

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICKAEL PELAT,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 49978

**FILED**

DEC 11 2008

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

ORDER OF REVERSAL AND REMAND

This is an appeal from a judgment of conviction, entered pursuant to a jury verdict, of one count of misdemeanor battery. Eighth Judicial District Court, Clark County; Kenneth C. Cory, Judge. The district court sentenced appellant Mickael Pelat to serve 90 days in the county jail with 40 days credit for time served, ordered the sentence suspended, and placed Pelat on informal probation for a period of one year.

Pelat contends that insufficient evidence was adduced at trial to support his conviction for battery. Pelat specifically claims that the evidence presented at trial demonstrated that he was acting in self-defense. However, our review of the trial transcript reveals sufficient evidence to establish Pelat's guilt beyond a reasonable doubt as determined by a rational trier of fact.<sup>1</sup>

The jury heard testimony that Mireille Chevalier invited Pelat into her home for Christmas dinner. Because Pelat's behavior towards

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<sup>1</sup>See McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

Chevalier's other guests was inappropriate and threatening, Chevalier asked him to leave. When Pelat reentered her house a short time later, Chevalier asked the victim to remove Pelat. The victim placed Pelat in a headlock and escorted him out of the house. After the victim had released Pelat, turned around, and began walking towards the house, Pelat struck him on the back of the head with a whiskey bottle. We conclude that a rational juror could infer from this testimony that Pelat was not acting in self-defense when he battered the victim.<sup>2</sup>

Pelat also contends that he was deprived of his right to a fair trial when the district court admitted evidence of an uncharged bad act without satisfying the requirements of Petrocelli v. State.<sup>3</sup> Pelat specifically claims that the district court erred by conducting a Petrocelli hearing midtrial, admitting evidence that the victim's father was injured during the altercation, and failing to instruct the jury on the use of this evidence.

Evidence of uncharged bad acts is presumed to be inadmissible.<sup>4</sup> To overcome this presumption, the prosecutor must request admission of the evidence and establish in a hearing outside the jury's presence that "(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

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<sup>2</sup>See NRS 200.481(1)(a).

<sup>3</sup>101 Nev. 46, 692 P.2d 503 (1985).

<sup>4</sup>Tavares v. State, 117 Nev. 725, 731, 30 P.3d 1128, 1131 (2001), modified on other grounds by McLellan v. State, 124 Nev. \_\_\_, \_\_\_, 182 P.3d 106, 111 (2008).

prejudice.”<sup>5</sup> If uncharged bad acts evidence is to be admitted, the prosecutor must ask the district court to instruct the jury on the limited use of this evidence.<sup>6</sup> If the prosecutor fails to request this instruction, the district court must raise the issue sua sponte.<sup>7</sup> Due to the highly prejudicial nature of uncharged bad act evidence, the failure to give a limiting instruction is unlikely to constitute harmless error.<sup>8</sup>

Here, the district court determined that evidence that the victim’s father was injured during the altercation was evidence of an uncharged bad act, conducted a thorough Petrocelli hearing, and ruled that the evidence was admissible. However, the prosecutor failed to request an instruction regarding the limited purpose for which evidence of the father’s injuries could be considered, and the district court failed to raise the issue sua sponte. We conclude that Pelat’s substantial rights were prejudiced by the absence of an instruction regarding the limited purpose for which the uncharged bad act evidence was admitted. Accordingly, we

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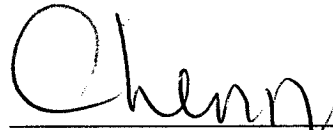
<sup>5</sup>Id. (quoting Tinch v. State, 113 Nev. 1170, 1176, 946 P.2d 1061, 1064-65 (1997)).


<sup>6</sup>Id. at 731, 946 P.2d at 1132.

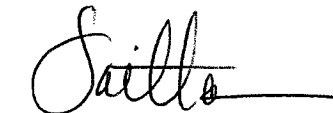
<sup>7</sup>Id.

<sup>8</sup>Id. at 732-33, 30 P.3d at 1133.

ORDER the judgment of the district court REVERSED AND  
REMAND this matter to the district court for proceedings consistent with  
this order.<sup>9</sup>

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Saitta

cc: Hon. Kenneth C. Cory, 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

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<sup>9</sup>In light of our conclusion that Pelat's conviction must be reversed,  
we decline to consider his other assignments of error.