IN THE SUPREME COURT OF THE STATE OF NEVADA

JESUS CELESTIN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 37788

FILED

OCT 0 8 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of count I -- burglary while in possession of a firearm; count II -- first degree kidnapping with use of a deadly weapon with substantial bodily harm; count III -- robbery with use of a deadly weapon; count IV -- murder with use of a deadly weapon; and count V -- third degree arson.

Celestin was sentenced to 120 months with a minimum parole eligibility after twenty-four months for count I; forty years with a parole eligibility after fifteen years for count II; 120 months with a minimum parole eligibility after twenty-four months, plus an equal and consecutive term for use of a deadly weapon for count III; life with the possibility of parole after twenty years, with an equal and consecutive term for use of a deadly weapon for count IV; and forty-eight months with a minimum eligibility of parole after twelve months for count V. Counts I and III were to run concurrent to each other and consecutive to count IV. All other counts were to run concurrently. Celestin was given credit for time served in the amount of 302 days.

Celestin, who was seventeen years of age, argues that he did not receive a fair trial because his statement to Detective Hardy was obtained before he was "charged" with murder pursuant to NRS 62.170(2)(a), and should not have been admitted. The State claims that

NRS 62.170(2)(a) did not apply because the statute excludes children "accused" of murder or attempted murder from the statutory protections of the jurisdiction of the juvenile courts.

NRS 62.170(2)(a) provides that once a child is taken into custody, the officer shall attempt to notify the parent, guardian or custodian of the child. NRS 62.020(1)(a) defines a "child" as a person less than eighteen years old. NRS 62.040 provides that the juvenile court has jurisdiction concerning a child who has committed a delinquent act. However, NRS 62.040(2) provides that:

> For the purposes of subsection 1, each of the following acts shall be deemed not to be a delinquent act, and the [juvenile] court does not have jurisdiction of a person who is charged with committing such an act:
>
> (a) Murder or attempted murder and any other related offense arising out of the same facts as the murder or attempted murder, regardless of the nature of the related offense.

(Emphasis added).

Here, Celestin was arrested on outstanding juvenile warrants. Detective Hardy had previously taken the statement of Celestin's girlfriend, Rena Kimenker, and had also received several Secret Witness tips divulging the "monikers" of the individuals alleged to have been involved in the murder. However, Celestin had not yet been charged or arrested in connection with the homicide of Sandoval. Nevertheless, Celestin was interviewed in connection with Sandoval's murder. Detective Hardy informed Celestin of his Miranda rights, and that he was being interrogated concerning a homicide. Celestin waived his Miranda rights although he was not afforded the benefit of parental notification as required by NRS 62.170(2)(a). Detective Hardy was aware that Celestin

was seventeen years old, yet he made no attempt to contact Celestin's parents.

The State contends that because this case involved a murder, and murder falls within the ambit of NRS 62.040(2)(a), the protections of NRS 62.170(2)(a) did not apply. However, NRS 62.040(2) does not provide that any child "accused" of murder or that any juvenile case "involving a murder" does not fall within the protection of NRS 62.170(2)(a). NRS 62.040(2) expressly requires that a juvenile be "charged" with committing murder before the juvenile court loses jurisdiction.

"When the language of a statute is plain and unambiguous, a court should give that language its ordinary meaning and not go beyond it."[1] However, "[w]hen either of the interpretations proffered by the parties can be reasonably drawn from the language of the statute, the statute is ambiguous and the plain meaning rule has no application."[2] In addition, "[t]he expressly stated purpose of the statute is a factor to be considered."[3] This court has held that statutory interpretation should avoid absurd or unreasonable results.[4]

Here, police arrested Celestin for juvenile warrants, but they did not arrest him nor charge him with murder prior to interrogating him

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[1]City Council of Reno v. Reno Newspapers, 105 Nev. 886, 891, 784 P.2d 974, 977 (1989).

[2]Hotel Employees v. State, Gaming Control Bd., 103 Nev. 588, 591, 747 P.2d 878, 880 (1987).

[3]Id.

[4]General Motors v. Jackson, 111 Nev. 1026, 1029, 900 P.2d 345, 348 (1995).

regarding the murder. The plain language of NRS 62.170(2)(a) required that the police attempt to notify Celestin's parents upon taking him into custody but they did not do so. However, under these circumstances, we conclude that interpreting the juvenile statute in a manner that would require the police to attempt to contact Celestin's parents prior to interrogating him would produce an absurd and unreasonable result. Celestin was seventeen years old, and there is no suggestion that he was of low intelligence. In addition, the district court noted that Celestin was out at three o'clock in the morning, did not live at home with his parents, had himself taken on the responsibility of parenthood and was not under any parental control.

We have held that due process might require parental notification in some instances.[5] In McCurdy v. State, the juvenile defendant was nearly eighteen years old, and there was nothing in the record which suggested that he required treatment different than that which he would have received had he been eighteen years old.[6] We acknowledged that although murder was outside the purview of the juvenile statute, had the defendants been eight or nine years of age, due process might have required parents to be present during interrogation.[7] However, we held that the defendant, who was convicted of first degree murder, "was not a child in the usual sense of the word and was not

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[5]McCurdy v. State, 107 Nev. 275, 809 P.2d 1265 (1991).

[6]107 Nev. at 277, 809 P.2d 1266.

[7]Id.

reasonably, statutorily or constitutionally entitled to have his parents present as a condition to police interrogation."[8]

Here, we conclude that Celestin is not "a child in the usual sense of the word."[9] Thus, he was not entitled to have his mother present as a condition to being interrogated by police and that requiring the police to attempt to contact his parents prior to interrogating him would not further the purpose of the juvenile statute.

Celestin argues that the district court erred in allowing testimony regarding the alleged prior robbery of Vecchiarino. Celestin claims that since he admitted his presence at the instant shooting, the only probative issue was whether he knew that Tadeo, Celestin's co-felon, brought a gun to the crime scene. Celestin concludes that allowing testimony regarding the earlier robbery was error because the circumstances were too disimilar to be relevant. We disagree.

NRS 48.045(2) provides that evidence of bad acts is admissible for purposes other than to show the defendant acted in conformity therewith if it is offered to show proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. The trial court must make a determination outside the presence of the jury that the act is relevant, proven by clear and convincing evidence, and that the probative value is not substantially outweighed by the danger of unfair prejudice.[10]

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[8]Id.

[9]Id.

[10]Petrocelli v. State, 101 Nev. 46, 52, 692 P.2d 503, 508 (1985).

Here, Celestin engaged in both acts with the intent of taking the victims' money. He similarly planned both robberies, using Kimenker to lure the victims into providing transportation. We conclude that the testimony regarding the prior bad act was probative because it provided proof of intent and the existence of a common plan.

Celestin also contends that the use of three witnesses to provide the same testimony was overly prejudicial. While testimony of the three witnesses was similar, each witness provided some additional insight into the prior bad act. Therefore, we conclude that the district court did not abuse its discretion in admitting the evidence of the prior bad act and that the probative value was not substantially outweighed by the danger of unfair prejudice.

Celestin claims that evidence that he hit and spat on Vecchiarino during the prior uncharged bad act constituted bad acts separate and distinct from the robbery itself, and were not argued in the Petrocelli hearing conducted to consider the admission of the robbery.

"[T]he prosecution is entitled to present 'a full and accurate account' of the circumstances surrounding a crime."[11] However, "the evidence must be relevant and necessary in the presentation of the case, especially when the evidence implicates the defendant in the commission of other crimes or only tends to prove a bad character."[12]

Here, battery was not specifically argued during the Petrocelli hearing. However, the witnesses testified regarding Celestin kicking the

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[11]Shults v. State, 96 Nev. 742, 748, 616 P.2d 388, 392 (1980) (quoting Dutton v. State, 94 Nev. 461, 464, 581 P.2d 856, 858 (1978)).

[12]Id. at 749, 616 P.2d at 392.

victim, and Vecchiarino herself testified at the hearing that Celestin spat on her. The district court concluded that it was "important for the jury to hear all of the facts" regarding the nature of the robbery. Also, the additional facts provided more similarities between the prior bad act and the instant murder. Celestin admitted that the robbery of Sandoval provided a way to "deface the man who had violated his girlfriend," similar to the act of spitting on Vecchiarino. Therefore, we conclude that the district court did not err in allowing testimony regarding the prior bad act.

Lastly, Celestin alleges that the State violated the district court's order denying the State's motion to admit evidence of other crimes, wrongs or acts when it questioned Kimenker regarding whether Celestin had supplied her with a controlled substance. Further, Celestin argues that the question condemned him as a "bad person." Celestin's argument is without merit.

Here, the State filed a motion to admit evidence of Celestin's prior robbery of Vecchiarino and evidence that Celestin threatened Kimenker during a preliminary hearing. The State's motion to admit evidence discussed Celestin's possession of a controlled substance, but did not specifically argue the issue. At the Petrocelli hearing, the State informed counsel for Celestin that Celestin supplying cocaine to Kimenker was not important, but that there was no way to prevent it from coming up since it was part of the case. The attorneys agreed that it was not an issue. Further, the district court's order permitted testimony regarding Celestin's prior uncharged robbery, and denied the admission of testimony regarding threats allegedly made by Celestin to Kimenker in the courtroom. However, the district court's order did not address Celestin's possession of a controlled substance.

While Petrocelli mandates that the district court consider the admission of prior bad acts outside the presence of the jury, here, the State did not improperly attempt to introduce evidence of Celestin's cocaine possession independently. The facts of this case unavoidably involved the exchange of controlled substances between those involved. Celestin acknowledged in his opening brief that Sandoval drove Celestin and Kimenker to purchase additional cocaine, and that on a second trip, Kimenker was let out of the vehicle so that Celestin and Tadeo could purchase additional cocaine. We conclude that the State's line of questioning was not "off limit[s],"[13] nor improper. Further, upon Celestin's objection, the district court noted that Celestin had attempted to mention how the victim was providing drugs at the party. Here, the State's line of questioning was not offered to show that Celestin was a "bad person," but was offered to show that cocaine was being provided by people other than the victim in this case. Therefore, Celestin's right to a fair trial was not violated. Accordingly we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Shearing

_____, J.
Leavitt

_____, J.
Becker

[13]Garner v. State, 78 Nev. 366, 375, 374 P.2d 525, 530 (1962).

cc: Hon. Sally L. Loehrer, District Judge
Special Public Defender
Attorney General/Carson City
Clark County District Attorney
Clark County Clerk