

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICKY JOHNSON,

No. 37439

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

JUN 13 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT

BY *J. [Signature]*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of burglary. The district court sentenced appellant to serve 16 to 72 months in prison.

Appellant's sole contention is that the district court abused its discretion by admitting evidence of appellant's five prior convictions for petty larceny and one prior conviction for attempted burglary. Appellant argues that the prior convictions were not relevant to the charged offense, that the petty larceny convictions were not proven by clear and convincing evidence, and that the probative value of the prior convictions was substantially outweighed by the danger of unfair prejudice.¹ We disagree.

The district court's decision to admit evidence of other crimes will be respected on appeal unless it was "'manifestly wrong'".² We conclude that the district court

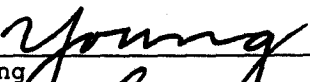
¹See Tinch v. State, 113 Nev. 1170, 1176, 946 P.2d 1061, 1064-65 (1997) (explaining that evidence of prior bad acts are admissible only if the trial court determines that they are relevant to the crime charged, are proven by clear and convincing evidence, and their probative value is not substantially outweighed by the danger of unfair prejudice).

²See Petrocelli v. State, 101 Nev. 46, 52, 692 P.2d 503, 508 (1985) (quoting Brown v. State, 81 Nev. 397, 400, 404 P.2d 428, 430 (1965)).

did not commit manifest error in determining that the prior convictions were relevant to the crime charged as proof of appellant's intent to feloniously enter the Wal-Mart and commit a larceny,³ that the prior convictions were established by clear and convincing evidence, and that the probative value of the evidence was not substantially outweighed by the danger of unfair prejudice. Moreover, we note that the district court diminished any potential prejudice by instructing the jury that it could consider the prior convictions only for certain limited purposes consistent with NRS 48.045(2) and not as evidence of bad character or a disposition to commit crimes. Finally, we conclude that Officer Melton's testimony that he considered the prior convictions in deciding to arrest appellant on a charge of burglary was not unfairly prejudicial considering the defense's suggestion that the police and prosecution had ulterior motives for charging appellant with burglary rather than petty larceny.

Having considered appellant's contention and concluded that it lacks merit, we


ORDER the judgment of conviction AFFIRMED.



Young J.



Leavitt J.



Becker J.

³See NRS 48.045(2) (providing that evidence of other crimes are admissible as proof of intent); see also Tillema v. State, 112 Nev. 266, 269, 914 P.2d 605, 607 (1996) (holding that evidence of prior conviction for vehicle burglary was admissible to show defendant's intention to feloniously enter vehicles on subsequent occasion).

cc: Hon. John S. McGroarty, District Judge
Attorney General
Clark County District Attorney
Clark County Public Defender
Clark County Clerk