shackled with chains and in the custody of uniformed law enforcement personnel immediately prior to beginning deliberations. Additionally, Williams contends that the district court erred in refusing to replace two of the jurors with alternates. We disagree with Williams’ contention.

This court has stated that “[d]enial of a motion for a mistrial is within the sound discretion of the district court, and that ruling will not be reversed absent a clear showing of abuse of discretion.”¹² Further, a defendant has the right to appear before the jury in the clothing of an innocent person, as “[t]he presumption of innocence is incompatible with the garb of guilt.”¹³ When an error has occurred at trial that infringes on a defendant’s constitutional rights, the conviction must be reversed unless it was harmless beyond a reasonable doubt.

In the instant case, after being informed by the bailiff that the jury may have seen Williams in the hallway shackled in chains, the district court proceeded to conduct an individual voir dire of each of the jury members. Only three of the jurors indicated that they had seen Williams in the hallway. Upon questioning by the district court, the three jurors stated that they would not be influenced by what they saw, could put the incident out of their minds, and would base their ultimate decision


¹²McKenna v. State, 114 Nev. 1044, 1055, 968 P.2d 739, 746 (1998).


¹³Grooms v. State, 96 Nev. 142, 144, 605 P.2d 1145, 1146 (1980).

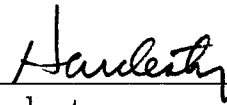
during deliberations solely on the evidence. The district court subsequently denied the motion for a mistrial. We conclude that: (1) any error was harmless beyond a reasonable doubt,¹⁴ and (2) the district court did not abuse its discretion in denying Williams' motion for a mistrial.

Therefore, having considered Williams' contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Rose


_____, J.
Gibbons


_____, J.
Hardesty

cc: Hon. Michael A. Cherry, 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

¹⁴See NRS 178.598.