

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

RALPH EDMOND GOAD,

Appellant,

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Elizabeth A. Brown  
Clerk of Supreme Court  
No. 79977

vs.

THE STATE OF NEVADA,

Respondent.

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**Appeal from a Judgment of Conviction in Case CR19-0999  
The Second Judicial District Court of the State of Nevada  
Honorable David Hardy, District Judge**

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**APPELLANT'S REPLY BRIEF**

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## TABLE OF CONTENTS

TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES.....	ii
ARGUMENT IN REPLY.....	1
Mr. Goad’s behavior on the fourth day of trial clearly established reasonable doubt regarding his competence to proceed, and the district court abused its discretion in failing to order a competency evaluation.....	1
The district court abused its discretion in admitting evidence related to Mr. Goad’s financial situation, including the fact that he was evicted from his apartment.....	3
Error resulting from the admission of evidence related to Mr. Goad’s eviction and other gruesome autopsy photographs was not harmless.....	6
CONCLUSION .....	8
CERTIFICATE OF COMPLIANCE.....	9
CERTIFICATE OF SERVICE.....	11

## TABLE OF AUTHORITIES

### CASES

<i>Bellon v. State</i> 121 Nev. 436, 117 P.3d 176 (2005).....	4
<i>Bigpond v. State</i> 128 Nev. 108, 270 P.3d 1244 (2012).....	5
<i>Felder v. State</i> 107 Nev. 237, 810 P.2d 755 (1991).....	3, 4
<i>Mulder v. State</i> 116 Nev. 1, 992 P.2d 845 (2000).....	7
<i>Old Chief v. United States</i> 519 U.S. 172 (1997).....	3
<i>Olivares v. State</i> 124 Nev. 1142, 195 P.3d 864 (2008).....	2
<i>Tinch v. State</i> 113 Nev. 1170, 946 P.2d 1061 (1997).....	6

### STATUTES

NRS 48.035.....	3, 4, 5
NRS 48.045.....	3, 4, 5

### NEVADA RULES OF APPELLATE PROCEDURE

Rule 28 .....	9
Rule 32 .....	9

## ARGUMENT IN REPLY

**Mr. Goad's behavior on the fourth day of trial clearly established reasonable doubt regarding his competence to proceed, and the district court abused its discretion in failing to order a competency evaluation.**

In its answering brief, the State contends that because Mr. Goad was able to communicate with his attorneys in writing, he was able to assist counsel, and competent to proceed. RAB 9. This does not fully encompass the concerns raised by defense counsel at trial. Notably, on the fourth morning of trial, while Mr. Goad appeared willing and able to interact with Sheriff's deputies, he refused to acknowledge or communicate with defense counsel at all. 6 JA 818. While Mr. Goad later insinuated, through his actions, that he was having physical trouble speaking, this does not fully explain his complete failure to communicate with counsel. 6 JA 820.

At the end of the day, following the canvass regarding Mr. Goad's right to testify, the court observed that Mr. Goad appeared to be understanding the proceedings, and was responding appropriately (though he still apparently refused to speak aloud) 6 JA 944-45. Defense counsel later informed the district court that it appeared Mr. Goad's

missing medication from the day prior took some time to “activate,” and that by the afternoon, Mr. Goad appeared much more responsive to counsel, and had asked counsel some questions of his own. 6 JA 1039.

A district court must stop proceedings and initiate a formal competency hearing whenever substantial evidence suggests that a defendant may not be competent to stand trial. *Olivares v. State*, 124 Nev. 1142, 1148, 195 P.3d 864, 868 (2008); NRS 178.405. Further, “[o]nce there is such evidence from any source, there is a doubt that cannot be dispelled by conflicting evidence.” *Id.*

Accordingly, the “wait and see” approach taken by the district court in this case was an abuse of discretion. Due process requires that Mr. Goad be afforded the opportunity to participate in each stage of the proceedings against him. Given the actions of the district court in this case, it is unclear whether or not Mr. Goad fully understood and could participate in the proceedings during that fourth morning of trial. The fact that Mr. Goad was much “better” by the afternoon only serves to emphasize that he may not have been competent during the morning’s proceedings. Accordingly, a new trial is required on this basis.

**The district court abused its discretion in admitting evidence related to Mr. Goad's financial situation, including the fact that he was evicted from his apartment.**

*This evidence is appropriately analyzed a prior bad act*

The State first contends that evidence related to Mr. Goad's eviction was not a prior bad act, subject to heightened scrutiny under NRS 48.045, but rather admissible as res gestae evidence pursuant to NRS 48.035(3), or as evidence of motive. The district court's minute court order finding the evidence to be admissible stated that it was not "bad act" evidence, but "supported the State's theory that there was a financial motive for the crime," and also established res gestae pursuant to NRS 48.035. 2 JA 265.

As discussed by the United States Supreme Court, bad act evidence includes that evidence which, while relevant, has the capacity to "lure the factfinder into declaring guilt on a ground different from proof specific to the offense charged." *Old Chief v. United States*, 519 U.S. 172, 180 (1997). Prior decisions of the Nevada Supreme Court do not require that conduct be criminal to constitute a "bad act" for the purposes of NRS 48.045(2). In *Felder v. State*, the court analyzed "questionable financial

behavior,” including evidence related to the fact that a defendant had significant debt and had bounced a check, as prior bad acts. 107 Nev. 237, 240-41, 810 P.2d 755, 757 (1991). Similarly, in *Newman v. State*, the court analyzed an “ugly verbal run in” between staff at a hospital and a defendant as a prior bad act, ultimately finding the altercation to be inadmissible under NRS 48.045(2). 129 Nev. 222, 229-34, 298 P.3d 1171, 1176-80 (2013).

Conversely, NRS 48.035(3) defines evidence related to *res gestae* as “[e]vidence of another act or crime which is so closely related to an act in controversy or a crime charged that an ordinary witness cannot describe the act in controversy or the crime charged without referring to the other act or crime.” NRS 48.035(3) further provides that this evidence “shall not be excluded,” but that a cautionary instruction may be requested and given. The Nevada Supreme Court has consistently reiterated that NRS 48.035(3) must be “construed narrowly,” such that admission of *res gestae* evidence is “limited to the statute’s express provisions.” *Bellon v. State*, 121 Nev. 436, 444, 117 P.3d 176, 181 (2005).

In this case, it was certainly possible for witnesses to describe Mr. Gibson’s murder without referring to the eviction of Mr. Goad. Notably,

with the exception of the Park Manor property manager, the witnesses called to discuss Mr. Gibson and Mr. Goad's respective financial situations did not give testimony related to the alleged murder itself. Further, discussion of Mr. Goad's eviction was not necessary to Park Manor employees' testimony regarding the discovery of Mr. Gibson's body.

To the extent the State sought to admit evidence of Mr. Goad's financial situation as evidence of motive, this evidence should have been analyzed as a prior bad act. Notably, NRS 48.045(2) specifically contemplates that evidence related to motive may also constitute a prior bad act. As in *Felder*, the evidence that Mr. Goad was in an allegedly desperate financial situation and had been evicted tended to portray him in a negative light in front of the jury. Accordingly, this evidence should have been analyzed using the starting presumption of inadmissibility set forth in NRS 48.045(2).

*The evidence had limited relevance, and was more prejudicial than probative*

Prior bad act evidence is admissible "only when the trial court determines that (1) the evidence is relevant to the crime charged, (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.” *Bigpond v. State*, 128 Nev. 108, 116, 270 P.3d 1244, 1249 (2012) (citing *Tinch v. State*, 113 Nev. 1170, 1176, 946 P.2d 1061, 1064-65 (1997)).

As discussed in Mr. Goad’s opening brief, evidence related to Mr. Goad’s eviction had very little relevance, as Mr. Goad expressed no desire to fight his eviction, but rather told Park Manor staff that he intended to go to Sacramento. 2 JA 240. Further, this evidence presented a very high danger of unfair prejudice, as it worked to paint Mr. Goad as a low income person who could not manage his own financial affairs, and was in a desperate enough position to kill his friend for a small amount of money. Given the limited relevance and prejudicial nature of this evidence, the district court abused its discretion in admitting evidence related to Mr. Goad’s financial situation and eviction.

**Error resulting from the admission of evidence related to Mr. Goad’s eviction and other gruesome autopsy photographs was not harmless**

In addition to the error in admitting evidence related to Mr. Goad’s financial situation, for the reasons stated in Mr. Goad’s opening brief, the

district court also erred in admitting several gruesome autopsy photographs over the objection of Mr. Goad. *See* AOB 23-24. In its answering brief, the State contends that any evidentiary errors in this case were harmless. RAB 21-22. Mr. Goad disagrees.

The State argues that the evidence presented against Mr. Goad was overwhelming. Nonetheless, when examining claims of harmless error, the reviewing court must analyze together (1) whether the issue of guilt is close; (2) the quantity and character of error; and (3) the gravity of the crime charged. *Mulder v. State*, 116 Nev. 1, 17, 992 P.2d 845, 855 (2000). In this case, Mr. Goad was charged with first degree murder, the most serious of crimes. The evidentiary errors alleged by Mr. Goad were numerous. Further, while some DNA evidence linked Mr. Gibson and Mr. Goad, the pair were friends, and often spent time together. The primary other evidence linking Mr. Goad to the alleged crime was motion activated surveillance video, and there were several inconsistencies on the video that were extensively discussed by the defense at trial. Under these circumstances, the errors in this trial were not harmless beyond a reasonable doubt, indicating that reversal is required.

///

## CONCLUSION

Based on the foregoing, as well as all arguments raised in his opening brief, Mr. Goad respectfully requests that this court reverse his conviction, and remand this case to the district court for a new trial.

DATED this 8th day of July, 2020.

*/s/ Kathryn Reynolds*

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## **CERTIFICATE OF COMPLIANCE**

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because: This brief has been prepared in a proportionally spaced typeface using Century in 14-point font.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, even including the parts of the brief though exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points and contains a total of 2,202 words. NRAP 32(a) (7) (A) (i), (ii).

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied upon is to be found.

I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 8th day of July 2020.

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## **CERTIFICATE OF SERVICE**

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 8th day of July 2020. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Kevin Naughton, Appellate Deputy  
Washoe County District Attorney's Office

I further certify that I served a copy of this document by providing a copy to:

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/s/ Kathryn Reynolds  
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