

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALAN ROBERT CULVER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 59487

FILED

MAY 10 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Anderson*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Appellant Alan Robert Culver appeals from a judgment of conviction, pursuant to a jury verdict, of third-offense DUI. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge.

Victoria Vanderhoef was staying at the Victorian Inn in Reno. Late one night, she awoke to the sounds of loud music and a revving engine. The noise sounded like the vehicle was driving back and forth across the small parking lot. Vanderhoef observed that the noise was coming from a gray truck with Montana license plates, and she went outside and asked the driver to stop making the noise. When the driver ignored her request, Vanderhoef called the police. The police arrived and found the truck parked and empty. Officers knocked at the door where Vanderhoef believed the driver lived and found an intoxicated Culver. At trial, Vanderhoef identified Culver as the driver. Culver claimed that his friend had been the person in the truck. Based on the mistaken identity



claim, the State sought to introduce evidence that Culver had been arrested for DUI under similar circumstances several months earlier. The district court held a Petrocelli¹ hearing and admitted the evidence. Culver argues that the district court abused its discretion by admitting evidence of his previous DUI in order to prove his identity.

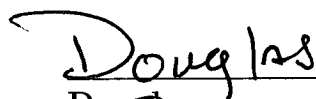
While evidence of other bad acts is generally inadmissible in a criminal prosecution, a recognized exception to this rule exists where the evidence is relevant to the identity of the perpetrator. Mortensen v. State, 115 Nev. 273, 279-80, 986 P.2d 1105, 1109-10 (1999); Reed v. State, 95 Nev. 190, 193, 591 P.2d 274, 276 (1979). Here, Culver argued during his opening statement that Vanderhoef had failed to positively identify him, and he attempted to impeach her identification during his cross-examination. The prior DUI arrest and the current offense were similar in several respects, including that both instances occurred at an extended-stay hotel, happened within three months of each other, happened late at night, involved playing loud music, involved a gray truck with Montana plates, and involved Culver driving his vehicle back and forth between parking stalls. We conclude that the evidence of Culver's prior DUI arrest was properly admitted to show identity. NRS 48.045(2); cf. Mayes v.


¹Petrocelli v. State, 101 Nev. 46, 51-52, 692 P.2d 503, 507-08 (1985), modified on other grounds by Sonner v. State, 112 Nev. 1328, 1334 & n.4, 930 P.2d 707, 711-12 & n.4 (1996).

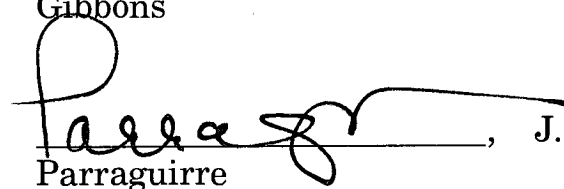
State, 95 Nev. 140, 142, 591 P.2d 250, 251-52 (1979) (reasoning that the identity exception is inappropriate where the crimes are only generally similar).

Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

cc: Hon. Steven P. Elliott, District Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk