

IN THE SUPREME COURT OF THE STATE OF NEVADA

REGINALD O. FOX A/K/A REGINALD
COX,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40412

FILED

JUN 20 2003

CHARITTE M. BLOOM
CLERK OF THE SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count each of burglary while in the possession of a firearm, conspiracy to commit robbery, and robbery with the use of a deadly weapon. The district court sentenced appellant Reginald O. Fox to serve a prison term of 24-60 months for the burglary, 12-48 months for the conspiracy, and two consecutive terms of 36-120 months for the robbery; all prison terms were ordered to run concurrently.

In the instant case, an employee of the store robbed by Fox and his codefendant informed police that a black female wearing a two-piece yellow outfit pointed a gun at him and demanded money out of the cash register. Fox and his codefendant eventually fled from the scene and were spotted by police entering an apartment. While waiting for a search warrant for the apartment, the police officers returned to the store and watched a surveillance video depicting the crime which showed one of the two offenders dressed as a woman. Upon entering the apartment, the

police officers found Fox and his partner both dressed as men, but the search of the apartment revealed the same two-piece yellow outfit apparently worn by Fox during the commission of the crime.

The day before the robbery, undercover detectives observed Fox "loitering for the purpose of prostitution wearing a red miniskirt, a blouse with straps, and . . . tissue paper trying to resemble breasts." Eventually, Fox went with the detectives to their motel room, discussed engaging in sexual activity, but suspected that they were police officers and refused. When asked by the detectives why he entered the motel room, frequently looked out the window, fondled the groin area of one of the detectives, and asked them if they were police officers, Fox responded that he needed money to pay for his motel room and that he recognized one of the detectives from a prior contact. The detectives arrested Fox for loitering for the purpose of prostitution.

Prior to the start of the trial in the instant case, the State filed a motion to admit evidence of other crimes, wrongs or acts committed by Fox. Specifically, the State sought to introduce into evidence the testimony of the detectives who arrested Fox the day before the robbery to prove identity and motive. Fox opposed the motion. The district court conducted a hearing and granted in part the State's motion, thus allowing the State to present evidence for purposes of identity that Fox was dressed as a woman when previously arrested for loitering for the purpose of prostitution. The district court denied the State's motion with regard to

motive, thus prohibiting the State from presenting testimony concerning the circumstances surrounding Fox's arrest, and that Fox told the detectives he was soliciting sex in order to pay his motel bill.

Fox's sole contention on appeal is that the district court abused its discretion in granting in part the State's motion to admit evidence of his prior bad act, thereby permitting the jury "to improperly conclude that it was their duty to remove Fox from our midst because he is a bad person who cross-dresses and solicits sex, both non-violent acts, rather than because he is a bad person who robbed a storekeeper by pointing a gun in his face." Fox argues that a "mere similarity in clothing" was not relevant to the instant charges and the admission that he was dressed as a woman when arrested for loitering for the purpose of prostitution was unduly prejudicial. We disagree.

Evidence of other wrongs 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.¹ Nevertheless, NRS 48.045(2) also states that evidence of other bad acts may be admitted to prove "opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." Prior to admitting such evidence, the district court must determine during an evidentiary hearing whether the evidence is relevant to the charged offense, is proven

¹NRS 48.045(2).

by clear and convincing evidence, and whether the probative value is substantially outweighed by the danger of unfair prejudice.² Further, “[t]he decision to admit or exclude evidence rests within the trial court's discretion, and this court will not overturn that decision absent manifest error.”³

We conclude that the district court did not commit manifest error in granting in part the State's motion to admit evidence of a prior bad act committed by Fox. In fashioning a ruling on the motion, the district court limited the potential prejudicial impact of the evidence by prohibiting testimony regarding the circumstances of Fox's arrest for loitering for the purpose of prostitution. The fact that Fox was arrested in women's clothing one day prior to the robbery was relevant to the instant case for purposes of identification. When the police arrested Fox in his motel room after the robbery, he was not dressed in women's clothing, yet the surveillance video of the crime clearly depicted a person appearing to be a woman dressed in a two-piece yellow outfit and pointing a gun at the store employee. The same two-piece yellow outfit was found in Fox's

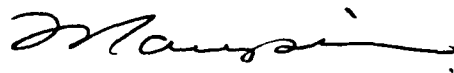
²See, e.g., Qualls v. State, 114 Nev. 900, 902, 961 P.2d 765, 766 (1998); see also Tinch v. State, 113 Nev. 1170, 1176, 946 P.2d 1061, 1064-65 (1997).

³Collman v. State, 116 Nev. 687, 702, 7 P.3d 426, 436 (2000), cert. denied, 532 U.S. 978 (2001).

apartment during the subsequent search. Therefore, having considered Fox's contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.⁴


_____, J.
Rose


_____, J.
Maupin


_____, J.
Gibbons

⁴Although this court has elected to file Fox's fast track appendix, we note that it does not comply with the arrangement and form requirements of the Nevada Rules of Appellate Procedure. See NRAP 3C(e)(2); NRAP 30(c); NRAP 32(a). Specifically, the appendix is not prefaced by an index. NRAP 30(c)(2) states: "The appendix shall contain an alphabetical index identifying each document with reasonable definiteness, and indicating the volume and page of the appendix where the document is located. The index shall preface the documents comprising the appendix." Emphasis added. Counsel is cautioned that failure to comply with the requirements for appendices in the future may result in the appendix being returned, unfiled, to be correctly prepared. See NRAP 32(c). Failure to comply may also result in the imposition of sanctions by this court. NRAP 3C(n).

cc: Hon. John S. McGroarty, District Judge
Gregory L. Denué
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk