

IN THE SUPREME COURT OF THE STATE OF NEVADA

CYRUS EUGENE WILLIAMS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39484

FILED

AUG 23 2002

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of possession of a controlled substance. The district court sentenced appellant Cyrus Eugene Willams to serve a prison term of 12 to 34 months, and then suspended execution of the sentence and placed Williams on probation for a period not to exceed 3 years.

Williams' sole contention on appeal is the district court erred in admitting evidence of his prior conviction for possession of a controlled substance with intent to sell. In particular, Williams contends that the probative value of the evidence was substantially outweighed by the danger of unfair prejudice. We conclude that the district court did not abuse its discretion in admitting evidence of this prior conviction to show that Williams intended to sell the controlled substances in his possession.

NRS 48.045(1) provides that evidence of other wrongs cannot be admitted at trial solely for the purpose of proving that the defendant acted in a similar manner on a particular occasion. However, NRS 48.045(2) provides that such evidence may be admitted for other purposes, "such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." Before admitting such evidence, the trial court must conduct a hearing on the record and determine (1) that the evidence is relevant to the crime charged; (2) that

the other act is proven by clear and convincing evidence; and (3) that the probative value of the other act is not substantially outweighed by the danger of unfair prejudice.¹ On appeal, we will give great deference to the trial court's decision to admit or exclude evidence and will not reverse the trial court absent manifest error.²

Here, the trial court conducted a hearing prior to trial regarding the prior bad act evidence offered by the State. At the conclusion of the hearing, the trial court determined that the evidence was relevant as proof of Williams' intention to sell controlled substances. Based on our review of the record, we conclude that the district court did not commit manifest error in admitting the evidence of Williams' prior conviction for possession of a controlled substance with the intent to sell. The evidence was relevant to show that Williams intended to sell the cocaine found in his possession.³ Williams placed his intent at issue by pleading not guilty and by presenting his defense theory that he did not intend to sell the cocaine, but it was merely for his personal use. Additionally, the district court alleviated the potential for unfair prejudice by instructing the jury on the limited relevance of the evidence. Finally, even assuming the district court erred in admitting this evidence, the error is harmless because Williams was only convicted of the lesser count

¹See Tinch v. State, 113 Nev. 1170, 1176, 946 P.2d 1061, 1064-65 (1997).

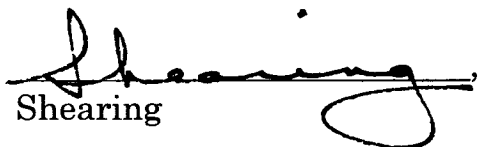
²See Bletcher v. State, 111 Nev. 1477, 1480, 907 P.2d 978, 980 (1995); Petrocelli v. State, 101 Nev. 46, 52, 692 P.2d 503, 508 (1985).

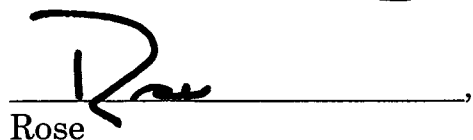
³See King v. State, 116 Nev. 349, 354-55, 998 P.2d 1172, 1175-76 (2000).

of possession of a controlled substance, a crime which he admitted to when he testified at trial.

Having considered Williams' contention and concluded that it lacks merit, we

ORDER the judgment of conviction AFFIRMED.

 J.
Shearing

 J.
Rose

 J.
Becker

cc: Hon. John S. McGroarty, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Clark County Clerk