

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

No. 42193

FILED

APR 08 2004

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of burglary. The district court sentenced appellant Dell Marvin Roberts to serve a prison term of 24-120 months to run consecutively to the sentence imposed in another district court case.

Roberts' sole contention is that the district court abused its discretion in granting the State's motion to admit prior bad act evidence at trial. Specifically, Roberts argues that evidence that he committed a similar burglary moments before the instant burglary was highly prejudicial, and without that evidence, the State could only have charged him with misdemeanor possession of stolen property. We conclude that Roberts' contention is without merit.

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 "motive, 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

¹NRS 48.045(2).

hearing whether the evidence is relevant to the charged offense, is proven 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 the State's motion to admit the prior bad act evidence at trial. The record reveals that the district court conducted a Petrocelli hearing⁴ and considered the factors required by Tinch.⁵ The district court concluded that evidence that Roberts, wearing the same distinctive clothing, stole jewelry from the Amaranth Gallery only moments before committing the same crime at the River Gallery in the instant case was: (1) relevant and admissible to prove intent, opportunity, and absence of mistake; (2) demonstrated by clear and convincing evidence, especially in light of the fact that Roberts had already been convicted of burglary for the first offense; and (3) not outweighed by the danger of unfair prejudice. Additionally, any danger of unfair prejudice was alleviated when the district court instructed the jury prior to the admission of the prior bad act that the evidence “may not be considered by you to prove that the

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).

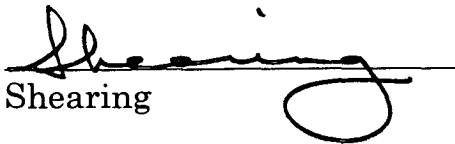
⁴Petrocelli v. State, 101 Nev. 46, 692 P.2d 503 (1985), modified on other grounds by Sonner v. State, 112 Nev. 1328, 930 P.2d 707 (1996).

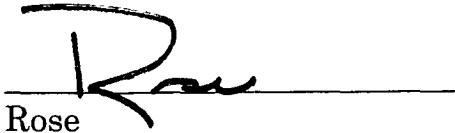
⁵113 Nev. at 1176, 946 P.2d at 1064-65.

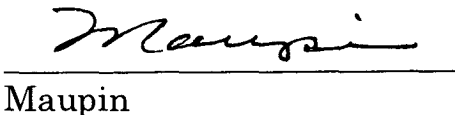
defendant is a person of bad character or that he has a disposition to commit crimes,” and that the evidence may only be considered for a limited purpose, specifically, “the defendant’s intent, motive, preparation, plan, knowledge, identity or absence of mistake.”⁶

Therefore, having considered Roberts’ contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.⁷

 C.J.
Shearing

 J.
Rose

 J.
Maupin

cc: Hon. Jerome Polaha, District Judge
John J. Kadlic
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

⁶See Tavares v. State, 117 Nev. 725, 30 P.3d 1128 (2001) (discussing the importance of a limiting instruction).

⁷Because Roberts is represented by counsel in this matter, we decline to grant him permission to file documents in proper person in this court. See NRAP 46(b). Accordingly, the clerk of this court shall return to Roberts unfiled all proper person documents he has submitted to this court in this matter.