

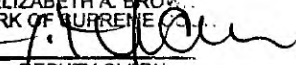
IN THE SUPREME COURT OF THE STATE OF NEVADA

LAMEDA NICOLE WHITE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 86728

FILED

JAN 16 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of trafficking in or possessing a schedule I or II controlled substance, 400 grams or more, and ownership or possession of a firearm by a prohibited person. Second Judicial District Court, Washoe County; Kathleen M. Drakulich, Judge.

Appellant Lameda White (White) was convicted following bifurcated trials of trafficking in or possessing 400 grams or more of a schedule I or II controlled substance, and unlawful possession of a gun as an ex-felon. White now appeals both convictions, claiming that evidence of a prior bad act and gun possession were improperly admitted, the confidential informant's identity should have been disclosed, a mistrial should have been declared, and insufficient evidence existed to convict her. We disagree and affirm.

White's prior bad act was properly admitted

White argues that the trial court erred when it admitted evidence of her prior bad act. This court reviews evidentiary challenges under an abuse of discretion standard and will not reverse the "district court's decision to admit or exclude evidence . . . unless it is manifestly

wrong.” *Archanian v. State*, 122 Nev. 1019, 1029, 145 P.3d 1008, 1016 (2006).

Evidence of a defendant’s “other crimes, wrongs or acts” is inadmissible when used to prove a person’s character or propensity to act in conformity with a character trait. NRS 48.045(2). However, prior bad act evidence may “be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.” *Id.* There is a presumption of inadmissibility against evidence of prior bad acts, however, that presumption may be overcome when “(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 danger of unfair prejudice.” *Bigpond v. State*, 128 Nev. 108, 117, 270 P.3d 1244, 1250 (2012).

The prior bad act at issue is White’s prior conviction for possession of a controlled substance for purposes of sale. This evidence was presented during phase one of trial, for which White was being tried on count 1, possession with intent to sell a schedule I controlled substance, a violation of NRS 453.337.2(a), and count 2, trafficking in or possessing a schedule I or II controlled substance, 400 grams or more, a violation of NRS 453.3385(1)(b). The district court found the prior bad act evidence was relevant to the instant case because it was factually similar (in both cases (1) an individual named Don White (Don) and White traveled together in a vehicle into Nevada, (2) from California, (3) with methamphetamine that was packaged in individual baggies found in a larger bag, and (4) seized as a result of a traffic stop) and was offered for a legitimate, non-propensity purpose. We agree. White’s prior bad act was relevant to the instant case,

as it tended to prove that White had knowledge of methamphetamine inside the vehicle, White's motive to engage in the use and/or sale of methamphetamine, and lack of mistake or accident regarding possession and transportation of drugs. "Under a statute making it unlawful for any person to possess a narcotic drug except as authorized, an essential element of the offense is knowledge of the narcotic character of the object possessed." *Wallace v. State*, 77 Nev. 123, 125, 359 P.2d 749, 750 (1961). Evidence of a prior sale or sales of a controlled substance is probative to establish knowledge that the substance at issue is narcotic in nature. *Overton v. State*, 78 Nev. 198, 205, 370 P.2d 677, 681 (1962) (holding that two prior bad acts were admissible to prove defendant's knowledge that the substance at issue was a narcotic). We therefore agree that the prior bad act was relevant.

As to the probative value and prejudice to White, we conclude the district court did not abuse its discretion in admitting evidence of the prior bad act. The district court considered the factors outlined in *Randolph v. State*, which require courts to consider

the strength of the evidence as to the commission of the other crime, the similarities between the crimes, the interval of time that has elapsed between the crimes, the need for the evidence, the efficacy of alternative proof, and the degree to which the evidence probably will rouse the jury to overmastering hostility.

136 Nev. 659, 665, 477 P.3d 342, 349 (2020) (quoting *State v. Castro*, 756 P.2d 1033, 1041 (Haw. 1988)). When balancing the factors outlined in *Randolph*, it becomes clear that the probative value of the prior bad act evidence was high. Here, the district court noted the prior bad act was nearly identical to the instant case and only occurred 19 months prior.

Although the evidence against White was strong, the prior bad act evidence specifically helped establish White's knowledge of drugs in the vehicle and support the crime's knowledge requirement. While evidence of the prior bad act could be construed as prejudicial, it was not unduly prejudicial. The prior bad act did not appear to "rouse the jury to overmastering hostility," considering the crime was victimless and not egregious. *See id.* In fact, any prejudicial effect of the prior bad act evidence was further diminished when the district court provided a limiting instruction to the jury to clarify the limited use of this evidence. On balance, the district court did not abuse its discretion in admitting evidence of White's prior conviction.

Gun evidence was properly admitted during phase one of trial

Pursuant to *Brown v. State*, the district court bifurcated the trial into two phases. 114 Nev. 1118, 1126, 967 P.2d 1126, 1131 (1998) (requiring severance of multi-count prosecutions when an ex-felon is charged with unlawful possession of a firearm). Phase one tried White on counts 1 and 2, and phase two tried White on count 3.

On appeal, White argues bifurcation of count 3 necessarily required exclusion of any gun evidence in phase one since count 3 related to unlawful possession of a firearm as an ex-felon. The State argues the district court's order bifurcating the charges did not operate to exclude any other relevant evidence. The State further argues that the use of the gun at trial in phase one was relevant as it was used to demonstrate a common tool of the trafficking trade.

The bifurcation mandate in *Brown* is imposed to promote fairness and prevent undue prejudice by revealing a defendant's status as an ex-felon. 114 Nev. at 1126, 967 P.2d at 1131. The policy interests in *Brown* are not served by automatically excluding evidence relevant to the

gun charge in a separate trial on drug trafficking charges. Admitting evidence of gun possession does not necessarily reveal to the jury that the defendant is an ex-felon. Therefore, we agree with the State that the gun evidence was relevant in so far as it tended to prove or disprove White was guilty of trafficking narcotics. Although prejudicial, this evidence was not unduly prejudicial such that its probative value is outweighed by any prejudicial effect. The district court did not abuse its discretion in admitting the gun evidence during phase one of trial.

The district court did not abuse its discretion in maintaining the confidential informant's identity

White moved for disclosure of the confidential informant's (CI) identity in this case. The district court's decision to deny disclosure of the CI's identity is reviewed for reversible error under an abuse of discretion standard. *See Roviario v. United States*, 353 U.S. 53, 55 (1957); *Sheriff of Washoe Cnty. v. Vasile*, 96 Nev. 5, 7, 604 P.2d 809, 810 (1980).

The State has the privilege of withholding an informant's identity. NRS 49.335. However, disclosure is necessary where it "is relevant and helpful to the defense of an accused, or is essential to a fair determination of a cause." *Roviario*, 353 U.S. at 60-61. The test is whether a reasonable probability exists "that the informer can give testimony necessary to a fair determination of the issue of guilt or innocence." NRS 49.365. In deciding whether the necessary showing has been made, a court must balance "the public interest in protecting the flow of information against the individual's right to prepare his defense" by considering relevant factors such as "the crime charged, the possible defenses, the possible significance of the informer's testimony," and any other relevant considerations. *Roviario*, 353 U.S. at 62.

On appeal, White argues she is entitled to the CI's identity because he/she participated in and instigated a chain of events which led to criminal charges. Further, White contends the CI's identity is crucial to her lack of knowledge defense regarding the presence of drugs in the car and, alternatively, that the Reno Police Department's (RPD) use of the CI could have been the basis for an entrapment defense. Finally, she alleges that because a warrantless search of her home was conducted, and the legality of that search is at issue, the CI identity privilege gives way and requires mandatory disclosure.

As the district court articulated and the record makes clear, the CI's role in the investigation was almost non-existent. The CI furnished information to RPD that only related to Don selling drugs in Reno and had nothing to do with trafficking drugs from California. After obtaining the tracker warrant, RPD monitored Don's travel patterns and relayed relevant information to conduct a traffic stop. None of the information relayed to RPD regarding the traffic stop came from the CI. The resulting traffic stop ultimately led to White's arrest, and her probation status led to the warrantless search at her home. Logically following the chain of events, the CI's role in the investigation is too attenuated to demand his/her identity. Further, there are no facts in the record that indicate the CI induced White to traffic methamphetamine, making White's entrapment argument unpersuasive. The CI presumably lacks any knowledge about White since she was never implicated in the information supplied by the CI. Finally, White fails to demonstrate any search is at issue—she does not raise the legality of a search on appeal and provides no support in the record that an illegal search took place. Therefore, the district court did not abuse its discretion in keeping the CI's identity confidential.

The district court did not err in failing to sua sponte declare a mistrial

White argues the district court erred in not declaring a mistrial when evidence of her probationary status was inadvertently admitted at trial. At trial, a redacted video clip was played before the jury where an officer referenced White's "return," implying that White was on probation. Despite previously stipulating to its admittance, White argued below and now argues on appeal, that the video clip violated the district court's previous order to exclude reference to her probationary status. White further argues that because no correcting instruction was provided, the revealing of her probation status was prejudicial and led the jury to use propensity reasoning to convict her.

Both parties agree abuse of discretion is the proper standard of review for mistrial on appeal. *See Owens v. State*, 96 Nev. 880, 883, 620 P.2d 1236, 1238 (1980). The district court noted the exhibit was previously stipulated to by both parties and thus, would remain admitted. The State argued below and on appeal the term "return" is not universally known to be synonymous with probationary status. We agree. Although White argues this term was prejudicial to her case, we believe the inclusion of the word "return" was innocuous. Therefore, the district court did not abuse its discretion in failing to sua sponte declare a mistrial.

Sufficient evidence existed to support both jury verdicts

When a sufficiency of evidence argument is made, this court views "the evidence in the light most favorable to the prosecution, [and determines whether] any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Koza v. State*, 100 Nev. 245, 250, 681 P.2d 44, 47 (1984) (emphasis and internal quotation marks omitted); *Origel-Candido v. State*, 114 Nev. 378, 381, 956 P.2d 1378, 1380

(1998). Considering the trial was bifurcated into two phases, we consider the charges and evidence presented for each respective phase.

Phase one

During phase one, White was convicted of trafficking or possessing with intent to sell over 400 grams of a schedule I or II controlled substance. The State presented evidence that White provided misstatements to law enforcement about where she was driving from, she was discovered driving a vehicle with a plastic bag located at her shoulder height, containing small individual baggies totaling \$40,000 worth of methamphetamine, and she had a prior conviction for the same crime. In the center console of the vehicle, a handgun and \$1,200 cash, wrapped with rubber bands, was found. At White's home, \$6,000-7,000 cash was found wrapped in rubber bands, a safe was found with mail and more rubber-banded money, and an unlocked gun safe was found with a scale and numerous plastic baggies. Finally, the absence of any paraphernalia commonly used to smoke methamphetamine, tends to give rise to a reasonable inference that White was selling the methamphetamine.

Viewing the evidence in the light most favorable to the prosecution, we conclude sufficient evidence existed to convict White beyond a reasonable doubt as to phase one.

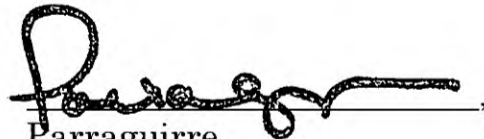
Phase two

During phase two, White was convicted on count 3 of unlawful possession of a handgun as an ex-felon. The only issue presented during this phase was whether White was in possession or custody of the handgun. The State presented evidence that she was found driving a vehicle with a gun in the center console. At her home, more guns were found with additional ammunition. There was evidence that the belongings at her

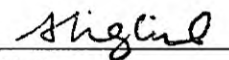
home were intertwined with her husband's—indicating the two shared items, which was further solidified by the fact that White held the key to Don's safe. Therefore, when viewing the evidence in the light most favorable to the prosecution, there was sufficient evidence to secure a conviction for count 3.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.


Farraguirre, J.


Bell, J.


Stiglich, J.

cc: Hon. Kathleen M. Drakulich, District Judge
Law Office of Jeannie Hua
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk