

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

EDRICK DILLARD,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 66643

**FILED**

AUG 27 2015

*ORDER OF AFFIRMANCE*

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

This appeal arose following a jury trial convicting appellant Edrick Dillard of sex trafficking, pandering, living from the earnings of a prostitute, and preventing or dissuading a witness from testifying or producing evidence. Dillard and the State present contrasting accounts of the facts and, as the parties are familiar with those facts, we do not detail them here.

The primary issues we consider are whether the district court properly admitted the testimonies of Joy Richardson and Sergeant Donald Hoier.<sup>1</sup> Because we conclude the district court did not err, we affirm.

Regarding Richardson's testimony, the State filed a motion to admit other bad acts prior to trial. Dillard opposed the motion, and the district court held a *Petrocelli*<sup>2</sup> hearing. The district court found Richardson's testimony was relevant as to absence of mistake, that it was proved by clear and convincing evidence, and determined that the probative value was not substantially outweighed by the prejudicial effect.

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<sup>1</sup>We have considered Dillard's additional contentions and hold they are without merit.

<sup>2</sup>*Petrocelli v. State*, 101 Nev. 46, 692 P.2d 503 (1985).

Dillard argues the district court erred in admitting the evidence because Richardson's experience was dissimilar from Davis', highly prejudicial to Dillard's case, and did not show a common scheme or plan, absence of mistake, or intent or knowledge. The State counters Richardson's testimony was properly admitted under NRS 48.045(2) because it was for an "other purpose" than to show propensity, as it was relevant regarding Dillard's intent, knowledge, common scheme or plan, and absence of mistake. We agree with the district court's ruling that the evidence was admissible to prove absence of mistake.

We review the district court's admission of other bad act evidence for abuse of discretion. *Bigpond v. State*, 128 Nev. \_\_\_, \_\_\_, 270 P.3d 1244, 1250 (2012). Evidence of a prior or other bad act is admissible if offered for a "purpose other than proving the defendant's propensity[.]" *Id.* at \_\_\_, 270 P.3d at 1250. In *Bigpond*, the Nevada Supreme Court concluded evidence of the defendant's history of physical abuse against the victim was admissible where the victim, the sole witness of the crime, recanted her allegations. 128 Nev. at \_\_\_, 270 P.3d at 1246, 1250-51. Prior to admitting the evidence, the district court conducted a *Petrocelli* hearing and held the evidence was relevant to both explain the relationship between the defendant and victim and provide one explanation for the victim's recantation, and determined its probative value was not substantially outweighed by unfair prejudice. *Id.* at \_\_\_, 270 P.3d at 1251. In affirming, the supreme court noted many jurisdictions allow prior bad act evidence to explain the victim's recantation and help the jury evaluate the victim's credibility. *Id.* at \_\_\_, 270 P.3d at 1250-51. The supreme court further noted the evidence was highly probative because the victim's credibility was a central issue, and

the district court minimized the prejudice by giving an appropriate limiting instruction. *Id.*

We conclude that in the present case and pursuant to *Bigpond* the district court did not abuse its discretion in allowing Richardson's testimony in the State's case-in-chief. The district court found Richardson's testimony was relevant, proven by clear and convincing evidence, and the probative value was not substantially outweighed by the prejudicial effect. Richardson testified at a *Petrocelli* hearing prior to trial, and the district court observed her demeanor and heard her testimony. The district court concluded Richardson's testimony was relevant to show absence of mistake as to Davis' testimony that Dillard was her pimp, as she had recanted at the preliminary hearing. Richardson's testimony was especially probative because Davis' testimony changed between Dillard's arrest and the preliminary hearing. Dillard highlighted these discrepancies during cross-examination at trial discrediting the validity of Davis' allegations.

Richardson's accusations of Dillard being her pimp as well were close in time and factually similar to the events in this case. Dillard employed both the victim and Richardson within a two-year period, initially contacted both through their online advertisements, offered both positions "escorting", offered a 60/40 split and then demanded a larger percentage, took steps to obscure his role as a pimp, advertised for both women, and transported both to prostitution appointments. *See United States v. Robinson*, 702 F.3d 22, 37 (2nd Cir. 2012) (upholding the admission of evidence of defendant's discussions regarding other prostitutes who worked for him as admissible to show the victim worked as a prostitute for the defendant). Finally, the prejudicial effect of

Richardson's testimony did not substantially outweigh the probative value under these facts.<sup>3</sup>

Finally, the district court ensured the procedural safeguards necessary before admitting Richardson's testimony, by conducting a *Petrocelli* hearing outside the presence of the jury and making the requisite findings before permitting the admission of the evidence. The district court also minimized the prejudicial effect by giving a limiting instruction before the jury heard Richardson's testimony and again in the jury instructions.<sup>4</sup> Thus, the district court properly admitted Richardson's testimony, and did not commit error.

Dillard next challenges the expert testimony of Vice Sergeant Donald Hoier, who testified to the dynamics of pimp-prostitute subculture. Dillard first argues Sergeant Hoier's testimony was unnecessary to the jury's determination of Davis' and Dillard's credibility. We disagree. Sergeant Hoier's testimony was based on his extensive work investigating prostitution rings and explained to the layperson jury both the meaning of words used within that subculture and why a prostitute might remain in

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<sup>3</sup>We recognize "[a]ll evidence offered by the prosecutor is prejudicial to the defendant," and prejudicial evidence is not necessarily inadmissible. *Holmes v. State*, 129 Nev. \_\_\_, \_\_\_, 306 P.3d 415, 420 (2013).

<sup>4</sup>Dillard, citing to *Tavares v. State*, 117 Nev. 725, 30 P.3d 1128 (2001), asserts the instructions were insufficient because the district court did not direct the jury to apply the testimony solely to the elements of the pandering charge. This contention is without merit, as *Tavares* requires trial courts to give a limiting instruction before the admission of other bad act evidence, 117 Nev. at 731, 30 P.3d at 1132, and the district court's instruction comported with this requirement. And, as Dillard offers no authority beyond *Tavares* to support his contention, we do not consider it further. See *Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987).

that culture, recant a report, blame themselves, or minimize abusive behavior. See NRS 48.061. This information was valuable to the jury's comprehension of the case, as an average juror does not have sufficient knowledge of pimp-prostitute subculture to fully understand the terms or the interactions between pimps and prostitutes. See *United States v. Brooks*, 610 F.3d 1186, 1195-96 (9th Cir. 2010) (upholding the admission of testimony of pimp-prostitute subculture as relevant and not unduly prejudicial).

Second, Dillard argues Sergeant Hoier's testimony improperly supported the State's case, as it "left no doubt about his opinion of which version of Davis' story was credible" and unfairly undermined Dillard's credibility. "A witness may not vouch for the testimony of another or testify as to the truthfulness of another witness." *Perez v. State*, 129 Nev. \_\_\_, \_\_\_, 313 P.3d 862, 870 (2013) (internal citation omitted). Sergeant Hoier restricted his testimony to explaining pimp-prostitute subculture, and he did not opine as to Davis' credibility or Dillard's guilt. Therefore, Sergeant Hoier's testimony did not vouch for Davis' testimony.

Finally, Dillard contends Sergeant Hoier's testimony was more prejudicial than probative. Based on our previously conclusions, and because Davis recanted her allegations, we conclude the probative value of Sergeant Hoier's testimony was not substantially outweighed by unfair prejudice. See NRS 48.035. Therefore, the district court did not abuse its discretion in allowing Sergeant Hoier to testify. For the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED.

*Gibbons*, C.J.  
Gibbons

*Tao*, J.  
Tao

*Silver*, J.  
Silver

cc: Hon. David B. Barker, District Judge  
Eric G. Jorgenson  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk