

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID OWENS HOOPER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 63027

FILED

MAR 26 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *S. Young*
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of battery by a prisoner in lawful custody. Seventh Judicial District Court, White Pine County; Steve L. Dobrescu, Judge.

Appellant David Hooper appeals from his conviction of battery by a prisoner in lawful custody in violation of NRS 200.481(2)(f). Hooper argues that his conviction must be reversed because the district court (1) abused its discretion by admitting, over Hooper's objection, his unredacted prior judgment of conviction; and (2) committed plain error by admitting Hooper's unredacted Nevada Department of Corrections offender sheet. We agree.

The State offered Hooper's prior judgment of conviction and NDOC offender sheet to prove that Hooper was in lawful custody at the time of the charged crime. As an essential element of battery by a prisoner, Hooper's custody status was certainly relevant. See NRS 200.481(2)(f); NRS 48.025(1). The State does not contend, however, that the names of Hooper's prior crimes were relevant for any proper purpose. Cf. *Bigpond v. State*, 128 Nev. ___, ___, 270 P.3d 1244, 1250 (2012) (stating that a district court should exclude evidence of prior crimes unless the

State establishes, inter alia, that the evidence is relevant for a purpose other than proving the defendant's propensity to commit crimes). Thus, the State failed to overcome the "presumption of inadmissibility" attached to this prior bad act evidence, *Rosky v. State*, 121 Nev. 184, 195, 111 P.3d 690, 697 (2005), these references to Hooper's past crimes were inadmissible, see NRS 48.045(2), and the district court should have redacted them.¹ See *Angle v. State*, 113 Nev. 757, 762, 942 P.2d 177, 181 (1997) (stating that in a prosecution for driving under the influence, the defendant's videotaped statement that she was previously convicted of driving under the influence was irrelevant and "could have been easily redacted," and the district court erred by refusing to allow redaction); *Walker v. State*, 112 Nev. 819, 824, 921 P.2d 923, 926 (1996) (stating that a reference to other crimes in defendant's confession was irrelevant, the district court could have easily redacted the reference, and failure to do so was reversible error). Thus, we conclude that the district court abused its discretion by failing to redact the names of Hooper's past crimes in his prior judgment of conviction. See *Ledbetter v. State*, 122 Nev. 252, 259, 129 P.3d 671, 676 (2006) (stating that a district court's decision to admit evidence is generally reviewed for an abuse of discretion).

Because Hooper failed to object to the district court's admission of his unredacted NDOC offender sheet, we review for plain error. See *McLellan v. State*, 124 Nev. 263, 269, 182 P.3d 106, 110 (2008).

¹Despite the district court's statement to the contrary, review of Hooper's prior judgment of conviction and NDOC offender sheet indicates that the names of his prior crimes could have been easily redacted without hindering the jury's ability to determine Hooper's lawful custody status in any way.

“In conducting plain error review, ‘we must examine whether there was error, whether the error was plain or clear, and whether the error affected the defendant’s substantial rights.’” *Id.* (quoting *Baltazar-Monterrosa v. State*, 122 Nev. 606, 614, 137 P.3d 1137, 1142 (2006) (internal quotation marks omitted)).

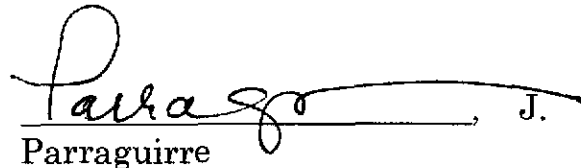
As discussed above, the names of Hooper’s prior crimes were irrelevant for any proper purpose, *cf. Bigpond*, 128 Nev. at ___, 270 P.3d at 1250, the district court should have redacted the nature of Hooper’s prior crimes, *see Angle*, 113 Nev. at 762, 942 P.2d at 181; *Walker*, 112 Nev. at 824, 921 P.2d at 926, and we conclude that the district court clearly erred by failing to do so. *See Mclellan*, 124 Nev. at 269, 182 P.3d at 110. Moreover, one of Hooper’s past crimes listed in both his prior judgment of conviction and his NDOC offender sheet was battery by a prisoner, the same crime with which Hooper was charged in this case. Therefore, not only was this evidence inadmissible; it was also highly prejudicial. *See Angle*, 113 Nev. at 762, 942 P.2d at 181; *Mclellan*, at 269, 182 P.3d at 110.

The State argues that any error in admitting this evidence was cured by the district court’s instructing the jury that it could only consider the prior judgment of conviction and NDOC offender sheet to determine whether Hooper was in lawful custody. We generally presume that jurors follow the instructions they are given. *Summers v. State*, 122 Nev. 1326, 1333, 148 P.3d 778, 783 (2006). Nevertheless, in *Angle*, we stated that “a limiting instruction would have been insufficient . . . to remove the prejudicial impact of” evidence that the defendant was previously convicted of the same crime charged in that case. 113 Nev. at 762, 942 P.2d at 181. Thus, the district court’s limiting instruction failed to cure the prejudice caused by the improper references to Hooper’s prior

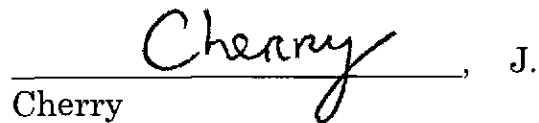
conviction of battery by a prisoner, and a new trial is required.² *See id.*;
Walker, 112 Nev. at 824, 921 P.2d at 926.

Accordingly, we

ORDER the judgment of conviction REVERSED AND
REMAND this matter to the district court for a new trial.


Parraguirre, J.


Douglas, J.


Cherry, J.

cc: Hon. Steve L. Dobrescu, District Judge State Public Defender/Ely
State Public Defender/Carson City
Attorney General/Carson City
White Pine County District Attorney
White Pine County Clerk

²We decline to address Hooper's remaining arguments as unnecessary to our disposition of this appeal. *See Angle*, 113 Nev. at 763-64, 942 P.2d at 182 ("Because we have reversed Angle's conviction, we need not consider her remaining issues on appeal.").

In addition, we remind the State that text in briefs "shall be double-spaced." NRAP 32(a)(4).