IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTOPHER KYRIACOU,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43963

FILED

APR 22 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 possession of a controlled substance by a state prisoner, and one count of conspiracy to commit an unauthorized act relating to a controlled substance. Seventh Judicial District Court, White Pine County; Dan L. Papez, Judge. The district court sentenced appellant to two concurrent prison terms of 19 to 48 months each.

Appellant contends that the district court erred by denying his motion to suppress his confession. "The question of the admissibility of a confession is primarily a factual question addressed to the district court: where that determination is supported by substantial evidence, it should not be disturbed on appeal."[1] Moreover, in determining whether a confession is voluntary, the court looks at the totality of the circumstances.[2]

Appellant first argues that his statements were coerced because the investigator agreed to put in the report that appellant was the "master mind" behind the plan, in order to shield appellant's accomplice

[1]Chambers v. State, 113 Nev. 974, 981, 944 P.2d 805, 809 (1997).

[2]Id.

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from liability. We conclude that the investigator's conduct in this case does not constitute coercion.[3]

Appellant also argues he did not validly waive his Miranda[4] rights. The validity of a defendant's waiver "must be determined in each case by examining the facts and circumstances of the case such as the background, conduct and experience of the defendant."[5] After viewing the totality of the circumstances in this case, we agree that the State has shown by a preponderance of the evidence that appellant understood and validly waived his Miranda rights. We therefore conclude that the district court did not err by admitting appellant's statements.

Appellant also contends that the district court abused its discretion by admitting prior bad act evidence in the form of letters written by appellant that discussed smuggling drugs into prison.

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

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[3]Cf. Lynumn v. Illinois, 372 U.S. 528 (1963) (holding that a confession was coerced and therefore inadmissible where the defendant was threatened with the loss of her children and welfare payments).

[4]Miranda v. Arizona, 384 U.S. 436 (1966).

[5]Falcon v. State, 110 Nev. 530, 534, 874 P.2d 722, 775 (1994).

danger of unfair prejudice.[6] 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.[7]

Here, the trial court conducted a hearing outside the presence of the jury 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 appellant's intent, 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.

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

ORDER the judgment of conviction AFFIRMED.

_____, J.
Rose

_____, J.
Gibbons

_____, J.
Hardesty

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

[7]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, 930 P.2d 707 (1996).

cc: Hon. Dan L. Papez, District Judge
State Public Defender/Carson City
State Public Defender/Ely
Attorney General Brian Sandoval/Carson City
Attorney General Brian Sandoval/Las Vegas
White Pine County District Attorney
White Pine County Clerk