

Scholarly Commons @ UNLV Boyd Law

Nevada Supreme Court Summaries

Law Journals

12-10-2009

Summary of Fields v. State, 125 Nev. Adv. Op. No. 57

Kimberly Duque
Nevada Law Journal

Follow this and additional works at: <https://scholars.law.unlv.edu/nvscs>



Part of the [Evidence Commons](#)

Recommended Citation

Duque, Kimberly, "Summary of Fields v. State, 125 Nev. Adv. Op. No. 57" (2009). *Nevada Supreme Court Summaries*. 342.

<https://scholars.law.unlv.edu/nvscs/342>

This Case Summary is brought to you by the Scholarly Commons @ UNLV Boyd Law, an institutional repository administered by the Wiener-Rogers Law Library at the William S. Boyd School of Law. For more information, please contact youngwoo.ban@unlv.edu.

Fields v. State, 125 Nev. Adv. Op. No. 57 (Dec. 10, 2009)¹

Evidence - Prior Bad Act, Common Plan or Scheme, Unfair Prejudice

Summary

Whether the district court abused its discretion in admitting prior bad act evidence because (1) it did not fall within the common-plan-or-scheme exception or because (2) its probative value was substantially outweighed by the danger of unfair prejudice.

Disposition/Outcome

The Court concluded first, that the district court abused its discretion in admitting the prior bad act evidence because the prior bad act was not similar enough to the crimes charged to be relevant as proof of a common plan or scheme. As to the second issue, the Court concluded that the probative value of the bad act evidence was substantially outweighed by the danger of unfair prejudice. Finally, since the Court determined that the admission was not harmless, the action was reversed and remanded for a new trial.

Factual and Procedural History

Relationship between the Fieldses and Palensky

Appellant, Linda Fields and her husband John Fields owned a bar in Elko, Nevada. Palensky was a regular customer of the Fieldses. In 2002, Palensky gave Linda power of attorney so she could take care of his affairs while he was in prison for over a year.

Upon Palensky's release, the Fieldses arranged for his trailer to be moved to their property and Palensky worked on their ranch until his disappearance in 2003. A month after Palensky's disappearance, his body was found in a river near Salt Lake City, Utah. An autopsy concluded that Palensky had died of blows to the back of his head inflicted by a blunt instrument. The Fieldses alleged that, prior to his disappearance, Palensky made a will that made the Fieldses his heirs.

Salt Lake County Sheriff's Department initiated a murder investigation but subsequently abandoned it². Nearly three years later, Elko County detective McKinney began investigating the murder after Linda's brother, Mike and his wife, Niqua, alerted police that Linda had told Niqua that Linda had killed Palensky by hitting him in the head with a pipe after she caught Palensky molesting her grandson. Mike and Niqua also told McKinney that the Fieldses used a red Toyota pickup to transport Palensky's body. McKinney located Palensky's trailer and the Fieldses' pickup and after a search, charged Linda with open murder with the use of a deadly weapon. Linda was convicted by a jury of murder in the first degree.

Bad act evidence- Mobert conspiracy

At trial, in an attempt to establish a possible motive linking Linda to Palensky's murder, the State introduced evidence of a prior uncharged conspiracy involving the Fieldses and Mobert. Mobert, an elderly man in poor health, was the Fieldses' friend and business partner. Mobert assigned Linda power of attorney to handle some affairs. The business relationship, however, soon soured and the Fieldses filed a civil suit against Mobert, who filed a counterclaim. Mobert

¹ By Kimberly Duque

² Salt Lake County police did question the Fieldses regarding Palensky's death and searched his trailer at the Fieldses' ranch.

and the Fieldses settled this suit in 2000. In 2001, Elko detectives Pitts and Kidd, investigated Well's (an informant) allegation that the Fieldses had solicited him to murder Mobert. The Fieldses were never charged for the "Mobert Conspiracy." In 2007, Mobert died of natural causes, when Linda no longer held rights in Mobert's property. Linda objected to the admission of the Mobert conspiracy evidence on the basis of relevancy and prejudicial value but the district court admitted the evidence with a limiting instruction.³

The State first called Corn, Mobert's attorney in the civil suit between Mobert and the Fieldses, to testify that Linda had sold some of Mobert's real property and without Mobert's authorization, used the proceeds for personal expenditures. Next, the State called Pitts and Kidd who authenticated recorded conversations between Wells and the Fieldses where allegedly, the Fieldses solicited Wells to murder Mobert.

By introducing evidence of the uncharged Mobert conspiracy, the State sought to convey that Linda, with both Palensky and Mobert, planned to take advantage of elderly men by obtaining power of attorney, using that power of attorney to get money and assets, and then murdering the elderly men for their estates. After deliberating, the jury returned a guilty verdict. The district court sentenced Linda and entered a judgment of conviction. This appeal followed.

Discussion

Admission of bad act evidence

The Court, pursuant to *Braunstein*,⁴ deferred to the district court's discretion in admitting evidence of prior bad acts and explained that it would not reverse such determinations absent manifest error.⁵

The Court held that pursuant to NRS 48.045(2), prior bad act evidence is not admissible to prove character of a person in order to show that he acted in conformity therewith but may be admissible for other purposes, such as plan.⁶ As a preliminary matter, a district court must determine whether: (1) the evidence is relevant, (2) the prior bad act is proven by clear and convincing evidence, and (3) the danger of unfair prejudice substantially outweighs the evidence's probative value.⁷ The present appeal focused on the first and third factors.

Relevance and the danger of unfair prejudice

Prior bad act evidence is admissible pursuant to the common-plan-or-scheme exception of NRS 48.045(2) when both the prior bad act evidence and the crime charged constitute "an integral part of an overarching plan explicitly conceived and executed by the defendant."⁸

The Court held that the district court abused its discretion in admitting evidence of the prior bad act alleged as the "Mobert conspiracy" because although the State presented evidence of Linda's financial motive to the jury, the State also presented an alternative motive- that Palensky molested her grandson- a theory not at all in line with the alleged elderly fraud scheme.

³ The district court issued the instruction pursuant to *Tavares v. State*, 117 Nev. 725, 733, 30 P.3d 1128, 1131 (2001)(stating that the trial court, absent a waiver from the defendant, must give a limiting instruction explaining the limited purposes for which the bad act evidence may be used).

⁴ *Braunstein v. State*, 118 Nev. 68, 72, 40 P.3d 413, 416 (2002).

⁵ *Id.*

⁶ NEV. REV. STAT. §48.045(2) (2007).

⁷ *Meek v. State*, 112 Nev. 1288, 1292-93, 930 P.2d 1104, 1107 (1996).

⁸ *Ledbetter v. State*, 122 Nev. 252, 260-61, 129 P.3d 671, 677-78 (2006) (quoting *Rosky v. State*, 121 Nev. 184, 196, 111 P.3d 690, 698 (2005)).

The Court also rejected the State's attempt to liken the financial circumstances surrounding the Palensky death to the Mobert death. Specifically, the State inaccurately portrayed Mobert and Palensky as similarly situated- "elderly, frail, and helpless," when in fact they differed in age, health, and vigor. Moreover, Mobert died of natural causes years after the financial disputes between him and the Fieldses had been settled, whereas, Palensky was murdered and there was no dispute over money prior to his death. Therefore, the Court concluded that the prior uncharged conspiracy and the present murder charge were not similar enough to be part of a preconceived plan.

The Court further held that the district court abused its discretion in admitting evidence of the Mobert conspiracy because its probative value was substantially outweighed by the danger of unfair prejudice and its admission led to serious jury confusion. First, evidence of the alleged solicitation was not relevant and its sole purpose was to show Linda's bad character. Second, because Mobert and Palensky were not similarly situated, the probative value of the Mobert conspiracy was substantially lowered, thereby increasing its probability of causing prejudicial harm to Linda. Third, the State's alternative theory of motive based on the alleged molestation in conjunction with an unrelated presentation of conspiracy evidence led to serious jury confusion. Fourth, because the State spent considerable time explaining the civil suit in intricate detail, the jury was likely confused with the differing standards of evidence in civil versus criminal proceedings. Finally, that Linda was not charged with conspiracy to commit murder, significantly increased the possibility of unfair prejudice and jury confusion.

Harmless Error

The Court reviewed the district court's nonconstitutional error pursuant to *Kotteakos*,⁹ which is identical to NRS 178.598. The test is whether the error "had substantial injurious effect or influence in determining the jury's verdict."¹⁰ The Court concluded that the district court's improper admission of the bad act evidence was not harmless for two reasons: (1) the unfair prejudice Linda suffered from the admission substantially outweighed any probative value of such an admission; and (2) the error had a substantial and injurious influence in the jury's verdict because the alleged prior bad act was so serious and potentially confusing. The jury verdict could have been determined, in part, by Linda's alleged solicitation to kill Mobert rather than on tying Linda to Palensky's murder.

Conclusion

In compliance with, NRS 48.035 and NRS 48.045,¹¹ because the probative value of the prior bad act evidence was substantially outweighed by the danger of unfair prejudice to the defendant and because the district court's discretion in admitting the evidence was not harmless error, a new trial is warranted. The Court concluded that the confusing admission of the tapes and the amount of time spent on discussing the uncharged conspiracy surely had an impact on the verdict. Therefore, the Court reversed and remanded the case.

⁹ *Kotteakos v. U.S.*, 328 U.S. 750 (1946).

¹⁰ *Id.* at 776.

¹¹ NEV. REV. STAT. §§ 48.035, 48.045 (2007).