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Randolph v. State, 136 Nev. Ad. Op. 78 (Dec. 10, 2020)

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EVIDENCE: ADMISSIBILITY OF EVIDENCE OF PRIOR BAD ACTS

SUMMARY

The Nevada Supreme Court determined the district court abused its discretion in admitting the details of the appellant's second wife's death as evidence for his murder trial. Nevada law states that evidence of other bad acts is inadmissible unless the evidence is offered to prove something other than criminal propensity. Additionally, the Court held that the State did not meet its burden of proof showing the error was harmless. The Court reversed and remanded the judgment of conviction.

BACKGROUND

On May 8, 2008, law enforcement responded to the home of Thomas and Sharon Randolph. Per Thomas's account, when he and Sharon came home, Sharon went into the house where the intruder shot her once in the head. Thomas grabbed one of his handguns, and a physical altercation between him and the intruder ensued. Thomas shot the intruder multiple times, killing him. Thomas recognized the intruder as Michael Miller, Thomas's friend.

Law enforcement began to question Thomas's potential involvement in Sharon's murder. Prior to her death, Thomas took out multiple life insurance policies on Sharon. He also had an extensive relationship with Miller, which included hundreds of phone calls in the month before the incident. The State charged Thomas with conspiracy to commit murder and two counts of murder with a deadly weapon and filed a notice that it intended to seek the death penalty for both murders. The State alleged that Thomas recruited Miller to kill Sharon in a staged home invasion so Thomas could collect the life insurance proceeds. Allegedly, Thomas then shot and killed Miller.

The State filed a pretrial motion seeking to admit evidence of Thomas's involvement in a prior criminal proceeding in Utah. In 1986, Thomas's second wife, Becky, died from a single gunshot wound to the head. The death was initially ruled a suicide. However, intel from Thomas's former friend, Eric Tarantino, led to Thomas's arrest and a subsequent murder charge. According to Tarantino, Thomas discussed killing Becky to collect her life insurance proceeds. During the criminal proceedings, Thomas solicited an undercover police officer to kill Tarantino prior to Tarantino's testimony. He was charged with witness tampering and pleaded guilty. He was ultimately acquitted on the murder charge and he had the witness tampering conviction and records related to the murder case expunged in Utah.

The State sought to admit the Utah case to prove motive, intent, preparation, plan, knowledge, and identity. The district court held a *Petrocelli*² hearing, calling the Utah prosecutor of the murder trial as a witness. The district court found the details of the Utah case admissible. Thomas was found guilty on all counts and was sentenced to death. Thomas appeals.

¹ By Alexandra Mateo.

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

DISCUSSION

The issue is whether the lower court's admission of the prior-bad-act evidence was an abuse of discretion.³ NRS 48.045(2) provides that evidence of other crimes or bad acts are not permitted to prove a person's character or propensity.⁴ The court may admit evidence for other purposes including, but not limited to, proof of motive, intent, preparation.⁵ The party bringing such evidence must request a hearing and show 1) the prior bad act is relevant to the current charge for a purpose other than proving the defendant's propensity, 2) the act is proven by clear and convincing evidence, and 3) its potential unfair prejudice does not substantially outweigh the probative value of the evidence.⁶

The State's pretrial offer of proof

To prove the prior bad act, the State made an offer of proof. The district court must determine if the offer will lead to legally admissible evidence. When the State sought to admit the evidence, it could either inform the district court of the evidence or present the evidence through witness testimony. The State chose to call the prosecutor of the Utah case to testify. The prosecutor did not have first-hand knowledge of the events, but the State argued that offers of proof were necessarily based on hearsay. Additionally, the jury in the Utah murder case acquitted Thomas. An acquittal does not automatically preclude the Government from relitigating the issue under a lower standard of proof.⁷ However, combined with the lack of first-hand knowledge, the lower court should have been discouraged from finding the prior bad acts were proven by clear and convincing evidence.

Relevance for a permissible purpose

Evidence must be relevant for a permissible purpose. Evidence only has to have "any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable."⁸ The district court found the Utah case was relevant to Thomas's motive, intent, preparation, plan, knowledge, and identity. The Court found that Thomas's previous attempt to enter into a conspiracy may have been relevant to show Thomas's intent. However, the State presented additional bad acts that served no other reason than to show Thomas's character or his predisposition towards violent crimes. Therefore, the evidence was not admissible.

Balancing the probative value and the danger of unfair prejudice

The potential unfair prejudice must not substantially outweigh the probative value of evidence. All prior bad act evidence carries a presumption of inadmissibility.⁹ The Utah case may have had similarities to the current case. However, Thomas's acquittal reduces the probative value of the prior bad act evidence.¹⁰ Additionally, the district court did not adequately limit the State's presentation of the Utah case, allowing the State to present a myriad of evidence about Thomas's alleged bad character. The Court determined that Utah evidence functioned to show Thomas's

³ *Newman v. State*, 129 Nev. 222, 231, 298 P.3d 1171, 1178 (2013).

⁴ NEV. REV. STAT. § 48.045(2) (2020).

⁵ *Id.*

⁶ *Bigpond v. State*, 128 Nev. 108, 117, 270 P.3d 1244, 1250 (2012).

⁷ *Dowling v. United States*, 493 U.S. 342, 349 (1990).

⁸ NEV. REV. STAT. § 48.015 (2020).

⁹ *Rosky v. State*, 121 Nev. 184, 195, 111 P.3d 690, 697 (2005).

¹⁰ See 2 Edward J. Imwinkelried, *Uncharged Misconduct Evidence* § 8:25 (2020).

propensity for violent crimes. Therefore, the Court found that the unfair prejudice significantly outweighed the probative value of the Utah evidence.

Harmless error

Finally, the Court addressed whether the district court's abuse of its discretion was a harmless error.¹¹ An error is only harmless if it did not substantially affect or influence the jury's verdict.¹² Because the evidence's unfair prejudice outweighed its probative value, the Court held that there is no permissible reason to admit the evidence. Additionally, the State argued the evidence of Thomas's guilt was overwhelming. Because the unfair prejudice of the evidence outweighed its probative value, the Court held that there was no permissible reason to admit the evidence. Additionally, the Court was not convinced by the State's evidence of Thomas's guilt. The only evidence the State referenced was the prior-bad-act evidence.

The Court considered the possibility of review sua sponte. Sua sponte review is determined by 1) the length and complexity of the record, 2) whether the harmless is certain or debatable, and 3) the futility and costliness of further litigation.¹³ The Court declined to evaluate the error sua sponte, citing issues with all three consideration factors.

CONCLUSION

The Nevada Supreme Court reversed and remanded Thomas Randolph's judgment of conviction for the double murder of his wife and friend. The Court found the lower court abused its discretion in admitting evidence of Thomas's prior murder charge. The State's pretrial offer of proof did not prove the prior bad acts by clear and convincing evidence. Additionally, the evidence was not admissible for a proper purpose under NRS 48.045(2). Finally, the unfair prejudice of the evidence substantially outweighed its probative value. The Court held that the district court's error was not harmless.

¹¹ *See Rosky*, 121 Nev. at 198, 111 P.3d at 699,

¹² *Hubbard v. State*, 134 Nev. 450, 459, 422 P.3d 1260, 1267 (2018).

¹³ *Belcher v. State*, 136 Nev., Adv. Op. 31, 464 P.3d 1013, 1024 (2020) (internal quotations omitted).