

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

EVERETT HUNTER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 71826

FILED

AUG 14 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Everett Hunter appeals from a judgment of conviction entered pursuant to a jury verdict of two counts of burglary and two counts of uttering a forged instrument. Second Judicial District Court, Washoe County; Janet J. Berry, Judge.

First, Hunter argues the district court erred by admitting testimony pertaining to his prior, uncharged bad acts related to the fraudulent-check scheme. A police detective testified that he interviewed Hunter and Hunter confessed to passing a fraudulent check at a casino. The detective testified that Hunter explained he had agreed to pass fraudulent checks to pay his debts related to a prior fraudulent-check scheme, he recruited a second person to help him pass the checks, and he witnessed the creation of the fraudulent checks. Hunter also told the detective he knew the routing numbers used on the fraudulent checks had been obtained when other persons stole mail and other documents containing legitimate checking information. Hunter asserts portions of this testimony was improperly admitted because it contained information that was not encompassed by his charges in this matter.

Hunter did not object to admission of the testimony regarding the prior acts and, thus, Hunter is not entitled to relief absent a demonstration of plain error. *See Mitchell v. State*, 124 Nev. 807, 817, 192 P.3d 721, 727–28 (2008) (reviewing admission of unobjected to prior-bad-act evidence for plain error). “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.” *Green v. State*, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003) (internal quotation marks omitted).

Here, the challenged testimony contained Hunter’s explanation of his participation in this fraudulent-check scheme and his own witnessing of the creation of the fraudulent checks. Accordingly, we conclude Hunter fails to demonstrate the challenged testimony was not “inextricably intertwined with the charged crimes” and that the witness could have described “the crime charged without referring to related uncharged acts.” *State v. Shade*, 111 Nev. 887, 894-95, 900 P.2d 327, 331 (1995); *see also* NRS 48.035(3) (codification of the *res gestae* rule).

Moreover, even assuming this evidence could be considered prior-bad-act evidence admitted pursuant to NRS 48.045(2) and the district court should have conducted a *Petrocelli*¹ hearing prior to admission of this evidence, Hunter fails to demonstrate error affecting his substantial rights because overwhelming evidence of his guilt was presented at trial. *See Rhymes v. State*, 121 Nev. 17, 22, 107 P.3d 1278, 1281 (2005) (stating that failure to conduct a hearing prior to admission of prior-bad-act evidence is not reversible error “where the result would have been the same if the trial

¹*Petrocelli v. State*, 101 Nev. 46, 51-52, 692 P.2d 503, 507-08 (1985).


court had not admitted the evidence.”). This evidence included an additional confession, casino surveillance videos, Hunter’s personal identification used when passing the fraudulent checks, and eyewitness identification. Therefore, we conclude Hunter fails to demonstrate admission of the challenged testimony amounted to plain error.

Second, Hunter argues the district court erred by failing to issue a limiting instruction regarding the prior, uncharged acts. The district court is only required to issue a limiting or cautionary instruction regarding evidence admitted under NRS 48.035(3) if an interested party requests the district court to do so. Here, Hunter did not request the district court to issue such an instruction regarding the challenged testimony. Accordingly, Hunter fails to demonstrate the district court erred in this regard.

Moreover, again assuming this evidence could be considered prior-bad-act evidence admitted pursuant to NRS 48.045(2), as previously explained there was overwhelming evidence of Hunter’s guilt presented at trial and, therefore, any failure to issue a limiting instruction was harmless because “the error did not have a substantial and injurious effect or influence the jury’s verdict.” *Rhymes*, 121 Nev. at 24, 107 P.3d at 1282. Therefore, Hunter is not entitled to relief, and we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Chief Judge, Second Judicial District Court
Troy Curtis Jordan
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk