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**Chadwick v. State of Nevada, 140 Nev. Adv. Op. 10 (Feb. 29, 2024)**

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*Chadwick v. State of Nevada*, 140 Nev. Adv. Op. 10 (Feb. 29, 2024)<sup>1</sup>

EVIDENCE OF A DEFENDANT’S ALCOHOL CONSUMPTION AND APPARENT INTOXICATION WHILE DRIVING CAN BE ADMITTED IN CASES OF LEAVING THE SCENE OF AN ACCIDENT IF IT IS RELEVANT TO THE DEFENDANT’S MOTIVE, PROVEN BY CLEAR AND CONVINCING EVIDENCE, AND NOT UNFAIRLY PREJUDICIAL.

**Summary**

In an appeal regarding a conviction for fleeing the scene of an accident involving personal injury, the Nevada Court of Appeals upheld the lower court's ruling. The court held that the district court appropriately admitted evidence of the appellant's alcohol consumption and intoxication, deeming it relevant to his motive for fleeing the accident scene. Additionally, the court ruled that when a defendant directly introduces evidence of bad acts, it falls upon the defendant to request an instruction limiting the jury's consideration of such evidence.

**Background**

On Oct. 31, 2021, Joey Terrall Chadwick was driving a van with his friend, Helen Henry, as a passenger, when he accidentally ran over and injured three-year-old T.B., who was crossing the street while trick-or-treating. Despite the severity of the accident, Chadwick failed to stop or return to the scene. Both Chadwick and Henry were affiliated with the Bloods gang, and the accident occurred in a neighborhood known to have rival gang members.

Ultimately, Chadwick turned himself in to the police, denying any alcohol consumption that night and claiming he thought he had hit a pothole, not a child. Chadwick was charged with leaving the scene of an accident involving personal injury and reckless driving resulting in substantial bodily harm.

Prior to trial, the State sought to admit evidence of Chadwick's intoxication to establish his motive for fleeing the accident scene and to challenge his denial of alcohol consumption. During a *Petrocelli* hearing, Henry testified about Chadwick's alcohol consumption and apparent intoxication before the accident, stating that Chadwick's eyes were red, and he smelled of alcohol when he picked her up. She further recounted their visit to a house party where Chadwick consumed alcohol.

At the jury trial, the State presented Chadwick's recorded police interview and his voluntary statement, with Henry serving as a key witness. During cross-examination, Chadwick questioned Henry about her gang affiliation, revealing she was also a member of the Bloods. Additionally, he inquired about her failure to report the accident, to which Henry responded that Chadwick had threatened her. Despite Chadwick's defense, the jury found him guilty of leaving the scene of an accident involving personal injury, although he was acquitted of the reckless driving charge. As a result, Chadwick was sentenced to 72-240 months in prison, prompting him to appeal the verdict.

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<sup>1</sup> By Estera Kis.

## **Discussion**

### ***The district court did not err in admitting evidence of Chadwick's alcohol consumption and, apparent intoxication while driving***

NRS 48.045(2) outlines parameters for admitting evidence of a defendant's prior bad acts, emphasizing that such evidence should not be used to establish the defendant's propensity to commit the alleged crime.<sup>2</sup> Instead, it may be admitted for purposes like proving motive, intent, or absence of mistake. Before admitting such evidence, a *Petrocelli* hearing is necessary to ensure relevance, clear and convincing evidence, and lack of unfair prejudice.<sup>3</sup> Chadwick contested the admissibility of evidence regarding his alcohol consumption and apparent intoxication, arguing it failed to meet the three *Petrocelli* criteria.

However, the Nevada Court of Appeals disagreed with Chadwick's contentions. Firstly, they found evidence of his alcohol consumption relevant as it provided a motive for fleeing the accident scene, potentially driven by fear of DUI-related charges. This motive was crucial for understanding Chadwick's actions and intent. Secondly, the court determined that Henry's testimony during the *Petrocelli* hearing sufficiently established Chadwick's alcohol consumption and intoxication, meeting the clear and convincing evidence standard. Her testimony was grounded in direct observation and reasonable perception.

Lastly, the court concluded that the probative value of the evidence outweighed any potential unfair prejudice. They noted that the jury's ability to discern Chadwick's guilt in the face of this evidence, as demonstrated by his acquittal on the reckless driving charge, indicated that the evidence did not unduly sway their judgment. Therefore, despite Chadwick's objections, the Nevada Court of Appeals affirmed the district court's decision to admit evidence of his alcohol consumption and apparent intoxication as relevant, proven by clear and convincing evidence, and not unfairly prejudicial.

### ***Evidence of Chadwick's threat and gang affiliation***

Chadwick contends that the district court erred in permitting Henry's testimony about his gang affiliation and threats against her without conducting a *Petrocelli* hearing or providing *Tavares* limiting instructions.

#### ***Failure to conduct a Petrocelli hearing***

The State must request a *Petrocelli* hearing to determine the admissibility of bad act evidence under *Tinch*'s three-part test,<sup>4</sup> but failure to conduct such a hearing isn't reversible if the record sufficiently establishes the evidence's admissibility or if excluding it wouldn't change the trial outcome.<sup>5</sup> Moreover, if a defendant doesn't object to the absence of a *Petrocelli* hearing,

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<sup>2</sup> Nev. Rev. Stat. § 48.045(2) (2022).

<sup>3</sup> *Tinch v. State*, 113 Nev. 1170, 1176, 946 P.2d 1061, 1064-65 (1997), holding modified by *Bigpond v. State*, 128 Nev. 108, 270 P.3d 1244 (2012); *Tavares v. State*, 117 Nev. 725, 731, 30 P.3d 1128, 1131 (2001).

<sup>4</sup> See generally *Petrocelli v. State*, 101 Nev. 46, 692 P.2d 503 (1985).

<sup>5</sup> *Diomampo v. State*, 124 Nev. 414, 430, 185 P.3d 1031, 1041 (2008).

appellate courts review only for plain error affecting substantial rights. Even if Chadwick's threat could be considered a bad act requiring a *Petrocelli* hearing, he invited any error by eliciting the testimony himself during cross-examination of Henry. Thus, any error in admitting the threat without a *Petrocelli* hearing was invited.

Regarding the testimony about Chadwick's gang affiliation, as Chadwick didn't object to its admission, the district court didn't plainly err by allowing it without a *Petrocelli* hearing. There's no indication the jury convicted Chadwick based on his gang affiliation, as neither party argued the accident was gang-related or that his gang affiliation related to any material element of the offense. The evidence was introduced to explain Henry's behavior and justify why she didn't report the accident to authorities. Given the limited reference to Chadwick's gang affiliation at trial and its collateral nature, Chadwick can't demonstrate actual prejudice or a miscarriage of justice from its admission without a *Petrocelli* hearing, and thus, there wasn't plain error.

### ***Failure to give Tavares instructions***

When the State presents evidence of bad acts, the failure to provide *Tavares* instructions is examined for harmless error, even if the defendant doesn't request them.<sup>6</sup> The review standard focuses on whether the error had substantial and injurious effect or influence on the jury's decision. However, a party can't raise complaints about errors they themselves caused.<sup>7</sup>

In Chadwick's case, he introduced the threat during cross-examination and didn't object when the State followed up on it during redirect. Moreover, he didn't request *Tavares* instructions for either the threat or the evidence of his gang affiliation. Since it is the prosecutor's responsibility to seek the admission of uncharged bad act evidence and they must fulfill this duty as a servant to the law, the Nevada Court of Appeals concluded that it shall be the duty of the prosecutor to request that the jury receive instructions on the limited use of prior bad act evidence in all future cases.

In contrast, when a defendant introduces a bad act into evidence, they effectively invite the error and are not inherently entitled to a *Tavares* instruction without making a request. Hence, the Nevada Court of Appeals held that it is the defendant's responsibility to ask for a limiting instruction when they directly bring forth bad act evidence. In such instances, the general rule outlined in NRS 47.110 is applicable.<sup>8</sup> If they fail to do so, the court isn't obliged to raise the issue or provide a *Tavares* instruction sua sponte.

Chadwick elicited Henry's testimony about the threat, so it was his duty to request a *Tavares* instruction if desired to mitigate potential unfair prejudice. As he didn't, he waived any claim of error regarding the lack of a *Tavares* instruction. While Chadwick wasn't entitled to a *Tavares* instruction regarding the threat, he was entitled to one concerning his gang affiliation, which the State brought up on redirect. However, as his gang affiliation wasn't offered to prove

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<sup>6</sup> *Tavares v. State*, 117 Nev. 725, 731, 30 P.3d 1128, 1131 (2001).

<sup>7</sup> *Pearson v. Pearson*, 110 Nev. 293, 297, 871 P.2d 343, 345 (1994).

<sup>8</sup> NEV. REV. STAT. § 47.110 (2022).

guilt but rather to explain Henry's behavior, any error in not providing a *Tavares* instruction for it was deemed harmless and did not have a substantial and injurious effect on the jury's verdict.

### **Conclusion**

The Nevada Court of Appeals affirmed the district court's decision to admit evidence of Chadwick's alcohol consumption and apparent intoxication before the accident, as it was relevant to establish his motive to flee the scene and his awareness of the accident. Additionally, the Court held that when a defendant directly introduces bad act evidence, they are responsible for requesting a *Tavares* limiting instruction. Failure to do so relieves the district court of the obligation to provide one sua sponte.