



IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DARREN THOMAS LEFEVER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 91085-COA

ORDER OF AFFIRMANCE

Darren Thomas Lefever appeals from a judgment of conviction, entered pursuant to a jury verdict, of burglary of a business and grand larceny, value \$1,200 or more but less than \$5,000. Second Judicial District Court, Washoe County; Hon. Barry L. Breslow, Judge.

Lefever was charged in connection with the burglary of a business. The State alleged Lefever and a codefendant entered the business while its employees were at lunch and took several items from within, including laptops, an iPad, and several gift cards. The incident was captured on surveillance video, and based on this video, the police identified Lefever as one of the men involved. Almost two months after the burglary, law enforcement located and prepared to arrest Lefever. As two police officers exited their vehicles wearing black police raid vests, Lefever saw them and immediately fled; however, a third police officer was able to prevent Lefever's escape, and Lefever was arrested.

Prior to trial, the State filed a motion to admit evidence that Lefever fled when the police attempted to arrest him. The State contended that this evidence was relevant to show Lefever's consciousness of guilt and identity, that Lefever's flight could be proven by clear and convincing evidence,

and that the danger of any unfair prejudice could be minimized by limiting the scope of the testimony regarding Lefever's flight. Lefever filed an opposition, arguing the evidence was not relevant because the burglary occurred almost two months earlier and the reason for his flight was unrelated to the burglary: he believed the police were attempting to arrest him on a parole warrant, and he did not want to go back to prison. He also argued that the probative value of this evidence was substantially outweighed by the danger of unfair prejudice because it did not show consciousness of guilt and he would have to introduce evidence that he had another open criminal case to explain his flight. The district court held a hearing and granted the motion. The State later introduced the evidence of Lefever's flight at trial, and the jury ultimately convicted Lefever of the aforementioned offenses.

On appeal, Lefever argues the district court erred in admitting evidence of his flight from law enforcement. Evidence that a defendant has committed "other crimes, wrongs or acts" is admissible only if "(1) the [other 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, 116-17, 270 P.3d 1244, 1249-50 (2012); see NRS 48.045(2). "The trial court's determination to admit or exclude evidence of [other] acts is a decision within its discretionary authority and is to be given great deference[;] [i]t will not be reversed absent manifest error." *Braunstein v. State*, 118 Nev. 68, 72, 40 P.3d 413, 416 (2002). However, "[w]e limit the introduction of [other act] evidence because of the real concern that the jury will be unduly influenced by the evidence, and thus convict the accused because it believes the accused is a bad person." *Smith v. State*, 142 Nev., Adv. Op. 26, 587 P.3d 251, 260 (2026) (internal quotation

marks omitted); *see also Tavares v. State*, 117 Nev. 725, 730, 30 P.3d 1128, 1131 (2001) (stating “the use of uncharged bad act evidence to convict a defendant is heavily disfavored in our criminal justice system because bad acts are often irrelevant and prejudicial and force the accused to defend against vague and unsubstantiated charges”).

As a general matter, evidence of flight is relevant to show consciousness of guilt.¹ *See Kearney v. State*, 97 Nev. 127, 129, 625 P.2d 93, 94 (1981); *Matthews v. State*, 94 Nev. 179, 181, 576 P.2d 1125, 1126 (1978). And the parties do not dispute that Lefever’s flight was proven by clear and convincing evidence. Thus, we turn to the third factor concerning the balance between probative value and unfair prejudice. Notably, Lefever’s “flight” occurred almost two months after the commission of the crime. Furthermore, Lefever alleges that he could not explain his flight without introducing evidence that he had engaged in other criminal activity, and the district court did not make any findings regarding Lefever’s claim that he fled because there was an active parole warrant for his arrest.

In light of the above, we have concerns regarding both the probative value and prejudicial nature of this evidence. *See Guy v. State*, 108 Nev. 770, 777, 839 P.2d 578, 583 (1992) (stating it was “speculative to assert that [the defendant] fled because of a consciousness of guilt and fear of arrest” when the “flight” occurred 13 days after the crime was committed); *see also Randolph v. State*, 136 Nev. 659, 665, 477 P.3d 342, 349 (2020) (stating a court should consider, among other things, the amount of time that has passed between the other act and the charged crime). Nonetheless, we need not

¹We conclude evidence of Lefever’s flight was only relevant to show his identity to the extent it showed consciousness of guilt and, thus, identity did not provide an independent ground for admissibility.

determine whether the district court erred in admitting this evidence because, even if it did, we conclude any such error was harmless. *See Rosky v. State*, 121 Nev. 184, 198, 111 P.3d 690, 699 (2005) (“Errors in the admission of evidence under NRS 48.045(2) are subject to a harmless error review.”).

The State presented high-quality surveillance video depicting the two individuals who committed the crimes. A detective with the Reno Police Department testified that this video clearly showed the relevant suspect’s face, that the suspect had a band tattoo on his right arm that was identical to a tattoo Lefever had, and that a photograph taken from the surveillance video showed the suspect had a chipped front tooth. Another detective testified that he observed Lefever had a chipped tooth when he interviewed him. He also testified that Lefever admitted to knowing, and immediately identified, the other suspect depicted in the surveillance video. Given the evidence presented at trial, we conclude that evidence of Lefever’s flight did not have a substantial and injurious impact on the jury’s verdict. *See Randolph*, 136 Nev. at 668, 477 P.3d at 351; *see also Dickey v. State*, 140 Nev. 8, 15, 540 P.3d 442, 450 (2024) (concluding a district court’s error in admitting other act evidence was harmless in light of the evidence of the defendant’s guilt). Accordingly, we

ORDER the judgment of conviction AFFIRMED.



Bulla, C.J.



Gibbons, J.



Westbrook, J.

cc: Hon. Barry L. Breslow, District Judge
Attorney General/Carson City
Washoe County Alternate Public Defender
Washoe County District Attorney/
Second District Court Clerk