

IN THE SUPREME COURT OF THE STATE OF NEVADA

RENE F. FERNANDEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 58507

FILED

FEB 08 2012

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction entered pursuant to a jury verdict of conspiracy to violate the Uniform Controlled Substances Act, trafficking in a controlled substance, and transporting a controlled substance. Eighth Judicial District Court, Clark County; Doug Smith, Judge.

First, appellant Rene Fernandez contends that the district court erred by admitting evidence of his 1993 narcotics conviction. Fernandez argues that the staleness of this conviction weighs heavily against its probative value and asserts that it was admitted only to show that he had a propensity towards crime. We review the district court's decision to admit or exclude evidence of other bad acts for an abuse of discretion and will not reverse absent manifest error. Ledbetter v. State, 122 Nev. 252, 259, 129 P.3d 671, 676 (2006). Although the district court did not conduct a hearing pursuant to Petrocelli v. State, 101 Nev. 46, 692 P.2d 503 (1985), we conclude that its decision to admit the prior narcotics conviction was not manifestly wrong and reversal is not warranted because the evidence was relevant to show knowledge and absence of mistake, it was clearly proven, and its probative value was not substantially outweighed by the danger of unfair prejudice. See NRS

48.045(2); Rhymes v. State, 121 Nev. 17, 21-22, 107 P.3d 1278, 1281 (2005); Tinch v. State, 113 Nev. 1170, 1176, 946 P.2d 1061, 1064-65 (1997).

Second, Fernandez contends that the district court erred by allowing a State's witness to testify as to the habits and practices of narcotics smugglers without being qualified as an expert pursuant to NRS 50.275. We review a district court's decision to admit or exclude evidence for an abuse of discretion or manifest error. Thomas v. State, 122 Nev. 1361, 1370, 148 P.3d 727, 734 (2006). Trooper Matt Moonin testified that he worked with the Southern Nevada Interdiction Task Force to disrupt the flow of narcotics in and out of Las Vegas and, based on his training and experience, the two \$2 bills found in Fernandez's wallet were lucky charms that are used by narcotics smugglers to avoid being stopped by law enforcement officers. We conclude that the district court erred by admitting the trooper's testimony, but the error was harmless. See NRS 50.265; Valdez v. State, 124 Nev. 1172, 1188-89, 196 P.3d 465, 476 (2008) (discussing non-constitutional harmless-error review).

Third, Fernandez contends that the district court erred by rejecting his proposed jury instruction on actual or constructive possession because it was an accurate statement of the law and consistent with his theory of defense. "The district court has broad discretion to settle jury instructions, and this court reviews the district court's decision for an abuse of that discretion or judicial error." Crawford v. State, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005). "A defendant in a criminal case is entitled, upon request, to a jury instruction on his theory of the case so long as there is some evidence, no matter how weak or incredible, to support it." Harris v. State, 106 Nev. 667, 670, 799 P.2d 1104, 1105-06 (1990) (internal quotation marks and alteration omitted). However, a

defendant is not entitled to instructions that are “misleading, inaccurate or duplicitous.” Carter v. State, 121 Nev. 759, 765, 121 P.3d 592, 596 (2005). Here, the district court determined that the substance of Fernandez’s requested instruction was provided to the jury in other instructions and we conclude that it did not abuse its discretion by rejecting the proposed instruction. See Crawford, 121 Nev. at 754-55, 121 P.3d at 589.

Finally, Fernandez contends that cumulative error deprived him of a fair trial. Because Fernandez has failed to demonstrate any error, we conclude that his contention is without merit. See Pascua v. State, 122 Nev. 1001, 1008 n.16, 145 P.3d 1031, 1035 n.16 (2006).

Having considered Fernandez’s contentions and concluded that he is not entitled to relief, we

ORDER the judgment of conviction AFFIRMED.

Cherry, J.
Cherry

Pickering, J.
Pickering

Hardesty, J.
Hardesty

cc: Hon. Doug Smith, District Judge
Jonathan E. MacArthur
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk