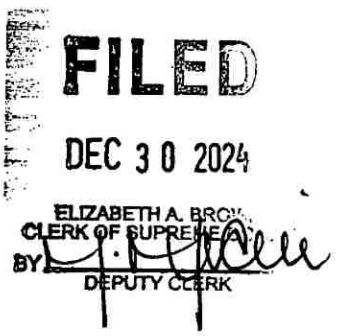
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CARLOS CHAVEZ NORWOOD, II,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 88224-COA



ORDER OF AFFIRMANCE

Carlos Chavez Norwood, II, appeals from a judgment of conviction, entered pursuant to a jury verdict, of violating an extended protection order against stalking or harassment. Second Judicial District Court, Washoe County; Kathleen M. Drakulich, Judge.

First, Norwood argues that the district court erred by admitting the extended protection order (EPO) at trial. Norwood argues that he stipulated to the existence of the EPO and thus that the EPO should not have been admitted.[1] Norwood does not demonstrate any error because his claim that he stipulated to the existence of the EPO is belied by the record. While Norwood mentioned in pretrial briefing that he would stipulate to the existence of the EPO, Norwood never presented a stipulation to the district court despite the district court requesting Norwood to do so. Instead, at trial Norwood requested the EPO be redacted, which was granted. Thus, no stipulation was ever presented to the jury, and we conclude that the

[1]We note that the existence of the EPO was an element of the crime. *See* NRS 200.591(5)(b).

district court did not err by admitting the EPO at trial.[2] *See Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48-49 (2018) (holding that this court reviews unobjected-to error for plain error).

Second, Norwood argues the district court erred by allowing the State to present evidence regarding one of his prior convictions for violating the temporary protection order issued before the EPO. Before trial, the State sought to admit this evidence in its rebuttal case to counter any claim by Norwood that the instant violation was a mistake or accident, that Norwood lacked intent, or that he did not have adequate knowledge of the EPO.

This court reviews a district court's decision to admit other act evidence for abuse of discretion. *Newman v. State*, 129 Nev. 222, 231, 298 P.3d 1171, 1178 (2013). Evidence of other crimes, wrongs, or acts cannot be admitted at trial solely for the purpose of proving that a defendant has a certain character trait and acted in conformity with that trait on the particular occasion in question. NRS 48.045(1). However, such evidence may "be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." NRS 48.045(2). Before admitting the evidence as such, the district court must determine whether "(1) the prior bad act is relevant to the crime charged and for a purpose other than proving the defendant's propensity, (2) the act is proven by clear and convincing evidence, and (3) the probative value of the evidence is not substantially outweighed by the

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[2]In his reply brief, Norwood argues the district court ruled that the EPO was admissible despite his offer to stipulate to its existence. This claim is belied by the record. The district court did not make, nor was it asked to make, a ruling on the admissibility of the EPO. The EPO was admitted without objection at trial.

danger of unfair prejudice." *Bigpond v. State*, 128 Nev. 108, 117, 270 P.3d 1244, 1250 (2012).

After holding a pretrial hearing, the district court considered the factors above and found that the State would be allowed to present the June 19th violation in rebuttal if Norwood opened the door by testifying he did not understand what was prohibited by the EPO, by calling into question his intent, or by alleging his behavior was an accident. At trial, Norwood testified regarding his recollection of the June 19th incident, intimating he did not intend to violate the EPO or that it was an accident. Norwood also testified that he did not know what was prohibited by the EPO.[3] After Norwood's testimony, the State told the district court it intended to have an officer testify regarding the June 19th incident in rebuttal to Norwood's testimony. Counsel for Norwood stated, "I don't see how I can object to that."[4] The district court gave a *Tavares*[5] instruction prior to allowing the officer to testify and also gave the instruction at the close of evidence with the other jury instructions. The instruction informed

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[3]In the reply brief, Norwood argues the State introduced the June 19th violation first. However, this claim is belied by the record as the State did not present facts or information regarding the June 19th violation until after Norwood testified.

[4]The State argues this claim should be subject to plain error review. However, Norwood's objection to the State's motion in limine preserved the challenge without need for further objection because the objection was fully briefed and considered during a hearing and because the district court made a definitive ruling. *See Richmond v. State*, 118 Nev. 924, 932, 591 P.3d 1249, 1254 (2002).

[5]*Tavares v. State*, 117 Nev. 725, 729-33, 30 P.3d 1128, 1130-33 (2001), *modified in part by Mclellan v. State*, 124 Nev. 263, 268, 182 P.3d 106, 110 (2008).

the jury that the testimony offered by the officer could not be used to prove propensity or bad character. Instead, the instruction told the jury the evidence could only be considered for motive, intent, knowledge, or absence of mistake or accident.

Based on this record, we conclude that the district court did not abuse its discretion by allowing the State to introduce rebuttal evidence regarding the June 19th incident. The evidence was not introduced for propensity purposes, it was relevant to the charged crime, it was proven by clear and convincing evidence, and the probative value of the evidence was not outweighed by the danger of unfair prejudice. Therefore, we conclude that Norwood is not entitled to relief on this claim. Accordingly, we

ORDER the judgment of conviction AFFIRMED.

_____, C.J.
Gibbons

_____, J.
Bulla

_____, J.
Westbrook

cc: Hon. Kathleen M. Drakulich, District Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk