IN THE SUPREME COURT OF THE STATE OF NEVADA

MARTIN KARL MILLER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 55577

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of violation of an extended order restricting the conduct of a person who stalks or harasses others.[1] Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

Prior bad acts

Appellant Martin Miller contends that the district court erred by admitting evidence of two prior bad acts: (1) that he had previously threatened to blow up his neighbors' house and a barrel of dynamite had been found on the property where Miller once lived, and (2) that he verbally accosted another neighbor shortly before the charged offense. Miller asserts that the probative value of this evidence was substantially

[1]We note that the judgment of conviction contains a clerical error; it incorrectly states that the conviction is pursuant to a guilty plea. Following this court's issuance of its remittitur, the district court shall enter a corrected judgment of conviction. See NRS 176.565; Buffington v. State, 110 Nev. 124, 126, 868 P.2d 643, 644 (1994).

outweighed by the danger of unfair prejudice.[2] We agree and conclude that the district court abused its discretion by admitting this evidence. See NRS 48.035(3); NRS 48.045(2); Tinch v. State, 113 Nev. 1170, 1176, 946 P.2d 1061, 1064-65 (1997) (when considering the admissibility of a prior bad act, the district court must determine that "the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice"); Ledbetter v. State, 122 Nev. 252, 260-62, 129 P.3d 671, 677-78 (2006) (describing when the modus operandi and common scheme or plan exceptions to NRS 48.045(2) apply); Taylor v. State, 109 Nev. 849, 854, 858 P.2d 843, 846-47 (1993) (the State cannot present character evidence to rebut a defense that has not been raised by the defense); Bellon v. State, 121 Nev. 436, 444, 117 P.3d 176, 181 (2005) (clarifying the use of prior bad act as res gestae). However, in light of the overwhelming and uncontradicted evidence of guilt, we conclude that the errors were harmless.[3] See NRS 178.598; Chavez v. State, 125 Nev. ___, ___, 213 P.3d 476, 487 (2009).

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[2]Miller also contends that the threat was not proven by clear and convincing evidence. Because we conclude that admission of the evidence was erroneous, we need not address this contention.

[3]We reject the State's contention that Miller's motion in limine objecting to the introduction of the evidence was insufficient to preserve the issue for appeal. See Richmond v. State, 118 Nev. 924, 931-32, 59 P.3d 1249, 1254 (2002).

Limiting instruction

Miller contends that the district court erred by failing to give a limiting instruction regarding the prior bad acts before the testimony of John Roy. This contention is belied by the record and thus lacks merit.

Miller also asserts that the limiting instruction given was defective because is does not actually limit the use of the prior bad act evidence to the purpose for which it was admitted. We agree. See Tavares v. State, 117 Nev. 725, 733, 30 P.3d 1128, 1133 (2001), modified on other grounds by Mclellan v. State, 124 Nev. 263, 270, 182 P.3d 106, 110 (2008). However, Miller did not object to the substance of the instruction, and we conclude that, in light of the overwhelming evidence of guilt, Miller has not demonstrated that this error affected his substantial rights. See Ford v. State, 122 Nev. 796, 805, 138 P.3d 500, 505-06 (2006); Valdez v. State, 124 Nev. 1172, 1190, 196 P.3d 465, 477 (2008). Thus, no relief is warranted on this ground.

Flight instruction

Miller contends that the district court erred by giving the jury a flight instruction because his conduct did not constitute flight. "A jury may properly receive an instruction regarding a defendant's flight so long as it is supported by the evidence." Weber v. State, 121 Nev. 554, 581, 119 P.3d 107, 126 (2005). We conclude that the evidence here was sufficient for the jury to infer that Miller left the area to avoid arrest and with consciousness of guilt. See id.

Miller also contends that the flight instruction was flawed because it instructed the jury that flight tends to prove guilt. Miller did not object to the flight instruction on this basis and we conclude that he has failed to demonstrate plain error. See Walker v. State, 113 Nev. 853,

871, 944 P.2d 762, 773 (1997); Berry v. State, 125 Nev. ___, ___, 212 P.3d 1085, 1097 (2009).

Having considered Miller's contentions and concluded that no relief is warranted, we

ORDER the judgment of conviction AFFIRMED.

_____, J.
Hardesty

_____, J.
Douglas

_____, J.
Pickering

cc: Hon. Connie J. Steinheimer, District Judge
Washoe District Court Clerk
Attorney General/Carson City
Washoe County District Attorney
Washoe County Public Defender