

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,
Appellant,
vs.
LORI JEAN PRICE,
Respondent.

No. 56372

FILED

MAR 17 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *T. Lindeman*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting respondent Lori Price's pretrial motion to dismiss a charge of possession of child pornography. Sixth Judicial District Court, Humboldt County; Michael Montero, Judge.

Initially, Price contends that this court lacks jurisdiction to consider this appeal because "the State cannot appeal from its own decision to forgo prosecution." As we previously determined, this is an appeal from an order granting a motion to dismiss, and the State may properly appeal from such an order. See State v. Price, Docket No. 56372 (Order Setting Briefing Schedule, September 3, 2010); NRS 177.015(1)(b); see also State v. Shade, 110 Nev. 57, 63, 867 P.2d 393, 397 (1994) (evidentiary determinations made prior to the entry of an order granting a motion to dismiss may be considered on appeal from the order granting the motion to dismiss). Accordingly, this contention lacks merit.

The State contends that the district court erred by denying its motion in limine to admit evidence that Price took the picture she was charged with possessing because that evidence was admissible as res gestae. We review the district court's ruling regarding a motion in limine

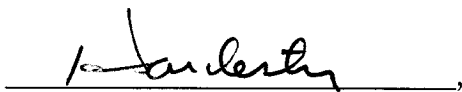
for an abuse of discretion. Whisler v. State, 121 Nev. 401, 406, 116 P.3d 59, 62 (2005). A witness could describe Price's possession of the picture without referring to the fact that she took the picture five years earlier. See Bellon v. State, 121 Nev. 436, 444, 117 P.3d 176, 181 (2005); Tabish v. State, 119 Nev. 293, 307, 72 P.3d 584, 593 (2003) (the res gestae statute is construed narrowly). Thus, we conclude that the district court did not abuse its discretion by denying the State's motion on this basis.

The State also contends that the district court erred by denying its motion in limine because the fact that Price took the picture was admissible, pursuant to NRS 48.045(2), to show her intent to possess the picture. The district court determined that the evidence was not relevant to the instant charge, was not proven by clear and convincing evidence, and its probative value was outweighed by the danger of unfair prejudice. See Ledbetter v. State, 122 Nev. 252, 259, 129 P.3d 671, 677 (2006) (stating three-part test used to determine admissibility of prior bad acts). We conclude that the State has failed to demonstrate that the district court abused its discretion by denying the motion on this basis, see Crawford v. State, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005) (defining "abuse of discretion"), and we

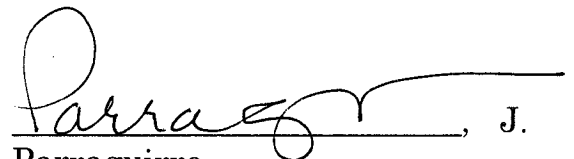
ORDER the judgment of the district court AFFIRMED.



_____, J.
Saitta



_____, J.
Hardesty



_____, J.
Parraguirre

cc: Hon. Michael Montero, District Judge
Humboldt County District Attorney
Humboldt County Public Defender
Humboldt County Clerk