IN THE SUPREME COURT OF THE STATE OF NEVADA

DELL MARVIN ROBERTS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41076

FILED

AUG 29 2003

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF 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 and misdemeanor petit larceny, a lesser-included offense of grand larceny. The district court sentenced appellant Dell Marvin Roberts to serve a prison term of 48 to 120 months for the burglary count and a consecutive jail term of 6 months for the larceny count.

Roberts was charged with one count each of burglary and grand larceny for stealing jewelry from the Armanth Gallery. At trial, Tara Bertucci, the owner of the Armanth Gallery, testified that Roberts entered her gallery dressed unusually for a hot summer day; Roberts was wearing two duster-type, knee-length coats, a "Crocodile-Dundee-like" suede hat, and a scarf and carrying several tote bags and a wooden cane with a brass handle. Bertucci observed Roberts place several items of jewelry in his pocket without paying for them and exit the gallery, heading in the direction of the River Gallery.

A River Gallery employee, Nicholas Ramirez III, testified at trial that he observed Roberts in the River Gallery and suspected that Roberts was shoplifting after he observed Roberts standing next to a shelf of jewelry with two open travel bags. Ramirez also testified that he did

not observe Roberts take any jewelry and, eventually, Roberts left the gallery without purchasing anything. Roberts was arrested shortly after leaving the River Gallery, and several pieces of jewelry were found in his possession. Ann Fullerton, the owner of the River Gallery, testified at trial that some of the items of jewelry found on Roberts belonged to the River Gallery. By contrast, Roberts testified at trial that he purchased the jewelry in San Francisco as gifts for his sisters.

On appeal, Roberts contends that the district court abused its discretion in allowing the State to present prior bad act evidence that Roberts took jewelry from the River Gallery at the trial involving the Armanth Gallery theft because it was overwhelmingly prejudicial.[1] We conclude that Roberts' contention lacks merit.

The record reveals that the district court admitted the prior bad act evidence at issue after conducting a Petrocelli hearing[2] and considering the factors set forth in Tinch v. State[3] and NRS 48.045(2).[4]

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[1]The State tried the counts involving the Armanth Gallery and the River Gallery separately, prosecuting the criminal case involving the Armanth Gallery first.

[2]Petrocelli v. State, 101 Nev. 46, 692 P.2d 503 (1985).

[3]113 Nev. 1170, 1176, 946 P.2d 1061, 1064-65 (1997) (setting forth three factors for admissibility of prior bad act evidence, including whether: "(1) the incident 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").

[4]Although Roberts concedes that the district court stated on the record that each Tinch factor was satisfied, Roberts argues that the district court erred in failing to make more specific findings about how the evidence was relevant and probative. We disagree. While we note that specific district court findings are more conducive to appellate review, the

continued on next page . . .

We conclude that the district court did not commit manifest error in admitting the prior bad act evidence.[5] The evidence was relevant to negate Roberts' claim that he did not enter the Armanth Gallery with the intent to take jewelry, and rebut his testimony that he had purchased the jewelry at issue in San Francisco.[6] Further, the prior bad act was proven by clear and convincing evidence, namely, the testimony of Ramirez and Fullerton. Finally, any danger of unfair prejudice was alleviated because, before admitting the prior bad act evidence, the district court gave a limiting instruction, admonishing the jury that the evidence could only be used "for the limited purposes of determining if it tends to show the defendant's intent, motive, preparation, plan, knowledge, identity or absence of mistake or accident."[7] Because the district court properly analyzed the admissibility of the prior bad act evidence by the standard set forth in NRS 48.045(2), the district court did not abuse its discretion in admitting the evidence.

. . . *continued*
district court is only required to state, on the record, that each Tinch factor is satisfied. See Qualls v. State, 114 Nev. 900, 903-04, 961 P.2d 765, 767 (1998). Moreover, we note that even where the district court findings are inadequate, that error is subject to harmless-error analysis. See id.

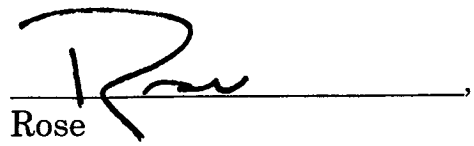
[5]See id. at 902, 961 P.2d at 766 ("The trial court's determination to admit or exclude evidence is to be given great deference and will not be reversed absent manifest error.").

[6]See Tillema v. State, 112 Nev. 266, 914 P.2d 605 (1996) (vehicular and store burglaries would be admissible in vehicular burglary trial to show felonious intent at time of entry).

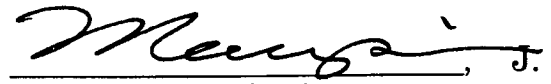
[7]See Tavares v. State, 117 Nev. 725, 30 P.3d 1128 (2001) (discussing the importance of a limiting instruction).

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

ORDER the judgment of conviction AFFIRMED.[8]



_____, J.
Rose



_____, J.
Maupin

_____, J.
Gibbons

cc: Hon. Steven R. Kosach, District Judge
Washoe County Public Defender
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

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[8]We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.