IN THE SUPREME COURT OF THE STATE OF NEVADA

RANDALL GEORGE ANGEL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49826

FILED

JUL 11 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, entered pursuant to a jury verdict, of one count of unlawful use of human excrement or bodily fluid. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge. The district court sentenced appellant Randell George Angel to serve a prison term of 36 to 120 months.[1]

First, Angel contends that the district court erred by permitting the State to present testimony concerning two prior bad acts: (1) a confrontation in the county jail during which Angel spit in his cellmate's face, and (2) a confrontation at a Greyhound bus station during which Angel spit on the bus station manager.

"The trial court's determination to admit or exclude evidence of prior bad acts is a decision within its discretionary authority and is to

[1]District Judge Steven R. Kosach decided the pretrial motions and presided over the trial. District Judge Connie J. Steinheimer presided over the sentencing hearing and imposed the sentence.

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 probative value of the evidence is not substantially outweighed by the danger of unfair prejudice."[5]

Here, the district court conducted a Petrocelli hearing. It found that the evidence regarding these spitting incidents was relevant to the crime charged, the spitting incidents were proven by clear and convincing evidence, and the probative value of the evidence was not substantially outweighed by the danger of unfair prejudice. We note that the district court instructed the jury that the bad acts evidence was "admitted for a limited purpose to prove intent or absence of mistake or accident" before and after the evidence was admitted,[6] and we conclude

---

[2]Braunstein v. State, 118 Nev. 68, 72, 40 P.3d 413, 416 (2002).

[3]Id.

[4]Petrocelli v. State, 101 Nev. 46, 51-52, 692 P.2d 503, 507-08 (1985), modified on other grounds by Sonner v. State, 112 Nev. 1328, 930 P.2d 707 (1996).

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

[6]See Tavares v. State, 117 Nev. 725, 733, 30 P.3d 1128, 1133 (2001), holding modified by Mclellan v. State, 124 Nev. ___, 182 P.3d 106 (2008).

that the district court's decision to admit this evidence did not constitute manifest error.

Second, Angel contends that the district court erred by denying his proposed jury instruction on voluntary intoxication. Angel claims that his theory of defense was that he did not knowingly and intentionally spit on Deputy Ron Harvey. And Angel argues that unlawful use of human excrement or bodily fluid is a specific intent crime and that his voluntary intoxication may have affected his ability to form the requisite intent to commit the crime.

The district court is ultimately responsible for ensuring that the jury is fully and correctly instructed.[7] If requested, the district court must provide instructions on the significance of findings that are relative to the defense's theory of the case.[8] "'If [a] proposed [defense] instruction is poorly drafted, a district court has an affirmative obligation to cooperate with the defendant to correct the proposed instruction or to incorporate the substance of such an instruction in one drafted by the court.'"[9] The

---

[7]Crawford v. State, 121 Nev. 744, 754-55, 121 P.3d 582, 589 (2005).

[8]Carter v. State, 121 Nev. 759, 767, 121 P.3d 592, 597 (2005); Crawford, 121 Nev. at 753-54, 121 P.3d at 588-89.

[9]Carter, 121 Nev. at 765, 121 P.3d at 596 (quoting Honeycutt v. State, 118 Nev. 660, 677-78, 56 P.3d 362, 373-74 (2002) (Rose, J., dissenting)).

defense is not entitled to instructions that are "misleading, inaccurate or duplicitous."[10]

Here, even assuming that the district court erred by not giving Angel's proffered instruction or by failing to ensure that the substance of Angel's proffered instruction was adequately incorporated into the jury instructions, "we are convinced beyond a reasonable doubt that the jury's verdict was not attributable to the error and that the error was harmless under the facts and circumstances of this case."[11] Specifically, we note that a police officer testified that Angel had spit on him, another police officer testified that he heard the "tooey" sound of Angel spitting, and several witnesses testified that Angel had been drinking. Additionally, the jury was shown a videotape of the incident.

Third, Angel contends that the district court erred by allowing the State to change its theory of the case after the defense had rested and the jury instructions had been settled. Angel claims that the information charged him with a general intent crime and that the State suddenly abandoned this theory of the crime and requested specific intent instructions. Angel argues that this change in the theory of the crime left him without adequate notice of the actual charge against which he was to defend.

---

[10]Id.; Crawford, 121 Nev. at 754, 121 P.3d at 589.

[11]Crawford, 121 Nev. at 756, 121 P.3d at 590.

We have held that "[a] criminal defendant has a substantial and fundamental right to be informed of the charges against him so that he can prepare an adequate defense."[12] "[T]he information must be a plain, concise and definite written statement of the essential facts constituting the offense charged."[13] However, when a challenge to the sufficiency of the charging document is raised after a verdict, the verdict cures any technical defects unless the defendant has been prejudiced by the defective charging document.[14]

The record on appeal reveals that initially Angel objected to the jury instruction that set forth the offense of unlawful use of human excrement or bodily fluid in terms of a general intent crime. Angel argued that it was a specific intent crime. However, the State responded that NRS 212.189(1)(d) had two subsections and that it had charged Angel under subsection (2), which it claimed was the general intent subsection. The district court agreed with the State and overruled Angel's objection.

The following morning, however, the State changed its position and proposed a new instruction that would replace the instruction setting forth the elements of the offense and include a specific intent element. Because the new instruction set forth the elements for a specific

---

[12]Viray v. State, 121 Nev. 159, 162, 111 P.3d 1079, 1081 (2005).

[13]NRS 173.075(1).

[14]See Laney v. State, 86 Nev. 173, 178-79, 466 P.2d 666, 669-70 (1970).

intent offense and the charging document alleged a general intent offense, the State asked Angel to waive any appellate issues regarding the adequacy of the charging document. The district court asked Angel if he understood that he could be found guilty of an offense other than what was alleged in the charging document, noted that the specific intent language probably increased the State's burden to prove intent, and asked Angel if he agreed to waive any appellate issues. Angel stated that he understood the issue and agreed to waive any appellate issues arising from defects in the charging document. Under these circumstances, we conclude that Angel has failed to demonstrate that he was prejudiced by a defective charging document.

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

ORDER the judgment of conviction AFFIRMED.

_____, J.
Maupin

_____, J.
Cherry

_____, J.
Saitta

cc: Hon. Connie J. Steinheimer, District Judge
Hon. Steven R. Kosach, District Judge
Washoe County Public Defender
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk