

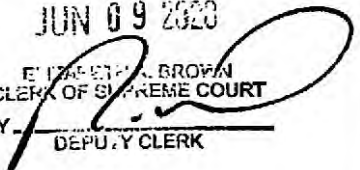
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JAMIE MERIE LAMBDIN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 78543-COA

FILED

JUN 09 2020

EMILY L. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Jamie Merie Lambdin appeals from a judgment of conviction entered pursuant to a jury verdict of three counts of fraudulent use of a credit or debit card and one count of burglary. Second Judicial District Court, Washoe County; Elliott A. Sattler, Judge.

Lambdin claims the district court abused its discretion by granting in part the State's motion in limine to admit *res gestae* evidence. The district court ruled that "[t]he State may present evidence regarding the theft of [the victim's] mail, the fact his card had been previously used, and his investigation thereof at the trial." We review the court's decision to admit or exclude evidence for abuse of discretion or manifest error. *Thomas v. State*, 122 Nev. 1361, 1370, 148 P.3d 727, 734 (2006). "An abuse of discretion occurs if the district court's decision is arbitrary or capricious or if it exceeds the bounds of law or reason." *Crawford v. State*, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005).


We conclude the district court abused its discretion by ruling the evidence of the mail theft and previous card use was admissible because this evidence implicated Lambdin in the commission of other bad acts and the State failed to show that its witnesses could not describe the charged

offenses without referring to the uncharged bad acts. See NRS 48.035(3); *Weber v. State*, 121 Nev. 554, 574, 119 P.3d 107, 121 (2005) (the plain language of NRS 48.035(3) limits the admissibility of evidence under the res gestae doctrine), *overruled on other grounds by Farmer v. State*, 133 Nev. 693, 697-700, 405 P.3d 114, 119-21 (2017); *Bellon v. State*, 121 Nev. 436, 444, 117 P.3d 176, 181 (2005) (“[Reiterating] that admission of evidence under NRS 48.035 is limited to the statute’s express provisions.”); *Tabish v. State*, 119 Nev. 293, 307, 72 P.3d 584, 593 (2003) (the res gestae statute is construed very narrowly).

However, we also conclude this error was harmless because the State presented compelling evidence of Lambdin’s fraudulent use of the victim’s debit card and her entry into a store with the intent to obtain property by false pretense and/or feloniously use the credit or debit card of another. See NRS 205.060(1); NRS 205.760(1); *Newman v. State*, 129 Nev. 222, 236, 298 P.3d 1171, 1181 (2013) (“A nonconstitutional error, such as the erroneous admission of evidence at issue here, is deemed harmless unless it had a substantial and injurious effect or influence in determining the jury’s verdict.” (internal quotation marks omitted)). Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

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