

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ADRIANNA MARIE NORMAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 83244-COA

FILED

JUN 22 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Adrianna Marie Norman appeals from a judgment of conviction, entered pursuant to a jury verdict, of burglary with possession of a firearm or deadly weapon. Second Judicial District Court, Washoe County; Kathleen M. Drakulich, Judge.

Norman befriended Steven Marcel Sims in 2019.¹ The two resided together in Norman's Winnemucca, Nevada home from approximately December 2019 through mid-January 2020. In January 2020, Sims left Norman's home without notifying her. That day Norman messaged Sims about leaving and accused him of stealing her children's tablet and Xbox from her home. When Sims did not respond, Norman messaged him "Ur dead," "U bitch," "I will never respect u," "just know ur day is commin," and "It's almost ur time." Without answering, Sims blocked further communication from Norman.

The next time Sims saw Norman was on February 22, 2020, at Bob & Lucy's, a tavern Sims frequented in Sparks, Nevada. At

¹We recount the facts only as necessary to the disposition. We note that the incidents inside the tavern were recorded and the video was played to the jury.

approximately 6:00 a.m., Norman entered the tavern, approached Sims who was seated at a slot machine, sat down next to him, and said something to the effect of "I told you I was gonna come." Sims and Norman began discussing his leaving and his alleged taking of the tablet and Xbox. Sims recalled seeing that Norman had a silver handgun tucked in her armpit. Sims told her "I have one too, but I'm not going to pull it out in front of the camera." He also told her that he was not alone in the tavern. As the conversation escalated, Sims stood up and over Norman. Shortly thereafter, Norman pulled the handgun from her armpit, showed it to Sims, and told him it was real. Norman never pointed the handgun at Sims.

At some point, Norman's co-defendant, Ryan Williams, entered Bob & Lucy's. As he approached Sims and Norman, Norman stood up and moved several feet away. After greeting each other, Williams said something to the effect of "You know how I roll. Let's ride" with one hand in his front sweatshirt pocket, which he nudged up and down creating sharp lines that made Sims believe he had a gun. Williams cashed out Sims's slot credits and took his voucher ticket without Sims's permission right after it came out of the machine. Williams then attempted to walk Sims out of Bob & Lucy's, but he refused. Sims eventually escaped the tavern after creating a diversion and having the bartender call police. After police arrived, Norman was arrested but Williams fled in a vehicle, leading to a high-speed chase, him entering Interstate 80 from the wrong direction, and striking another vehicle head, on killing the driver.

The State charged Norman and Williams jointly with robbery with use of a deadly weapon; attempted robbery with use of a deadly weapon; burglary with possession of a firearm or deadly weapon; and murder with use of a deadly weapon, by directly committing the charged

acts, or by aiding and abetting or conspiring with each other.² The justice court held Norman's preliminary hearing in mid-2020. There, Sims testified that he told Norman that he had fought his ex-wife's stepfather, resulting in the man's death. He also testified that his "hands are lethal" and people knew he was a trained UFC fighter.

Before trial, Williams filed a motion in limine seeking to admit Sims's preliminary hearing testimony as prior bad acts evidence, which Norman joined. Williams argued that he and Norman met the requirements for overcoming the presumption against admitting prior bad acts evidence. To that effect, Williams asserted that Sims's prior bad acts were relevant to the crimes charged and that their probative value was not substantially outweighed by the danger of unfair prejudice because Sims's acts were relevant to defendants' intent to commit the crimes charged and to why Norman entered Bob & Lucy's armed with a handgun. Williams also asserted that Sims's prior bad acts were proven by clear and convincing evidence because Sims admitted to them at the preliminary hearing. Williams additionally argued that the policy underlying the limits on propensity evidence was "not at play" in this case because he and Norman were seeking to introduce the prior bad acts evidence against a witness who was not on trial. The State opposed the motion, disputing Williams's claims and arguing the evidentiary rules applied to defendants the same as to the State.

The State then filed a motion in limine requesting that defendants refrain from referencing Sims's prior bad acts in front of the jury without prior approval from the district court. The State argued that Sims's testimony could become admissible at trial if defendants established a

²Williams faced additional vehicular death related charges.

relevant, nonpropensity theory of admissibility outside the presence of the jury and the probative value was not substantially outweighed by the danger of unfair prejudice. At that time, however, the State argued that defendants had no relevant, nonpropensity basis for admitting Sims's testimony and it was therefore inadmissible. Norman opposed the motion, arguing that "being a UFC fighter is not inherently negative or disparaging to Sims." Norman also argued that Sims's testimony should be admitted because Sims testified that he was not threatened by Norman during the Bob & Lucy's incident and his testimony regarding his life experiences—UFC training and killing a man—helped explain why.

The State replied that Sims was afraid during the Bob & Lucy's incident. Furthermore, since robbery considers the objective fears of the victim, evidence of Sims's subjective timidity should not be admitted. The State reiterated that Norman never claimed that she armed herself with a handgun for the Bob & Lucy's incident because she feared Sims. In fact, according to the State, she told police "I wasn't trippin" and that bringing the handgun to the altercation was not her idea. Therefore, according to the State, unless Norman testified at trial that her intent in arming herself was due to her knowledge regarding Sims's past UFC training and his killing a man, his testimony was inadmissible propensity evidence.

The district court held a *Petrocelli*³ hearing on the motions and issued an order finding "good cause to exclude any and all references to Mr. Sims's background as a UFC fighter and a man having died in a fight with him—*unless Ms. Norman elects to testify*, at which point this Court will revisit this ruling." The court further explained that it understood that

³*Petrocelli v. State*, 101 Nev. 46, 692 P.2d 503 (1985).

Williams and Norman sought to introduce the testimony to establish Norman's intent when entering Bob & Lucy's armed with a handgun. However, the district court found that "for this theory of relevance to have any significance, there needs to be some evidence presented to the jury that Ms. Norman feared Mr. Sims based on his UFC background."

At trial, Norman did not testify, introduce any evidence to show she feared Sims when entering Bob & Lucy's, or mention fearing Sims based on his background during her opening statement. Despite this "extremely limited defense," as Norman now calls it, the jury only found Norman guilty of burglary while in possession of a firearm or deadly weapon and not guilty of the remaining serious felony counts. Norman now appeals, arguing that the district court erred by excluding evidence of Sims's prior bad acts at trial.

"The admissibility of prior bad acts evidence is within the discretion of the trial court, whose decision will not be disturbed on appeal unless manifestly wrong." *Mortensen v. State*, 115 Nev. 273, 280, 986 P.2d 1105, 1110 (1999); see also *Manifest Error*, *Black's Law Dictionary* (11th ed. 2019) ("An error that is plain and indisputable, and that amounts to a complete disregard of the controlling law of the credible evidence in the record."). Prior bad acts evidence, meaning "[e]vidence of other crimes, wrongs or acts[,] is not admissible to prove character of a person in order to show that the person acted in conformity therewith." NRS 48.045(2). Such evidence "may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." *Id.*

As the supreme court emphasized in *Bigpond v. State*, "a presumption of inadmissibility attaches to all prior bad act evidence." 128

Nev. 109, 116, 270 P.3d 1244, 1249 (2012). And to overcome that presumption, the proponent of the evidence must request a hearing and establish three factors—the *Tinch* factors—outside the presence of the jury. *Tinch v. State*, 113 Nev. 1170, 1176, 946 P.2d 1061, 1064-65 (1997). As modified by *Bigpond*, the *Tinch* factors require that

- (1) the prior bad act is relevant to the crime charged and for a purpose other than proving the defendant's propensity [to commit crimes or this type of act], (2) the act is proven by clear and convincing evidence, and (3) the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice.⁴

Bigpond, 128 Nev. at 117, 270 P.3d at 1250 (modifying the first *Tinch* factor to provide that the evidence must be relevant specifically for a nonpropensity purpose).

Norman chiefly argues that the district court erred by refusing to admit Sims's prior bad acts unless Norman laid a foundation establishing a nonpropensity purpose for admitting them. In other words, she argues that the court erred in finding she had not met the first *Tinch* factor—relevance for a nonpropensity purpose.⁵ Norman argues that Nevada law

⁴Norman argues for a looser admissibility standard in this case because she, a defendant, sought to introduce the evidence. According to Norman, the supreme court noted approvingly in *Collman v. State* that the lower court in that case applied “a less stringent standard” when deciding whether a defendant could admit other act evidence that had “a tendency to negate the defendant's guilt.” 116 Nev. 687, 702 n.3, 7 P.3d 426, 436 n.3 (2003). But *Collman* did not hold that the district court must apply a looser admissibility standard when considering other acts evidence offered by a defendant. *See id.* at 702, 7 P.3d at 436.

⁵Norman appears to argue that this is a constitutional issue. She asserts, without citing any authority, that the district court effectively

does not require her to provide a foundation for Sims's prior bad acts before introducing them. The State answers that Norman needed to provide evidence establishing that she actually feared Sims when she entered Bob & Lucy's in order to make Sims's prior bad acts relevant for a nonpropensity purpose.

The only authorities Norman accurately cites for support are *Daniel v. State*, 119 Nev. 498, 78 P.3d 890 (2003), and *Griffith v. State*, No. 66312, 2016 WL 4546998 (Nev. Aug. 11, 2016) (Order of Affirmance). But the rule she cites from *Daniel*—"when a defendant claims self-defense and knew of relevant specific acts by a victim, evidence of the acts can be presented"—is taken out of context by Norman. 119 Nev. at 516, 78 P.3d at 902. In *Daniel*, the supreme court concluded that evidence of a victim's prior bad acts could be admissible to corroborate the defendant's own trial testimony concerning the same. *Id.* The court never held that a defendant is entitled to admission of a victim's prior bad acts without testifying to them first. *See id.* Therefore, Norman's reliance on *Daniel* is misplaced.

The rules she cites from *Griffith*—"the foundation for self-defense can be laid in a defendant's opening statement by the assertion of facts to be presented at trial" and "requiring self-defense to be raised solely by the defendant's testimony would improperly shift the burden of proof in a self-defense case"—are not availing to Norman either. *See* 2016 WL 4546998, at *2. The defendant in *Griffith* "was explicit" that his theory was

asked her to waive her Fifth Amendment right to remain silent at trial by requiring her to testify to establish a nonpropensity purpose for the prior bad acts evidence. Norman also cites the Confrontation and Due Process Clauses, without analyzing how those provisions were allegedly violated in this case. However, because Norman failed to cogently make these arguments or provide relevant authority for support, we need not consider them. *See Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987).

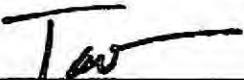
self-defense in his opening statement. *Id.* at *1. Therefore, the defendant had laid a foundation for self-defense because “the district court, the State and the jury were on notice that Griffith was pursuing self-defense.” *Id.* at *2 (emphasis added). Here, Norman does not address this critical component of *Griffith* in her briefing or provide a transcript of opening statements. See *Maresca v. State*, 103 Nev. 673, 669, 748 P.2d 3, 6 (1987). And respondent’s appendix reveals that Norman did not assert in her opening statement that she brought a handgun to Bob & Lucy’s because she feared Sims. In fact, nowhere in the trial transcripts provided did Norman expressly assert that theory or provide witnesses to suggest it such that the jury would have had notice of it.

As such, unlike in *Griffith*, neither the jury, the district court, nor the State in this case was on notice that Norman would be introducing Sims’s prior bad acts to show that she brought a handgun into Bob & Lucy’s because she feared Sims. Thus, the district court did not manifestly err in finding that Norman failed to lay a foundation establishing relevance for her proffered nonpropensity purpose because it is not plain that Norman established the same. See *Petty v. State*, 116 Nev. 321, 327, 997 P.2d 800, 803 (2000) (concluding that the district court properly excluded evidence of the victim’s specific acts, offered to show the defendant acted in self-defense, because the defendant had not shown his knowledge of the acts at the time the crime was committed); *Mortensen*, 115 Nev. at 280, 986 P.2d at 1110. The district court therefore did not err when it excluded evidence of Sims’s prior bad acts.⁶ Accordingly, we

⁶Although Norman also makes arguments concerning the remaining two *Tinch* factors, we need not address these arguments because, as stated, Norman failed to meet her burden under the first *Tinch* factor, relevance

ORDER the judgment of conviction AFFIRMED.⁷


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Kathleen M. Drakulich, District Judge
Washoe County Alternate Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

for a nonpropensity purpose. She therefore cannot overcome the presumption of inadmissibility irrespective of her showing on the second and third *Tinch* factor as they are conjunctive. *Cf. Miller v. Burk*, 124 Nev. 579, 588-89 & n.26, 188 P.3d 1112, 1118-19 & n.26 (2008) (explaining that this court need not address issues that are unnecessary to resolve the case).

⁷Insofar as the parties raise arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.