


IN THE SUPREME COURT OF THE STATE OF NEVADA

SIMON BOL MANGOK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48608

FILED

SEP 07 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY: 
DEPUTY CLERK

ORDER AFFIRMING IN PART, VACATING IN PART, AND
REMANDING

This is an appeal from a judgment of conviction. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge.

As a preliminary matter, we conclude that this case must be remanded for resentencing. The jury found appellant Simon Bol Mangok guilty of one count of stalking and one count of violating an extended protection order. However, the district court erroneously convicted and sentenced Mangok for aggravated stalking. The district court also improperly sentenced Mangok to serve 6 months in the county jail for violating an extended protection order; whereas, it should have sentenced Mangok to serve a minimum prison term of one year as required by the relevant statutes.¹

¹See NRS 193.130(2)(c) (a category C felony is punished by imprisonment for 1 to 5 years); NRS 200.591(5)(b) (violating an extended protection order is a category C felony and is punished in accordance with NRS 193.130).

Mangok presents three issues for our review. First, Mangok contends that the district court erred by denying his pretrial motion to prohibit the State from presenting testimony concerning his October 1, 2004, arrest at the Venetian Resort Hotel Casino for trespassing. He specifically claims that this arrest had nothing to do with the crimes charged in the instant case and that the State's only purpose for offering evidence of the arrest was to create prejudice by depicting him as a defiant and difficult person.

"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."² Such determinations will not be reversed absent manifest error.³ A trial court deciding whether to admit evidence of prior bad acts must conduct a hearing outside the presence of the jury,⁴ and determine whether "(1) the incident is relevant to the crime charged; (2) the act is proven by clear and convincing evidence; and (3) the

²Braunstein 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).

³Id.

⁴Petrocelli v. State, 101 Nev. 46, 692 P.2d 503 (1985), modified on other grounds by Sonner v. State, 112 Nev. 1328, 1334, 930 P.2d 707, 711-12 (1996), and superseded by statute as stated in Thomas v. State, 120 Nev. 37, 45, 83 P.3d 818, 823 (2004).

probative value of the other act is not substantially outweighed by the danger of unfair prejudice."⁵

Here, the district court conducted a brief hearing outside the presence of the jury. It found that the evidence regarding Mangok's trespass was admissible to show the seriousness of the danger that Mangok presented.⁶ We conclude from our review of the record that the Tinch factors for admissibility were met,⁷ and that the district court's decision to admit the evidence of the trespass did not constitute a manifest error.

Second, Mangok contends that he was denied a fair trial due to prosecutorial misconduct. Mangok specifically claims that the prosecutor improperly stated that the presumption of innocence no longer applied to him, argued that the defense had twisted the law, asked the jury to give the victim some closure, and asked the jury to enforce the protective order.

In determining whether prosecutorial misconduct has deprived a defendant of a fair trial, we inquire as to whether the prosecutor's statements so infected the proceedings with unfairness as to

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

⁶Evidence of Mangok's dangerousness was relevant to the stalking charge. See NRS 200.575(1) (requiring evidence that the accused engaged in "a course of conduct that would cause a reasonable person to feel terrorized, frightened, [or] intimidated").

⁷See King v. State, 116 Nev. 349, 355, 998 P.2d 1172, 1175 (2000).

make the results a denial of due process. Furthermore, a defendant is entitled to a fair trial, not a perfect one and, accordingly, a criminal conviction is not to be lightly overturned on the basis of a prosecutor's comments standing alone, for the statements or conduct must be viewed in context. Finally, we will determine whether any prosecutorial misconduct that did occur was harmless beyond a reasonable doubt.⁸

We have considered the prosecutor's comments in context. To the extent that they constitute improper argument, we conclude that they are harmless beyond a reasonable doubt.

Third, Mangok contends that the evidence presented at trial was insufficient to support his conviction for aggravated stalking. He specifically claims that the evidence did not establish that the victim was placed in fear of death or bodily harm. The State agrees and notes that the jury did not find Mangok guilty of aggravated stalking. Because Mangok was not found guilty of aggravated stalking, we conclude that this contention is moot.⁹

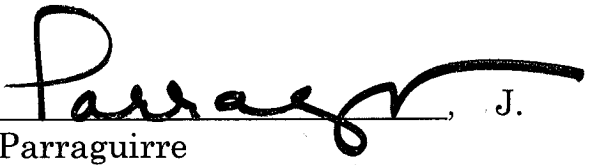
We have reviewed Mangok's contentions and conclude that he is not entitled to relief. However, because the district court erroneously convicted and sentenced Mangok for aggravated stalking and improperly

⁸Rudin v. State, 120 Nev. 121, 136-37, 86 P.3d 572, 582 (2004) (internal footnotes and quotation marks omitted).

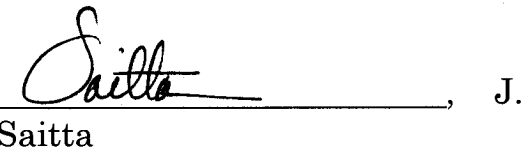
⁹See Abbott v. State, 122 Nev. 715, 718 n.1, 138 P.3d 462, 464 n.1 (2006).

sentenced him for violating an extended protection order, this case must be remanded for resentencing. Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND VACATED IN PART, AND REMAND this matter to the district court for proceedings consistent with this order.

 J.
Parraguirre

 J.
Hardesty

 J.
Saitta

cc: Hon. Stewart L. Bell, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk