

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ONEIL ORLANDA THOMAS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 87932-COA

FILED

FEB 10 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Oneil Orlanda Thomas appeals from a judgment of conviction, entered pursuant to a jury verdict, of attempted murder with the use of a deadly weapon; battery with the use of a deadly weapon resulting in substantial bodily harm; discharge of a firearm at or into an occupied structure, vehicle, aircraft, or watercraft; robbery with the use of a deadly weapon or tear gas; and two counts of ownership or possession of a firearm by a prohibited person. Second Judicial District Court, Washoe County; Kathleen A. Sigurdson, Judge.

Thomas argues the district court abused its discretion at trial by admitting two incidents that constituted other act evidence under NRS 48.045(2). Thomas also argues the district court erred by failing to give a limiting instruction at the time the acts were introduced and at the close of evidence. Evidence of other acts is “not admissible to prove the character of a person in order to show that he acted in conformity therewith.” NRS 48.045(2). “However, prior bad act evidence may be admissible for other purposes, such as to show motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.” *Rosky v. State*, 121 Nev. 184, 195, 111 P.3d 690, 697 (2005) (internal quotation marks omitted).

“District courts are vested with considerable discretion in determining the relevance and admissibility of evidence.” *Archanian v. State*, 122 Nev. 1019, 1029, 145 P.3d 1008, 1016 (2006). However, even relevant evidence may be excluded “if its probative value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues or of misleading the jury.” *Id.* (internal quotation marks omitted). Prior bad act evidence, for example, is presumptively inadmissible because it “forces the accused to defend himself against vague and unsubstantiated charges and may result in a conviction because the jury believes the defendant to be a bad person.” *Rosky*, 121 Nev. at 195, 111 P.3d at 697 (internal quotation marks omitted). “To ensure that this type of evidence is not misused, we have held that it is admissible only when the trial court determines that (1) the evidence is relevant to the crime charged, (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, 116-17, 270 P.3d 1244, 1249 (2012) (citing *Tinch v. State*, 113 Nev. 1170, 1176, 946 P.2d 1061, 1064-65 (1997)). An instruction must be given at the time the bad act is introduced to the jury and at the close of evidence that limits the use of the prior bad act evidence. *Tavares v. State*, 117 Nev. 725, 732-33, 30 P.3d 1128, 1132-33 (2001), *modified in part by Mclellan v. State*, 124 Nev. 263, 182 P.3d 106 (2008).

Here, the State filed a pretrial motion in limine requesting that two prior acts be introduced at trial to show identity. In the charged conduct, the perpetrator of the crime wore a mask but also had distinctive items (yellow gloves with a tag that said “Cat”, pink-lensed-gold-rimmed sunglasses, and a bi-fold brown wallet) as well as a distinctive body marking (white mark on his knuckle). The State wanted to introduce evidence of

Thomas' prior encounters with the police wherein the police observed these distinctive items and body marking to show that Thomas was the perpetrator. The district court held a hearing on the motion, and the State presented testimony from police officers and the victims.

At the hearing, the State presented evidence of an encounter on November 11, 2022, where Thomas called the police to his house. He produced his identification for the police officers from a brown bi-fold wallet. The police officers also noted a white mark on his knuckle. In another incident, on December 3, 2022, the police were called to a liquor store where it was alleged that Thomas participated in an armed robbery. A police officer contacted Thomas, who was outside the store in his vehicle. In his vehicle, Thomas had yellow gloves with a tag that said "Cat." He was also wearing sunglasses with rose lenses and gold rims. The officer also noted the white mark on Thomas's knuckle.

The district court found that the prior acts were relevant for a purpose other than proving Thomas's propensity as they tended to establish identity, the incidents were proven by clear and convincing evidence, and the probative value of the incidents was not substantially outweighed by the danger of unfair prejudice. In ruling that the evidence of the other acts was admissible, the district court limited the testimony regarding the December 3, 2022, incident by not allowing the State to mention that the police were called to the scene on the report of an armed robbery. At trial, the State limited the testimony of the officers to references of police contacts with Thomas, and the officers did not allude to any bad behavior on the part of Thomas.

We conclude that the district court properly weighed the testimony regarding the prior contacts and determined the evidence was

admissible subject to a limitation. Further, as presented at trial, the evidence did not implicate Thomas in any additional crime, wrong, or bad act or name him as a suspect in another pending matter. Thus, the dangers posed by the alleged other act evidence, those of confusing the jury and casting the defendant as a "bad person" acting in accordance with a bad character, do not apply here. We therefore conclude these incidents, as presented at trial, did not qualify as other act evidence under NRS 48.045(2), and the district court did not err by failing to give a limiting instruction. Therefore, we conclude that Thomas is not entitled to relief, and we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. Kathleen A. Sigurdson, District Judge
Washoe County Alternate Public Defender
Washoe County District Attorney
Marc Picker Law
Attorney General/Carson City
Washoe District Court Clerk