

IN THE SUPREME COURT OF THE STATE OF NEVADA

SALVADOR GONZALEZ,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 83543

**FILED**

DEC 15 2022

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY *E. A. Brown*  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of first-degree murder. Eighth Judicial District Court, Clark County; Tierra Danielle Jones, Judge.

*Factual Background*

On December 26, 2016, Jose De La Cruz was laying carpet in a vacant apartment. Jose carpeted the first two rooms and then went into the third room, where he worked alone for approximately 20 minutes with the door closed so that he could properly stretch the carpet. After Jose finished, he discovered one of the other bedroom doors had been closed and locked. Jose went out to his truck to retrieve a tool to open the locked bedroom, and when he reentered the apartment, he saw a man walking down the hallway. The man was Hispanic, in his early 20s, wearing a hat, and had a tear-shaped tattoo near his eye. The man, who was rubbing his hands and seemed nervous, asked Jose for a cigarette before leaving the apartment.

The locked bedroom door was now ajar, and Jose found a dead woman inside. Jose ran from the apartment yelling for help, and asked neighbors and a nearby maintenance crew which direction the man went. The maintenance crew called 911. Officers arrived and found the woman lying on her back with blue liquid in her mouth, and near the body officers found a sweating 7-Eleven cup with blue liquid inside, as well as two purses and a prescription medication bottle. In those purses, detectives found an

empty wallet and a phone charger, but detectives did not find a cell phone. Officers deduced the victim was 24-year-old Diana Rios. Officers observed bruising on her neck, and the autopsy report showed Diana died of asphyxia from strangulation.

Officers visited two nearby 7-Elevens and located video surveillance of Diana with a man shortly before the murder. Jose identified the man in the video surveillance as the same man in the apartment based upon the man's clothing. Detectives suspected that person was Salvador Gonzalez, Diana's on-again, off-again boyfriend and the father of her two young children. From Diana's prior 911 calls, detectives learned the couple had a history of domestic violence. Diana had been 13 weeks pregnant with the couple's third child when she died.

Late on the night of December 27, police took Gonzalez into custody and questioned him about his relationship with Diana and the last time he had seen her. As Gonzalez was being apprehended, detectives applied for and obtained a search warrant. Detectives searched Gonzalez's home and gathered clothing and a cell phone, as well as a DNA sample from Gonzalez.

The State charged Gonzalez with first-degree murder. Prior to trial, Gonzalez moved to suppress a statement he made to detectives early on the morning of December 28 on the ground that detectives continued questioning him after he invoked his right to counsel. After a hearing, the district court denied the motion, concluding Gonzalez's references to an attorney were ambiguous and equivocal. Also prior to trial, the State moved to admit evidence of other crimes, wrongs, or acts pursuant to NRS 48.045(2) and NRS 48.061. Namcly, the State sought to introduce prior domestic violence incidents spanning from 2013 to 2016, including various 911 calls, the testimony of Diana's family members regarding interactions between Diana and Gonzalez, and Diana's hospital records. Following a

lengthy three-part *Petrocelli* hearing, the district court granted the motion in part, admitting portions of the evidence to show a long-standing relationship and a consistent pattern of domestic violence.

The case went to a nine-day jury trial in June 2021. Jose and others testified to the events surrounding the murder and investigation. Diana's family testified that Diana had no other boyfriends besides Gonzalez and that the relationship between Gonzalez and Diana was violent and abusive. Diana's family also testified about specific interactions between Gonzalez and Diana. Testimony at trial further established that Gonzalez's fingerprints and palm prints were found on the 7-Eleven cup, Gonzalez's DNA was found on the cup's straw, and his sperm and DNA was found in Diana's underwear and on her genitals. Gonzalez's DNA was also found on fingernail clippings from Diana's right hand. Notably, Gonzalez had one injury at the time of his arrest: "linear red marks" on his upper left shoulder. The State also presented Diana's medical records showing Diana previously went to the hospital reporting "her boyfriend" had hit her in the head. In addition, the State presented various 911 calls, and incriminating text messages from the phone found in Gonzalez's room.

Gonzalez did not testify or present witnesses. During closing, he conceded that he and Diana entered the apartment together but argued that he left Diana behind, alive, and Jose must have killed Diana. He further argued that detectives failed to test all available evidence because they pre-determined Gonzalez had killed Diana. The jury found Gonzalez guilty of first-degree murder and sentenced him to life without parole.

### *Legal Analysis*

On appeal, Gonzalez argues the district court reversibly erred by: (1) denying his motion to suppress his statement to LVMPD detectives; (2) denying his motion to suppress evidence seized pursuant to a search warrant without an evidentiary hearing; (3) granting in part the State's

motion to admit evidence of other bad acts; and (4) admitting text messages attributed to Gonzalez without further authentication.

As to the first issue, we review the district court's factual findings regarding suppression issues for clear error and review the legal consequences of those findings de novo. *State v. Beckman*, 129 Nev. 481, 486, 305 P.3d 912, 916 (2013). Moreover, we review de novo the question of whether a defendant invoked his right to counsel. *Carter v. State*, 129 Nev. 244, 247, 299 P.3d 367, 370 (2013). We have long held that once a suspect invokes the right to counsel, detectives must stop all questioning until the suspect has legal counsel. *Id.* at 247-48, 299 P.3d at 370. In this regard, we first consider whether the suspect invoked the right by expressing a desire for an attorney's assistance. *Id.* at 248, 299 P.3d at 370. Importantly, references that are ambiguous or equivocal in that a reasonable officer would understand only that the suspect *might* be invoking the right are insufficient to require questioning to cease. *Id.*

The transcript of the interrogation shows Gonzalez mentioned an attorney three times during his December 28 statement: the first time he simply said he felt he might need an attorney, whereas on the second occasion he indicated he needed an attorney "if something was goin' on." After the third instance, when he asked for an attorney, detectives ended the interview. Therefore, we agree with the district court that Gonzalez's statements regarding an attorney were equivocal and ambiguous. Accordingly, we conclude the district court's findings are not clearly wrong, and the district court did not err by denying Gonzalez's pretrial suppression motion.

As to the second issue, Gonzalez argues the district court improperly denied his motion to suppress the seized evidence—his clothes, the cell phone, and his DNA—because the warrant was not supported by probable cause and the court denied the motion without an evidentiary

hearing. We review the district court's factual findings on a motion to suppress for clear error but review the court's legal conclusions de novo. *State v. Beckman*, 129 Nev. 481, 486, 305 P.3d 912, 916 (2013).

A judge's determination of probable cause to issue a warrant is entitled to "great deference" and we will not invalidate a warrant on hypertechnical grounds. *Doyle v. State*, 116 Nev. 148, 158, 995 P.2d 465, 471 (2000). Further, we consider the totality of the circumstances in determining whether probable cause is present. *Id.* "A defendant is not entitled to suppression of the fruits of a search warrant, even based on intentional falsehoods or omissions, unless probable cause is lacking once the false information is purged and any omitted information is considered." *Id.* at 159, 995 P.2d at 472. If the remaining content is insufficient to support probable cause, the defendant is entitled to a hearing. *Franks v. Delaware*, 438 U.S. 154, 171-72 (1978).

Even were we to credit Gonzalez's arguments, a substantial basis remained for concluding that probable cause existed for the warrant. *See Doyle*, 116 Nev. at 158, 995 P.2d at 472 ("The duty of the reviewing court is simply to determine whether there is substantial basis for concluding that probable cause existed."). Namely, Gonzalez matched Jose's description, Jose linked the surveillance video picture to the suspect based on the suspect's clothing, Gonzalez was in a relationship with Diana, the couple had a history of domestic violence, and Gonzalez had threatened to kill Diana. Accordingly, Gonzalez was not entitled to a hearing.

Next, Gonzalez argues the district court erred by granting in part the State's motion to admit other-bad-act evidence, arguing that these prior bad acts were insufficiently tied to Gonzalez or not proven by clear and convincing evidence, retracted by Diana, not relevant to prove Gonzalez's intent or the killer's identity, of minimal probative value, and/or were too remote in time to the murder to be relevant. We review the district

court's admission of other bad act evidence for a manifest abuse of discretion. *Bigpond v. State*, 128 Nev. 108, 117, 270 P.3d 1244, 1250 (2012).

NRS 48.045(2) provides that other-bad-act evidence is inadmissible to prove the defendant's character in order to show conformity therewith. But such evidence may be offered for a "purpose other than proving the defendant's propensity" to commit a crime, *Bigpond*, 128 Nev. at 117, 270 P.3d at 1250, such as "to demonstrate ill-will as a motive for the crime." *Hogan v. State*, 103 Nev. 21, 23, 732 P.2d 422, 423 (1987); *see also* NRS 48.045(2) (listing admissible purposes). Moreover, evidence of domestic violence may be admissible to explain "the relationship dynamics between a domestic-violence victim and the accused." *Newman v. State*, 129 Nev. 222, 223 n.2, 298 P.3d 1171, 1179 n.2 (2013) (explaining that the 2001 amendments to NRS 48.061 "expand[ed] the use of bad-act evidence in domestic violence cases"). Before allowing other-bad-act evidence, the district court must determine that the act is relevant to the crime and for a purpose other than proving the defendant's propensity, proved by clear and convincing evidence, and the danger of unfair prejudice does not substantially outweigh the probative value of the evidence. *Bigpond*, 128 Nev. at 117, 270 P.3d at 1250; *see also Tinch v. State*, 113 Nev. 1170, 1176, 946 P.2d 1061, 1064-65 (1997).

Having carefully reviewed the record, we conclude that the evidence here was for a permissible purpose, namely, to show that Gonzalez had the motive and intent to eventually kill Diana in an escalated act of domestic violence. This evidence of motive and intent is relevant because Gonzalez argued at trial that Jose killed Diana. In addition, the State showed clear and convincing evidence that Gonzalez committed the prior bad acts. Nor did the danger of unfair prejudice substantially outweigh the probative value, particularly where the other evidence against Gonzalez is overwhelming. Accordingly, the district court did not manifestly abuse its

discretion by admitting the other-bad-act evidence, and any possible error in admitting the evidence was harmless beyond a reasonable doubt.

Finally, Gonzalez argues that the text messages from the phone found in his bedroom were insufficiently authenticated because the State failed to sufficiently establish the sender's identity. We apply basic evidentiary rules to text messages and review the district court's decision to admit them for an abuse of discretion. *See Rodriguez v. State*, 128 Nev. 155, 160, 273 P.3d 845, 848 (2012). Subject to the other evidentiary rules, relevant evidence is admissible. *See* NRS 48.025(1). Evidence must be sufficiently authenticated to be admitted and may be identified by evidence "sufficient to support a finding that the matter in question is what its proponent claims." NRS 52.015(1). With regard to text messages, the identity of the sender is critical, and generally requires more than just showing that the message originated from a particular cell phone. *Rodriguez*, 128 Nev. at 161-62, 273 P.3d at 849. Here, trial testimony sufficiently authenticated the messages, and the messages were relevant to establish motive as they show that Diana wanted to leave Gonzalez and that Gonzalez was threatening to kill her to stop her and the children from leaving. *See* NRS 48.045(2). The district court therefore did not abuse its discretion by admitting this evidence.

Moreover, any error of the district court was harmless. A constitutional error is harmless when the State shows, "beyond a reasonable doubt, that the error did not contribute to the verdict." *Valdez v. State*, 124 Nev. 1172, 1189, 196 P.3d 465, 476 (2008). Here, video surveillance established (and Gonzalez admitted) that he was with Diana shortly before the murder, the evidence at the crime scene further implicated Gonzalez, and Jose testified to Gonzalez leaving the murder

scene. Thus, we are convinced beyond a reasonable doubt that any error would not have affected the jury's verdict.<sup>1</sup> See NRS 178.598.

Accordingly, we

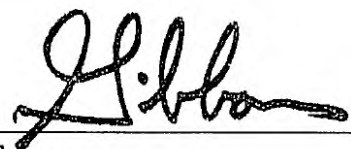
ORDER the judgment of the district court AFFIRMED.<sup>2</sup>



\_\_\_\_\_, J.  
Cadish



\_\_\_\_\_, J.  
Pickering



\_\_\_\_\_, Sr. J.  
Gibbons

cc: Hon. Tierra Danielle Jones, District Judge  
Gaffney Law  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

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<sup>1</sup>In light of the foregoing, we do not reach Gonzalez's arguments on cumulative error. See *Pascua v. State*, 122 Nev. 1001, 1008 n.16, 145 P.3d 1031, 1035 n.16 (2006) (rejecting appellant's argument of cumulative error where the "errors were insignificant or nonexistent").

<sup>2</sup>The Honorable Mark Gibbons, Senior Justice, participated in the decision of this matter under a general order of assignment.