

IN THE SUPREME COURT OF THE STATE OF NEVADA

KRISTINA RODEMAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 36857

FILED

FEB 21 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count each of trafficking in a controlled substance (methamphetamine) and possession of a controlled substance (marijuana). The district court sentenced appellant to serve two concurrent terms of 12 to 48 months in prison. The district court suspended the sentence on the possession count and placed appellant on probation for a period not to exceed 4 years.

Appellant's sole contention is that the district court abused its discretion by admitting prior bad act evidence regarding pay and owe sheets and appellant's prior use and sales of methamphetamine. In particular, appellant contends that the probative value of the evidence was substantially outweighed by the danger of unfair prejudice.

NRS 48.045(1) provides that evidence of other wrongs cannot be admitted at trial solely for the purposes of proving that the defendant acted in a similar manner on a particular occasion. But NRS 48.045(2) provides that such evidence may be admitted for other purposes, "such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity,

or absence of mistake or accident." Before admitting such evidence, the trial court must conduct a hearing on the record and determine (1) that the evidence is relevant to the crime charged; (2) that the other act is proven by clear and convincing evidence; and (3) that the probative value of the other act is not substantially outweighed by the danger of unfair prejudice.¹ On appeal, we will give great deference to the trial court's decision to admit or exclude evidence and will not reverse the trial court absent manifest error.²

Here, the trial court conducted a hearing prior to trial regarding the prior bad act evidence offered by the State. At the conclusion of the hearing, the trial court determined that the evidence was relevant as proof of appellant's intent and knowledge, that the State had proven the other acts by clear and convincing evidence, and that the probative value of the other acts was not substantially outweighed by the danger of unfair prejudice. Based on our review of the record, we conclude that the district court did not commit manifest error in admitting the evidence of the pay and owe sheets and appellant's prior use and sales of methamphetamine.

First, the evidence is relevant to the charged conduct. The State charged appellant with trafficking in a controlled substance in violation of NRS 453.3385. A person violates NRS 453.3385 when, among other things, she "is

¹See *Tinch v. State*, 113 Nev. 1170, 1176, 946 P.2d 1061, 1064-65 (1997).

²See *Bletcher v. State*, 111 Nev. 1477, 1480, 907 P.2d 978, 980 (1995); *Petrocelli v. State*, 101 Nev. 46, 52, 692 P.2d 503, 508 (1985).

knowingly or intentionally in actual or constructive possession" of a schedule I controlled substance. Thus, both the defendant's intent and her knowledge of the narcotic nature of the substance are elements of the offense.³ Here, the evidence of the pay and owe sheets identified as being in appellant's handwriting and appellant's prior use and sales of methamphetamine were relevant to her intent and knowledge of the narcotic nature of the substance found in her bathroom.⁴ Although appellant claims that she did not place her intent or knowledge at issue because she did not testify, we conclude that because intent and knowledge are elements of the charged offense of trafficking in a controlled substance, she placed them at issue by pleading not guilty.⁵ Moreover, her theory of defense was that the methamphetamine belonged to her roommate. This theory of defense also placed her intent and knowledge in dispute.

Second, the State proved the other acts by clear and convincing evidence. The pay and owe sheets were found in appellant's trash with other items bearing her name. A forensic document examiner testified that the pay and owe sheets were in appellant's handwriting. Additionally, the pay

³See *Sheriff v. Shade*, 109 Nev. 826, 830, 858 P.2d 840, 842 (1993).

⁴See *Lindsay v. State*, 87 Nev. 1, 3, 478 P.2d 1022, 1023 (1971) ("[W]here the charge is a narcotic offense, other prior similar offenses may sometimes be received to show the defendant's knowledge of the narcotic nature of the substance sold.").

⁵*Cf. Keeney v. State*, 109 Nev. 220, 228, 850 P.2d 311, 316 (1993) (stating that, in sexual assault case, defendant placed his intentions at issue by pleading not guilty), overruled on other grounds by *Koerschner v. State*, 116 Nev. ___, 13 P.3d 451 (2000).

and owe sheets were on stationery from a hotel where appellant stayed while attending beauty school in Sparks. As for appellant's prior use and sales of methamphetamine, the State produced testimony of an individual who had purchased methamphetamine from appellant and had seen appellant use methamphetamine within the relevant time period.

Finally, the probative value of the evidence was not substantially outweighed by the danger of unfair prejudice. In this case the evidence carried great probative value. The district court alleviated the potential for unfair prejudice by instructing the jury on the limited relevance of the evidence.

Having considered appellant's contention and concluded that it lacks merit, we affirm the judgment of conviction.

It is so ORDERED.

Young J.
Young

Rose J.
Rose

Becker J.
Becker

cc: Hon. Jerry V. Sullivan, District Judge
Attorney General
Humboldt County District Attorney
Lockie & Macfarlan, Ltd.
Humboldt County Clerk