

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD ANTHONY RIVERA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 50776

**FILED**

OCT 17 2008

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of possession of a stolen vehicle. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge. The district court sentenced appellant Richard Anthony Rivera to serve a prison term of 24 to 60 months. This timely appeal followed. Rivera presents two issues for our review.

First, Rivera contends that the evidence presented at trial was insufficient to support the jury's finding of guilt. Rivera asserts that the evidence indicated that he did not know or suspect that the scooter in his possession was stolen. Rivera points to evidence that he regularly buys broken down scooters then repairs and sells them, that he bought this scooter from a man named Mike, that he openly drove the scooter and allowed his girlfriend to drive it, and that he was cooperative with the police. We conclude that Rivera's contention lacks merit.

The standard of review for challenging the sufficiency of the evidence to support a criminal conviction 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.”<sup>1</sup> Our review of the record on appeal reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact.<sup>2</sup>

In particular, the jury heard evidence that a scooter had been reported missing by a scooter rental company when the renter, who was not Rivera, failed to return it. The arresting police officer testified that he observed Rivera driving and performing mechanical work on a scooter that matched the description of the missing scooter. Rivera told the officer that the scooter belonged to him, but he had no documented evidence of ownership. The standard plate containing the vehicle identification number (VIN) was missing from the scooter. As the VIN is generally placed on multiple areas of a vehicle so that it can be identified, the police officer located the VIN under a cover on a different part of the scooter. That information was used to identify the scooter as stolen. The officer further testified that the ignition had been “punched,” a condition where the metal area surrounding the keyhole is completely removed so that a key cannot be used to start the scooter.

The jury also heard evidence that Rivera was familiar with scooters and their parts, and that he paid \$150 for the scooter, which had a retail value of \$2,100. Further, while Rivera openly rode the scooter and allowed his girlfriend to borrow it, he could not locate the man who sold it to him. Rivera admitted to the police that the low purchase price, the missing VIN plate, and the punched ignition made him suspicious.

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<sup>1</sup>McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992) (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979)).

<sup>2</sup>See Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998).

We conclude that the jury could reasonably infer from the evidence presented at trial that Rivera knew or had reason to believe that the scooter in his possession was stolen.<sup>3</sup> It is for the jury to determine the weight and credibility to give conflicting testimony, and the jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict.<sup>4</sup>

Second, Rivera contends that the district court erred by allowing the State to present evidence concerning his prior arrest for possession of a stolen vehicle. Rivera asserts that evidence of his prior arrest for a similar offense was prejudicial because it could lead the jury to believe that he had a propensity for that type of offense. Rivera argues that admission of the evidence denied him a fair trial. We conclude that Rivera's contention lacks merit.

Under NRS 48.045(2), evidence of other wrongs is not allowed at trial solely for the purpose of proving that a defendant has a certain character trait and acted in conformity with that trait on the particular occasion in question. Nevertheless, evidence of other bad acts may be admitted to prove "motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident."<sup>5</sup> Prior to admitting such evidence, the district court must conduct a hearing to determine that (1) the evidence is relevant to the crime charged; (2) the

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<sup>3</sup>NRS 205.273(1)(b) ("A person commits an offense involving a stolen vehicle if the person . . . [h]as in his possession a motor vehicle which he knows or has reason to believe has been stolen.").

<sup>4</sup>See Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981); see also McNair, 108 Nev. at 56, 825 P.2d at 573.

<sup>5</sup>NRS 48.045(2).

other 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.<sup>6</sup> On appeal, we will give great deference to the trial court's decision to admit or exclude evidence and will not reverse that decision absent manifest error.<sup>7</sup>

We conclude that the district court did not commit manifest error in allowing the State to admit evidence of Rivera's prior arrest at trial. The record reveals that the district court conducted a hearing outside the presence of the jury, and determined that Rivera's prior arrest was relevant and proven by clear and convincing evidence, and the probative value of the prior arrest was not substantially outweighed by the danger of unfair prejudice.

In particular, Rivera's prior arrest for possession of a stolen vehicle in December 2005 was shown by clear and convincing evidence, which included testimony by the arresting police officer, who observed Rivera riding the stolen scooter, as well as testimony from the scooter's owner, who had reported it stolen. Next, the prior arrest was highly relevant and probative to show Rivera's knowledge, intent, and the absence of mistake. The arresting police officer in the earlier incident testified that Rivera was riding a scooter with an illegible VIN plate and a punched ignition. This evidence was highly probative of Rivera's knowledge and absence of mistake that a scooter with an altered VIN

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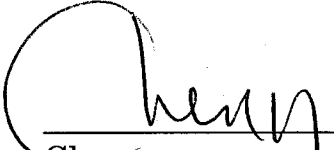
<sup>6</sup>Tinch v. State, 113 Nev. 1170, 1176, 946 P.2d 1061, 1064-65 (1997).

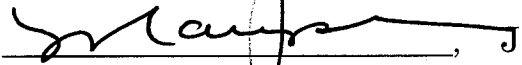
<sup>7</sup>See Bletcher v. State, 111 Nev. 1477, 1480, 907 P.2d 978, 980 (1995); Petrocelli v. State, 101 Nev. 46, 52, 692 P.2d 503, 508 (1985), modified on other grounds by Sonner v. State, 112 Nev. 1328, 930 P.2d 707 (1996).

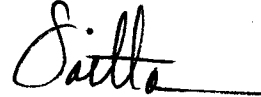
plate and a punched ignition is likely stolen. Finally, any danger of unfair prejudice was alleviated when the district court instructed the jury prior to admitting the evidence and again before deliberation, that the evidence “may not be considered by you to prove that he is a person of bad character or to prove that he has a disposition to commit crimes,” and that the evidence “may be considered by you only for the limited purpose of proving the defendant’s knowledge, intent, or the absence of mistake or accident.”<sup>8</sup> Under these circumstances, we conclude that the district court's decision to admit this evidence did not constitute manifest error.

Having considered Rivera’s contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.

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

  
\_\_\_\_\_, J.  
Maupin

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

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<sup>8</sup>See Tavares v. State, 117 Nev. 725, 30 P.3d 1128 (2001) (discussing the importance of a limiting instruction), holding modified by Mclellan v. State, 124 Nev. \_\_\_, 182 P.3d 106 (2008).

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