IN THE SUPREME COURT OF THE STATE OF NEVADA

ANDREW FRANK WILSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41431

FILED

MAR 0 3 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

Appeal from a judgment of conviction, upon a jury verdict, of first-degree murder with the use of a deadly weapon and burglary involving possession of a firearm. Fourth Judicial District Court, Elko County; Andrew J. Puccinelli, Judge.

Appellant Andrew Wilson was convicted of first-degree murder with the use of a deadly weapon and burglary while in possession of a firearm, for killing his grandmother in Elko County, Nevada. The district court sentenced him to life imprisonment with the possibility of parole after 20 years on the murder conviction, with an equal and consecutive term for the deadly weapon enhancement, and to 156 months imprisonment with minimum parole eligibility after 35 months on the burglary charge, to run concurrently with the first sentence.

Wilson now appeals. We affirm Wilson's conviction.

DISCUSSION

Admission of prior bad act evidence

Wilson first argues that the district court, after a Petrocelli[1] hearing, erroneously allowed Marina Trujillo to testify that she met Wilson for the first time at the jail where they were visiting an inmate,

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

that Wilson stated he could get "stuff" from Idaho, and that Wilson asked Trujillo if he could trust someone else to help him get rid of it.

"The trial court's determination to admit or exclude evidence of prior bad acts is a decision within its discretionary authority and is to be given great deference."[2] We will not reverse the district court's decision to admit prior bad act evidence absent manifest error.[3]

The State filed an offer of proof regarding Wilson's uncharged misconduct, including the statement by Trujillo that Wilson told her he could get some "stuff" from Idaho. At the district court hearing on the State's motion, Trujillo testified that she first met Wilson at the jail on the day that Wilson and Christie Oldfield were visiting an inmate. She testified that Wilson told her he had "a good amount of stuff" hidden at his house and was able to get more from Idaho. She further testified that he asked her if he could trust Oldfield, who Trujillo knew, to help him get rid of the stuff. She testified that she interpreted "stuff" to mean drugs. The district court found that Trujillo was a credible witness, that the evidence was probative of Wilson's motive, that it was proven by clear and convincing evidence, and that any unfair prejudicial effect did not substantially outweigh its probative value. The district court issued an order stating that Wilson's statements about getting "stuff" from Idaho and questioning whether he could trust Oldfield to help him get rid of it would be admissible at trial.

Wilson argues that the district court erred by allowing Trujillo to testify about Wilson's alleged statements because the prior bad acts were not proven by clear and convincing evidence since Trujillo merely

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[2]Braunstein v. State, 118 Nev. 68, 72, 40 P.3d 413, 416 (2002).

[3]Id. at 75, 40 P.3d at 418.

interpreted "stuff" to mean drugs, and because he never stated that he wanted to get drugs from Idaho. Wilson contends that the statements were marginally relevant, as Wilson never faced any drug charges. Finally, Wilson argues that the probative value was substantially outweighed by the danger of unfair prejudice in informing the jury that Wilson was visiting a jail inmate, wanted to acquire illegal drugs, and wanted to enlist a conspirator to help him sell those drugs.

We discourage the use of prior bad act evidence to convict a defendant because "bad acts are often irrelevant and prejudicial and force the accused to defend against vague and unsubstantiated charges."[4] Such evidence also creates a risk that the jury will convict the defendant for being a "bad person" rather than basing its conviction on evidence indicating that the defendant committed the crime.[5]

However, prior bad act evidence may be admissible "for limited purposes other than showing a defendant's bad character," such as for motive, opportunity and intent.[6] For such evidence to be admissible, the prosecutor must, at a hearing outside the presence of the jury, prove: (1) the prior bad act is relevant to the crime charged; (2) the occurrence of the act by clear and convincing evidence; and (3) the danger of unfair prejudice does not substantially outweigh the probative value.[7]

Here, the prosecutor used Wilson's alleged statements about getting "stuff" from Idaho and enlisting Oldfield to help him get rid of it as

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[4]Tavares v. State, 117 Nev. 725, 730, 30 P.3d 1128, 1131 (2001).

[5]Id.

[6]Id.; NRS 48.045(2).

[7]Tavares, 117 Nev. at 731, 30 P.3d at 1131.

evidence of motive. During closing arguments, the State urged: "He was thinking about drugs. We know that he talked to Ms. Trujillo about it Friday morning, [a] total stranger." The jury reasonably could infer from Wilson's statements that he was thinking of buying a large amount of drugs in order to sell them, which would require several thousand dollars. The jury also could reasonably infer that Wilson, an unemployed drug addict, needed the victim's money and valuables in order to purchase the drugs from Idaho. Hence, the prior bad act evidence was probative of Wilson's motive and was, therefore, admissible under NRS 48.045(2).

We conclude that the district court did not abuse its discretion by admitting Wilson's statements. The evidence was relevant to Wilson's possible motive to kill his own grandmother, who kept money and valuable coins in her house. The district court, which was in a better position than this court to evaluate witness credibility, expressly found Trujillo's testimony to be very credible. Based on her credibility, the district court reasonably found the statements to be proven by clear and convincing evidence. Although Trujillo testified that Wilson had used the word "stuff" rather than drugs, she also testified that she had some exposure to drug culture and there was no doubt in her mind that Wilson was referring to illegal drugs. Finally, the probative value as to motive of Wilson's statements was not substantially outweighed by the danger of unfair prejudice. No evidence indicated that Wilson actually obtained the drugs or that he mentioned his grandmother during the conversation. Wilson's argument is without merit.

Sufficiency of the evidence

Next, Wilson alleges that there was insufficient evidence to convict him because no forensic evidence linked him to the crime. Wilson contends that the State could not link any weapons or ammunition to him

and that the majority of the incriminating testimony came from Kasie Gaarsland and Kevin Robinson, two known drug abusers who dealt illicit drugs, had no meaningful employment, knew about the alleged money at Wilson's grandmother's house and owned a .22 derringer pistol. Wilson also points out that the State's forensic expert could not positively exclude the possibility that the bullet that killed the victim came from Robinson and Gaarsland's pistol. Wilson alleges that the above evidence implicating Robinson and Gaarsland was the very same evidence against him: that he had a .22 caliber weapon, that he knew of the victim's valuables, that he was a known drug user who wanted to acquire drugs and that he had an opportunity to kill the victim.

This argument lacks merit. As the State notes, the evidence indicated that the victim likely was killed on March 8, 2002. The evidence further showed that, on March 7, Wilson called Gaarsland several times and asked her to trade the .22 caliber derringer pistol that he had given them as a Christmas present for a .45 caliber pistol. When questioned by authorities as to his whereabouts on March 8, Wilson stated that he had been with Christie Oldfield all day until 3:00 or 4:00 p.m. However, Oldfield testified that they parted company at approximately noon. Moreover, business records from a pawn shop and a gun dealer showed that Wilson sold a .45 caliber Thompson Contender gun and purchased a .22 caliber two-shot Davis derringer handgun just after noon that day. No one could verify his whereabouts from 1:00 p.m. that afternoon until approximately 3:00 or 4:00 p.m., when, according to his mother's testimony, he returned home. The drive between the town of Elko and the victim's house was approximately twenty minutes.

The evidence indicated that the victim was killed in her kitchen. As police found no signs of forced entry or of a struggle, the jury

reasonably could infer that she was acquainted with her killer. The .22 caliber bullet entered the victim's head just to the right of her nose, and police recovered another .22 caliber bullet from the victim's kitchen wall. According to the State's firearms expert, the two bullets represented firing patterns consistent with the .22 caliber derringer. Significantly, the derringer that Wilson purchased on March 8, 2002, was never recovered. Although Gaarsland and Robinson had a derringer, and the firearms expert testified that he could not rule out the possibility that the bullets had been fired from their gun, they voluntarily surrendered the pistol to the police, even though the police went to their apartment in search of a .22 caliber rifle rather than a .22 caliber handgun. From their cooperation, the jury could infer that Gaarsland and Robinson had nothing to hide, and that they would not have volunteered the weapon had it been the murder weapon.

The State notes Oldfield's testimony that Wilson told her, before he found his deceased grandmother, that he had seen a dead person who had been shot in the nose. Although he referred to the dead person in the masculine, the jury reasonably could have inferred that Wilson was referring to his grandmother, who was shot in the face just to the right of her nose. The jury reasonably could have concluded that Wilson knew the nature of the injury because he was the one who shot the victim.

Finally, the testimony revealed that Wilson had talked about killing his grandmother for her cash and coins. Gaarsland testified that Wilson said he could suffocate his grandmother with a pillow, push her down the stairs or even shoot her, and that he often talked about killing her. Gaarsland further testified that Wilson had asked her to act as a decoy and distract his grandmother, so that he could take the coins without killing her, but she refused. Beverly Wilson, the victim's

daughter, testified that her mother used to keep a couple of thousand dollars in cash in her home, usually in a dresser drawer. A drawer in the victim's bedroom had been rifled through, and police found no valuable coins or cash.

Viewing the evidence in the light most favorable to the State, a reasonable trier of fact could have determined beyond a reasonable doubt that Wilson killed his grandmother for her money and valuable coins. Therefore, we conclude that substantial evidence supports the jury's verdict. The evidence was entirely circumstantial; however, a verdict may be based upon circumstantial evidence alone.[8] Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Maupin

_____, J.
Douglas

_____, J.
Parraguirre

cc: Hon. Andrew J. Puccinelli, District Judge
Lockie & Macfarlan, Ltd.
Attorney General Brian Sandoval/Carson City
Elko County District Attorney
Elko County Clerk

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[8]Walker v. State, 113 Nev. 853, 861, 944 P.2d 762, 768 (1997).