

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARION EVERETT WEATHERS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46489

FILED

JUN 29 2006

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment on conviction, entered pursuant to a jury verdict, of one count of felony possession of a controlled substance. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge. The district court sentenced appellant Marion Everett Weathers to serve a prison term of 12 to 30 months. Weathers presents three issues for our review.

First, Weathers contends that the district court erred by improperly admitting uncharged bad act evidence. He specifically argues that the evidence that he told a police officer that he had used drugs the night before was highly prejudicial. We disagree.

"The trial court's determination to admit or exclude evidence of prior bad acts is a decision within its discretionary authority and is to be given great deference."¹ Such determinations will not be reversed absent manifest error.² A trial court deciding whether to admit evidence of prior bad acts must conduct a hearing outside the presence of the jury,³ and

¹Braunstein v. State, 118 Nev. 68, 72, 40 P.3d 413, 416 (2002); Qualls v. State, 114 Nev. 900, 902, 961 P.2d 765, 766 (1998).

²Braunstein, 118 Nev. at 72, 40 P.3d at 416.

³Petrocelli v. State, 101 Nev. 46, 692 P.2d 503 (1985).

determine whether "(1) the incident is relevant to the crime charged; (2) the act is proven by clear and convincing evidence; and (3) the probative value of the other act is not substantially outweighed by the danger of unfair prejudice."⁴

Based on our review of the record on appeal, we are satisfied that the district court properly considered the uncharged bad act evidence before allowing it to be admitted into evidence. The district court heard argument on the record and outside the presence of the jury before concluding that Weathers' statement was relevant and admissible as evidence that he knew about the narcotics that the police found in his room. Accordingly, we conclude that the district court did not abuse its discretion.

Second, Weathers contends that the district court erred by failing to instruct the jury that evidence that he used drugs the night before could not be used to prove that he possessed drugs the following day. We agree that the district court was required to instruct the jury on the limited use of the uncharged bad act evidence.⁵ However, the district court's failure to give these instructions is "harmless if the error did not have a substantial and injurious effect or influence the jury's verdict."⁶

⁴Tinch v. State, 113 Nev. 1170, 1176, 946 P.2d 1061, 1064-65 (1997).

⁵Tavares v. State, 117 Nev. 725, 733, 30 P.3d 1128, 1133 (2001) (holding that "the trial court should give the jury a specific instruction explaining the purposes for which the [uncharged bad act] evidence is admitted immediately prior to its admission and should give a general instruction at the end of the trial").

⁶Rhymes v. State, 121 Nev. 17, 24, 107 P.3d 1278, 1282 (2005) (citing Tavares, 117 Nev. at 732, 30 P.3d at 1132).

Here, given the overwhelming evidence of Weathers' guilt, we conclude that the error was harmless.

Third, Weathers contends that there was insufficient evidence adduced at trial to support a conviction. Specifically, he claims that the State failed to prove that he had the requisite intent to possess the controlled substance because no evidence was adduced that he possessed a usable amount of the controlled substance. We disagree.

The standard of review for a sufficiency of the evidence challenge is "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt."⁷ To obtain a conviction for narcotics possession, the State must show that the defendant had dominion and control over the substance, the substance was a narcotic, and the defendant knew of its narcotic character.⁸ "The amount of controlled substance needed to sustain a conviction . . . is that amount necessary for identification as a controlled substance by a witness qualified to make such identification."⁹

Here, the State presented evidence that upon entering Weathers' locked bedroom, Police Officer Ray Eccles observed Weathers lying on his bed and an unopened can of soda sitting on the bed stand with what appeared to be white powdery substance on it and a cotton ball.

⁷McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992) (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979)).

⁸See Sheriff v. Shade, 109 Nev. 826, 830, 858 P.2d 840, 842 (1993); see also NRS 453.336(1).

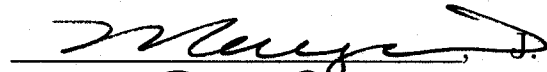
⁹NRS 453.570; see also Sheriff v. Benson, 89 Nev. 160, 162-63, 509 P.2d 554, 555 (1973).

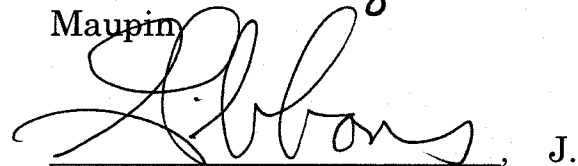
Weathers told Officer Eccles that he used narcotics with some friends the previous night, and he acknowledged the narcotics that Officer Eccles had found, but stated that they were not his. Criminalist Terry Hanson tested the substance found on the soda can and determined that it was methamphetamine.


We conclude that the jury could reasonable infer from the evidence presented that Weathers had the requisite intent to possess the controlled substance found near him in his locked bedroom.

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

ORDER the judgment of conviction AFFIRMED.


Maupin


Gibbons J.


Hardesty J.

cc: Hon. Steven R. Kosach, District Judge
Washoe County Public Defender
Attorney General George Chanos/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk