

IN THE SUPREME COURT OF THE STATE OF NEVADA

PAULETTE PERRY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 41256

FILED

DEC 01 2004

ORDER OF AFFIRMANCE

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

Appeal from a final judgment of conviction, entered upon jury verdicts finding appellant, Paulette Perry, guilty of first-degree murder with use of a deadly weapon, conspiracy to commit robbery, and robbery with use of a deadly weapon. Eighth Judicial District Court, Clark County; John S. McGroarty, Judge.

On appeal, Perry contends that the judgment should be reversed and the matter remanded for a new trial on the grounds that the district court improperly admitted prior bad act testimony, character evidence and victim impact testimony during the guilt phase of her trial below. We affirm.

FACTUAL AND PROCEDURAL HISTORY

On April 26, 2001, employees of the Maxim Hotel in Las Vegas discovered the dead body of David Sygnarski in a guest room rented by Perry and her male companion, Kenneth Grant, from April 23 through April 25, 2001. Surveillance tapes confirm that Sygnarski entered the room with Perry, that Perry and Grant later left the room and returned on at least two occasions with grocery bags containing cleaning items, that they left the room for good at 4:15 a.m. on April 25, 2001, and that Sygnarski was not seen again until discovery of his body. Forensic evidence gathered in connection with the investigation confirmed that

Sygnarski died as a result of multiple stab wounds accompanied by blunt head trauma. Investigators found no wallet or jewelry at the scene, indicating that the assailants had taken whatever personal effects Sygnarski may have had on his person. The autopsy confirmed the presence of illicit drugs in his system.

Perry testified at trial that she had left the hotel to purchase drugs, met Sygnarski and invited him back to the hotel to “smoke” together. Sygnarski, Perry and Grant then smoked cocaine for a period of time, after which Grant left to pay for another night at the hotel. She claimed that, during Grant’s absence, Sygnarski made unwanted sexual advances toward her, that she became frightened, and that she hit him with a telephone receiver. Shortly thereafter, according to Perry, Grant returned and an altercation between the two men ensued, during which she stood by while Grant fought with and stabbed Sygnarski several times.<sup>1</sup> She also confirmed that Sygnarski eventually expired from his wounds, and that they cleaned up the room, concealed the body in the room under the mattress in trash bags and fled the Las Vegas area.

Witnesses against Perry included hotel engineering, housekeeping and clerical personnel, a fellow inmate who testified to Perry’s tacit admission of guilt, and witnesses detailing her flight and evasion of apprehension until July 2001, in Fresno, California. Another witness, a Fresno doctor who helped support Perry from time to time, testified to paying for her motel accommodations in Fresno in late April after Sygnarski’s demise, and to the presence at that time of “cuts” on

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<sup>1</sup>Perry concedes that she may have been, to a degree, engaged in the combat between Grant and Sygnarski.

Perry's hands. The State also produced an audiotape of a conversation between Perry and the doctor during which Perry confirmed that the victim in this case did, in fact, have a wallet in his possession. As part of the State's case-in-chief during the guilt phase of the trial, the State elicited evidence of a similar but uncharged "prior bad act" committed less than a year prior to the events in question,<sup>2</sup> testimony concerning Perry's prior drug use and her knowledge after the homicide that she "was in trouble," and testimony from Sygnarski's sister identifying Sygnarski and documenting his missing personal effects.

Evidence introduced by both the State and Perry revealed Perry's life as a prostitute, her years of drug dependency, and her endurance of physical and sexual abuse by family members as a child and others as an adult.

The jury returned verdicts of guilty against Perry on charges of murder, conspiracy, and robbery. The district court sentenced Perry to consecutive life terms without the possibility of parole for murder with the use of a deadly weapon, 28 to 72 months for conspiracy to commit robbery, and consecutive 28 to 72 month sentences for robbery with the use of a deadly weapon. The sentences on the three separate charges were imposed concurrently. The district court also imposed a \$25 administrative assessment and a \$150 DNA analysis fee, and ordered that Perry submit to genetic marker testing. The judgment entered upon the convictions awarded Perry credit for 250 days of time served in local custody. As noted, Perry appeals.

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<sup>2</sup>This evidence was introduced as a result of a pretrial hearing conducted pursuant to Petrocelli v. State, 101 Nev. 46, 692 P.2d 503 (1985).

## DISCUSSION

This appeal concerns the testimony of three witnesses: Harvey Baughman, an acquaintance of Perry and Grant; Bruna Vesco, a friend with whom Perry talked after Sygnarski's death; and Joan Tepfenhardt, Sygnarski's sister.

### Bad act/character evidence

Perry's primary contention on appeal involves the introduction of prior bad act and character evidence through Baughman and Vesco.

Evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show that he acted in conformity with that character trait.<sup>3</sup> Such evidence may, however, be admissible for other limited purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.<sup>4</sup> The proponent of such evidence must demonstrate that 1) the act is relevant to the crime charged, 2) the act is proved by clear and convincing evidence, and 3) the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice.<sup>5</sup> It is within the trial court's sound discretion whether prior bad acts are admissible, and such decisions will not be disturbed on appeal unless "manifestly wrong."<sup>6</sup> Generally, such evidence must be pre-screened in a Petrocelli

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<sup>3</sup>NRS 48.045(2).

<sup>4</sup>Id.

<sup>5</sup>See Tinch v. State, 113 Nev. 1170, 1176, 946 P.2d 1061, 1064 (1997).

<sup>6</sup>Crawford v. State, 107 Nev. 345, 348, 811 P.2d 67, 69 (1991).

hearing for purposes of the appellate record, to support admissibility.<sup>7</sup> However, in the absence of such a hearing, we will review the record in its entirety to determine if the three criteria for admissibility have been met.<sup>8</sup> Even if a trial court erroneously admits prior bad act evidence, this court will not reverse the decision below if overwhelming evidence supports the conviction.<sup>9</sup>

Baughman, a former friend of Perry and Grant, testified to their extensive use of addictive drugs, including “crank,”<sup>10</sup> Perry’s prostitution to support her drug habit, and to Perry and Grant’s assault of him in October 2000, after he refused their request for money. During that separate incident, Baughman yelled for help and Perry yelled that she was being raped. When a passerby came upon this affray, Perry and Grant fled. Perry argues on appeal that this testimony violated NRS 48.045(2) and the cases construing it. We disagree.

First, the State was certainly entitled to introduce and argue Perry’s extensive drug use as a motive to obtain funds. Second, the State was also entitled to prove, through the similarities between the separate incidents, Perry and Grant’s modus operandi. In this connection, the incidents involving Baughman and Sygnarski both involved an addictive motive to obtain funds to purchase contraband, both were marked by the indicia of a prostitute and a pimp performing a “trick-roll,” and both

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<sup>7</sup>Petrocelli v. State, 101 Nev. 46, 692 P.2d 503.

<sup>8</sup>See Qualls v. State, 114 Nev. 900, 903, 961 P.2d 765, 767 (1998).

<sup>9</sup>See Chappell v. State, 114 Nev. 1403, 1407, 972 P.2d 838, 840 (1998).

<sup>10</sup>A highly addictive drug formulation.

involved questionable claims of attempted sexual assault to justify an attack upon the victim. In this, Perry and Baughman described Perry's separate claims of sexual aggression in the presence of, or in close proximity to, the same male companion, Grant. None of this offends the rules against prohibiting placement of the defendant's character at issue or use of prior actions to prove behavior consistent with a particular character trait. Going further, the district court could reasonably conclude that this evidence was relevant, proved by clear and convincing evidence, and that its probative value failed to substantially outweigh its prejudicial effect. Accordingly, we cannot conclude that the admission of Baughman's testimony against Perry was manifestly wrong.

Bruna Vesco testified concerning a telephone conversation with Perry between the time of Sygnarski's death and the arrest in this case. In that conversation, Perry acknowledged that she was in trouble and needed money. Vesco's testimony described Perry's extensive drug abuse, her relationship with Grant, and her "fiery" and dominant personality in relation to Grant. Perry alleges that this evidence likewise violated NRS 48.045(2), Petrocelli, Tinch and Tavares.<sup>11</sup> While the district

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<sup>11</sup>The district court failed to hold a Petrocelli hearing regarding Vesco's testimony. We conclude that this error is harmless because the record demonstrates that the three Tinch factors were satisfied. See Chappell v. State, 114 Nev. 1403, 1406, 972 P.2d 838, 840 (1998); Qualls v. State, 114 Nev. 900, 903, 961 P.2d 765, 767 (1998).

Perry does not assign error to the fact that the district court did not give a limiting instruction under Tavares v. State, 117 Nev. 725, 30 P.3d 1128 (2001). Given that trial counsel declined the district court's offer to give a limiting instruction, Perry solely relies on her claims of error that the "prior bad act" evidence should have been excluded.

court did not hold a Petrocelli hearing regarding Vesco's testimony, we determine that neither was necessary because the record demonstrates that the three Tinch factors were satisfied.

Vesco testified that Perry used crack cocaine and heroin in Vesco's presence on eight to ten occasions. This testimony was relevant to show Perry's motive to commit murder and robbery, especially given the addictive quality of the drugs, and that the prior association was such that Perry would confide in Vesco about the offense in this case. Under these circumstances, the drug use was proved by clear and convincing evidence, and its probative value was not in any respect outweighed by its prejudicial effect. Also, a person's fiery or dominant demeanor is not a prior bad act tending to prove action in conformity with a character trait. That she was either fiery or the dominant half of the Perry-Grant association does not establish a violent character tendency. Additionally, Perry never really addresses in this appeal why the admission of her "fiery" nature requires reversal. Accordingly, as with Baughman's testimony, we cannot conclude that the admission of Vesco's testimony was manifestly wrong.

We also conclude that any errors concerning the testimony of Baughman and Vesco were harmless. As to the extraneous evidence concerning Perry's drug use, numerous witnesses, including those produced by the defense, testified as to Perry's addictive lifestyle. Perry's parents, her husband, other previous lovers and Perry herself described her struggle with drugs. Because Perry elicited drug use testimony from other witnesses, it is unlikely that the result of her trial would have been different had the testimony of Baughman and Vesco concerning drug use been excluded. Moreover, given the circumstantial evidence linking Perry

to Sygnarski's death and her admissions of culpability, we cannot conclude that either Baughman's testimony or that of Vesco prejudiced the outcome in this case.


Victim impact and victim identification testimony during the guilt phase

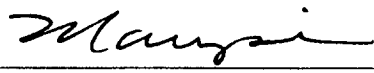
Perry argues that the State improperly elicited victim impact testimony from Sygnarski's sister, Joan Tepfenhardt, including a description of her relationship with her brother and a gratuitous in-court identification of him for the sole purpose of inflaming the jury. We disagree. First, the testimony concerning the relationship was relevant in connection with the robbery charges to provide evidence regarding Sygnarski's normal habits, such as possession of jewelry and a wallet, which were items noted as missing at the crime scene. Second, there was nothing inappropriate about the State solidifying the identification of the victim through Tepfenhardt's testimony. Third, there is no reason that the State must elicit evidence in any particular order. That an in-court identification of a homicide victim by a family member may evoke jury sympathy does not, of itself, give rise to error; this was a murder prosecution and the grief of the victim's surviving family members is a normal feature of such trials. We therefore cannot conclude that timing of the identification testimony in any way affected the outcome given, as noted above, the overwhelming evidence of Perry's guilt on all of the charges in the indictment.

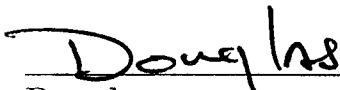


CONCLUSION

Overwhelming evidence supports the jury's verdict in this case and Perry establishes no error warranting reversal. Accordingly, we ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Maupin

  
\_\_\_\_\_, J.  
Douglas

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