

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,
Appellant,
vs.
KENTRO DWAYNE TAYLOR,
Respondent.

No. 46079

FILED

MAY 02 2006

ORDER OF AFFIRMANCE

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

This is a State's appeal from a district court order granting respondent's motion for reconsideration of his motion for a new trial. Eighth Judicial District Court, Clark County; Lee A. Gates, Judge.

Respondent Kentro Dwayne Taylor was charged with multiple felony counts, including conspiracy to commit murder and attempted murder. The day before trial began, Taylor filed a motion in limine to prohibit the State's witnesses from referring to Taylor as a "fugitive" or "homicide suspect." The State agreed to refer only to the fact that Taylor had a "warrant" for his arrest. Trial commenced the next day. In the State's opening argument, the prosecutor stated --

So, with the forensic finding, with this weapon being found in the possession of the defendant in his car with April Jones while they were acting together evading the police, wanting to die in order to avoid capture and willing to take shots at officers who were trying to facilitate an arrest for murder, or who had a warrant for his arrest for murder, excuse me -- who had a warrant for his arrest, the State will be asking you to find the defendant guilty as charged.

(Emphasis added.) Taylor objected and moved for a mistrial. The district court denied the motion.

Subsequently, a State's witness testified that dispatch broadcast that Taylor was a "homicide suspect." After the witness testimony, Taylor again made an oral motion for a mistrial. The district court denied the motion, finding that the State's reference to the fact that Taylor was wanted for homicide was not intentional and not prejudicial, especially in light of the fact that the State "was entitled to present the full and complete story as to what happened."

The jury convicted Taylor of seven counts of attempted murder with the use of a deadly weapon, and one count each of conspiracy to commit murder, stop required on signal of a police officer, and possession of stolen property. Prior to sentencing, Taylor filed a written motion for a new trial, arguing that the prosecutor's reference to Taylor as a "homicide suspect" warranted reversal of his convictions. In the motion, Taylor alleged that in his interviews with two jurors they "said that the revelations of [Taylor's] fugitive status and his being wanted for murder were the most decisive factors in the jury's collective perception of him, and one juror even went so far as to say that Mr. Taylor should not be loose in the community because he was wanted for murder." The State opposed the motion, arguing that extrinsic evidence could not be used to impeach the jury verdict. The district court denied the motion noting that the fact that Taylor was wanted for homicide was part of the complete story of the crime.

On August 12, 2005, the district court imposed multiple concurrent and consecutive prison terms, totaling 14 to 40 years. Thereafter, Taylor filed a motion for reconsideration of his request for a new trial, arguing that a new trial was warranted based on this court's

recent decision in Bellon v. State.¹ The State opposed the motion. After hearing argument from counsel, the district court granted the motion, ruling that the Bellon case was clear, and the evidence that Taylor was wanted for homicide should not have been admitted.

The State contends that the district court abused its discretion in granting the motion for a new trial based on Bellon. First, the State argues that Bellon is factually inapposite. In particular, the State argues that in Bellon the jury was presented with damaging police testimony that the accused threatened the lives of the police officers and their families, whereas here the jury only heard the prosecutor's "inadvertent slip" in opening argument that Taylor was a murder suspect. Emphasizing that the reference to the homicide warrant was an accident, the State argues that affirming the district court's ruling would cause a "chilling of zealous advocacy" because "[d]edicated advocates should not be burdened with the notion that a mistaken, inadvertent slip of the tongue of this nature can compromise an entire case." The State also argues that, unlike in Bellon, the evidence that Taylor had an outstanding homicide warrant was admissible under NRS 48.035(3) because it was interconnected with the reason for stopping the car in the first place and explained Taylor's motive to run from the police and attempt to avoid capture at all costs.

Alternatively, the State argues that the prosecutor's reference to the fact that Taylor was wanted for murder was harmless beyond a reasonable doubt because of the overwhelming evidence of guilt, as well as the fact that the error was "miniscule" relative to Bellon. We conclude that the State's contention lacks merit.

¹121 Nev. ___, 117 P.3d 176 (2005).

The district court has broad discretion in granting a motion for a new trial, and this court will not set aside the district court's ruling absent an abuse of discretion.² We conclude that the district court acted within its discretion in granting Taylor's request for a new trial. Pursuant to NRS 48.035(3), a witness may only testify to another crime if it is so closely related to charged crime that the witness cannot describe the events at issue without referring to the other crime.³ In this case, the State could have and, in fact, expressly agreed to only introduce evidence that Taylor was fleeing from police because he had a warrant without referencing that the warrant was for homicide. The nature of the error is significant because the prosecutor violated both the agreement between the parties and the district court's order and referenced the homicide warrant in opening argument. The information that Taylor was wanted for homicide in another State was highly prejudicial, under the facts of this case, because the State's theory of attempted murder was based mainly on a theory of accomplice liability. Notably, there was no direct evidence presented at trial that Taylor ever shot at police officers or had the intent to kill them. To the contrary, the shooter testified that Taylor told her to put the gun down.

Although the State presented sufficient evidence in support of Taylor's convictions under a theory of accomplice liability, under the circumstances, we cannot say that the district court exceeded its broad discretion in ruling that the gravity of the error was sufficient to warrant a new trial. We note that, on retrial, the evidence that Taylor was wanted

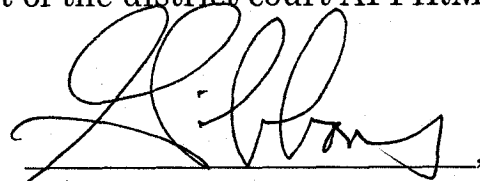
²See State v. Carroll, 109 Nev. 975, 860 P.2d 179 (1993).

³Bellon, 121 Nev. at ___, 117 P.3d at 181.

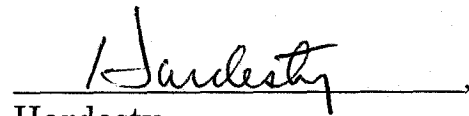
for homicide may be admissible, pursuant to NRS 48.045(2), to explain Taylor's motive for attempting to kill the police officers, assuming the district court conducts a Petrocelli hearing⁴ and finds that the three factors set forth in Tinch v. State⁵ are satisfied.

Having considered the State's arguments and concluded that they lack merit, we

ORDER the judgment of the district court AFFIRMED.



Gibbons J.



Hardesty J.

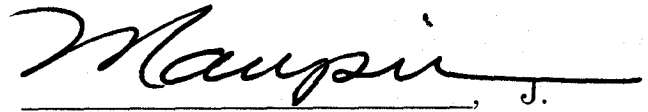
cc: Hon. Lee A. Gates, District Judge
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Public Defender Philip J. Kohn
Clark County Clerk

⁴Petrocelli v. State, 101 Nev. 46, 692 P.2d 503 (1985).

⁵Tinch v. State, 113 Nev. 1170, 1176, 946 P.2d 1061, 1064-65 (1997).

MAUPIN, J., dissenting:

While I appreciate the quandary the trial judge was placed in as a result of our decision in Bellon,¹ I conclude that any error in admitting the evidence was harmless beyond a reasonable doubt.² In this, I place no credence on the State's argument that the district court's ruling chills vigorous advocacy.

A handwritten signature in cursive script that reads "Maupin" followed by a horizontal line and a small "J." to the right.

Maupin

¹121 Nev. ___, 117 P.3d 176 (2005).

²See Chapman v. California, 386 U.S. 18 (1967).