

N THE SUPREME COURT OF THE STATE OF NEVADA

JAMES STOREY A/K/A JAMES  
EUGENE STOREY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 45343

**FILED**

NOV 17 2005

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. R. [Signature]*  
CLERK

This is an appeal from a judgment of conviction, pursuant to a guilty verdict, of one count of compounding or manufacturing a controlled substance (second offense) and one count of trafficking a controlled substance. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge. The district court sentenced appellant James Storey to serve one prison term of 36 to 120 months and a second concurrent prison term of 12 to 48 months. Storey presents four issues for our review.

First, Storey claims that the district court erred when it denied his pretrial petition for a writ of habeas corpus. In his petition, Storey contended that the initial intrusion into his apartment was unconstitutional, that observations made during this intrusion formed the basis for a search warrant, and therefore evidence seized during the execution of the search warrant was tainted and must be suppressed. Storey specifically argued that because he was arrested outside of his apartment, the initial warrantless intrusion into the apartment could not be justified by exigent circumstances.

During Storey's preliminary hearing, Officer Michael Beitel testified that he and Officer Thomas Stoll went to Storey's apartment to investigate an allegation of petty larceny. When Storey opened the door,

Officer Beitel detected an odor that he knew from his training and experience was associated with methamphetamine production. Officer Beitel detained Storey and Officer Stoll entered the apartment to search for other occupants. After clearing the residence, the officers informed the dispatcher that they had encountered a methamphetamine laboratory and asked her to contact the narcotics detectives. Under these facts, we conclude that the warrantless intrusion into the apartment was necessary to prevent physical harm to the officers and other persons and the destruction of relevant evidence.<sup>1</sup> Therefore, the district court did not err in denying Storey's pretrial habeas petition.

Second, Storey claims that the district court erred when it determined sua sponte that the State could present evidence obtained in an unrelated case because the evidence was probative to the issues of a common scheme or plan and the absence of mistake. Our review of the record reveals that the district court conducted a Petrocelli hearing,<sup>2</sup> considered the factors required by Tinch,<sup>3</sup> and concluded that the danger of unfair prejudice did not substantially outweigh the probative value of the evidence.

---

<sup>1</sup>Doleman v. State, 107 Nev. 409, 413-14, 813 P.2d 1287, 1289-90 (1991) (warrantless searches are permissible if they are based on probable cause and exigent circumstances, e.g. necessary for the protection of police officers and other persons or to prevent the destruction of evidence).

<sup>2</sup>Petrocelli 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); Tinch v. State, 113 Nev. 1170, 1176, 946 P.2d 1061, 1064-65 (1997).

<sup>3</sup>113 Nev. at 1176, 946 P.2d at 1064-65.

We conclude that the district court did not commit manifest error,<sup>4</sup> and that any danger of unfair prejudice was alleviated when the jurors were instructed that the evidence was to be considered "only for the limited purpose of proving the defendant's opportunity, intent, motive, plan, knowledge, identity or absence of mistake or accident" and not to show criminal predisposition.<sup>5</sup> Therefore, the district court did not err in permitting the State to admit other bad act evidence.

Third, Storey claims that the district court erred by denying his motion to strike evidence of other bad acts. In his motion, Storey contended that this evidence was obtained during an illegal pretextual traffic stop and as a result of an improper custodial interrogation, and he argued that it should have been suppressed under the exclusionary rule.

Officer Christopher Cannon testified that he initiated the traffic stop after determining that the car was a rental and its license plates had expired. Because Storey was unable to produce a rental agreement and proof of current insurance coverage, Officer Cannon decided to have the car towed and asked Storey to get out of the car. Storey's nervous behavior and his repeated statements that he needed to go, along with the fact that Officer Cannon was alone in high crime neighborhood, created a dangerous situation that prompted Officer Cannon to place Storey in handcuffs. While conducting an inventory

---

<sup>4</sup>Collman v. State, 116 Nev. 687, 702, 7 P.3d 426, 436 (2000) ("The decision to admit or exclude evidence rests within the trial court's discretion, and this court will not overturn that decision absent manifest error.").

<sup>5</sup>See Tavares v. State, 117 Nev. 725, 30 P.3d 1128 (2001) (discussing the importance of a limiting instruction).

search of the car, Officer Cannon found a paper bag on the floorboard and asked Storey if the bag was his. Officer Cannon opened the bag after Storey acknowledged that it was his. The bag contained red phosphorus, methamphetamine, and pseudoephedrine.

We conclude that Officer Cannon had a valid reason for initiating the traffic stop,<sup>6</sup> that ordering Storey out of the car and placing him in handcuffs was an appropriate precautionary measure and did not convert the traffic stop into an arrest,<sup>7</sup> and that Officer Cannon's question about the ownership of paper bag was not an interrogation.<sup>8</sup> Therefore, the district court did not err in denying Storey's pretrial motion to suppress.

Fourth, Storey claims that the district court erred by denying his motions for mistrial. The motions were made following the improper remarks of two State witnesses. Storey contends that the testimony was solicited, deliberate, and done in bad faith. He argues that the cumulative effect of the improper testimony amounted to prosecutorial misconduct.

---

<sup>6</sup>Whren v. United States, 517 U.S. 806, 808-19 (1996) (The temporary detention of a motorist for a traffic violation is not an unreasonable search and seizure, even if a reasonable officer would not have stopped the motorist absent some additional law enforcement objective); see also Gama v. State, 112 Nev. 833, 836, 920 P.2d 1010, 1012-13 (1996).

<sup>7</sup>See Pennsylvania v. Mimms, 434 U.S. 106, 111 (1977); United States v. Baustista, 684 F.2d 1286, 1289 (9th Cir. 1982).

<sup>8</sup>Rhode Island v. Innis, 446 U.S. 291, 301-02 (1980) (An interrogation is questioning, words, or actions on the part of the police that they should know are reasonably likely to elicit an incriminating response); see also Koza v. State, 102 Nev. 181, 186, 718 P.2d 671, 674-75 (1986).

The first remark that Storey complains of occurred when the State asked Detective Nicholas Gulli to describe the evidence depicted in a photograph. Detective Gulli testified that "[o]ne of the items that caught my attention right away . . . was a book along with a drawing of some sort. I went ahead and looked in the book and it was referring to white supremacist-type activities." Defense counsel immediately objected, asked to approach, and conferred with the district court. Instead of admonishing the jury, the district court allowed the State to elicit testimony that the book was found in the room occupied by Storey's codefendant. Later, outside the presence of the jury, the district court held that there was an effort to cure, that effort had a curative effect, and that the description of the material was so brief that a mistrial would not have been warranted even without the curative effort.

The second remark occurred when the State asked Officer Cannon why he asked Storey if he had a methamphetamine laboratory. Officer Cannon responded "Due to the fact that the contents he had inside the bag, the red phosphorous, and the meth was still wet, the box of pseudoephedrine which is a content also used to make methamphetamine, and after I ran Mr. Story in his priors." Defense counsel objected and the district court admonished the jury to disregard the witness's last response.

We conclude that the district court adequately cured the prejudicial effects of the witnesses' remarks,<sup>9</sup> the remarks were harmless, and they were not the result of prosecutorial misconduct.<sup>10</sup> Therefore, the

---

<sup>9</sup>See Allen v. State, 99 Nev. 485, 490-91, 665 P.2d 238, 241-42 (1983).



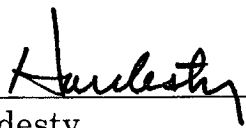
<sup>10</sup>See Parker v. State, 109 Nev. 383, 389, 849 P.2d 1062, 1066 (1993) (where the prosecution has solicited the prejudicial statement, the district

*continued on next page . . .*

district court did not abuse its discretion when it denied Storey's motions for mistrial.<sup>11</sup>

Having considered Storey's contentions and concluded that they lack merit, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Maupin  
  
\_\_\_\_\_, J.  
Gibbons  
  
\_\_\_\_\_, J.  
Hardesty

cc: Hon. Donald M. Mosley, District Judge  
Special Public Defender David M. Schieck  
Attorney General George Chanos/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

... continued

court's denial of a motion for a mistrial will be deemed a harmless error if the prejudicial effect of the statement is not strong and there is otherwise strong evidence of the defendant's guilt).

<sup>11</sup>See Geiger v. State, 112 Nev. 938, 942, 920 P.2d 993, 995 (1996).