IN THE SUPREME COURT OF THE STATE OF NEVADA

LINKSTON LIONS A/K/A LINKSTON ASHLEY LIONS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 58108

FILED

NOV 18 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY A. Ingerson
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction entered pursuant to a jury verdict of robbery with the use of a deadly weapon, grand larceny of a motor vehicle, and battery with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Doug Smith, Judge.

First, appellant Linkston Lions contends that the district court erred by instructing the jury on flight because the evidence adduced at trial merely indicated that he left the crime scene with the victim's car and was not present in his motel room when the police discovered the stolen car. We review a district court's decision to give a jury instruction for abuse of discretion or judicial error. Grey v. State, 124 Nev. 110, 122, 178 P.3d 154, 163 (2008). We conclude that the district court erred by giving the flight instruction because there was no evidence that Lions "fled with consciousness of guilt and to evade arrest," Rosky v. State, 121 Nev. 184, 199, 111 P.3d 690, 699-700 (2005), but the error was harmless because it did not substantially affect the jury's verdict, see Valdez v. State, 124 Nev. 1172, 1188-89, 196 P.3d 465, 476 (2008); Guy v. State, 108 Nev. 770, 777-78, 839 P.2d 578, 583 (1992).

Second, Lions contends that the district court erred by admitting the victim's testimony that the license plates on his car had been changed because this testimony was prejudicial evidence of an uncharged bad act and the district court did not conduct a hearing pursuant to Petrocelli v. State, 101 Nev. 46, 692 P.2d 503 (1985), or provide the jury with a limiting instruction. We review the district court's decision to admit evidence of other bad acts for an abuse of discretion and will not reverse that decision absent manifest error. Ledbetter v. State, 122 Nev. 252, 259, 129 P.3d 671, 676 (2006). Although the district court failed to conduct a proper hearing, we conclude that its decision to admit this evidence was not manifestly wrong and reversal is not warranted because the evidence was admissible under the test announced in Tinch v. State, 113 Nev. 1170, 1176, 946 P.2d 1061, 1064-65 (1997). See Rhymes v. State, 121 Nev. 17, 21-22, 107 P.3d 1278, 1281 (2005). We further conclude that the district court's failure to instruct the jury on the limited use of this uncharged bad act evidence was harmless error under the facts of this case. See id. at 24, 107 P.3d at 1282.

Third, Lions contends that the State acted in bad faith by failing to obtain a recording of a phone call made to Western Union and the district court erred by refusing to give his proposed jury instruction on the presumption that this evidence would have been unfavorable to the State. To succeed on a claim that an injustice occurred as a result of the State's failure to obtain evidence, the defense must demonstrate that the evidence was material by showing "a reasonable probability that, had the evidence been available to the defense, the result of the proceedings would have been different." Daniels v. State, 114 Nev. 261, 267, 956 P.2d 111, 115 (1998). Here, Lions asserts that "assuming that the voice on the tape

did not belong to [him]," the tape was material. We conclude that Lions' bare speculation does not show a reasonable probability that the trial result would have been different if the police had obtained the recording, see Steese v. State, 114 Nev. 479, 492, 960 P.2d 321, 329 (1998), and that the district court did not abuse its discretion by refusing to give the proposed jury instruction, see Grey, 124 Nev. at 122, 178 P.3d at 163.

Fourth, Lions contends that the district court erred by denying his motion for a mistrial because the State violated Brady v. Maryland, 373 U.S. 83 (1963), by failing to disclose information about the neighbors of the residence where the crime occurred. We review a district court's resolution of a Brady claim de novo. Mazzan v. Warden, 116 Nev. 48, 66, 993 P.2d 25, 36 (2000). Here, Lions claims that a police officer testified that he spoke to several neighbors, but did not record their names, contact information, or detail his interviews in the incident report. A police detective testified that the officer received information from the neighbors that squatters lived in the residence and the officer had recorded an address. The detective also testified that he returned to the crime scene and spoke to an unidentified female who said that no one lived at the residence. Lions asserts that he specifically asked for this evidence in his motion to compel discovery. And Lions argues that the evidence was favorable because it provided grounds for the defense to attack the reliability, thoroughness, and good faith of the police investigation and the evidence was material because, if it had been disclosed, he could have established that the crime scene was a squatter's residence and he did not have exclusive possession of the residence. We conclude that this evidence was discoverable with the exercise of reasonable diligence, see Rippo v. State, 113 Nev. 1239, 1257, 946 P.2d 1017, 1028 (1997), and not material

because there was no possibility that its timely disclosure would have affected the outcome of the trial, see Mazzan, 116 Nev. at 66, 67, 993 P.2d at 36, 37 (defining materiality and summarizing the three components of a Brady violation). Accordingly, the district court did not erred in denying Lions' motion for a mistrial.

Having considered Lions' contentions and concluded that he is not entitled to relief, we

ORDER the judgment of conviction AFFIRMED.

Douglas, J.
Douglas

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

cc: Hon. Doug Smith, District Judge
Wendy D. Leik
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk