

IN THE SUPREME COURT OF THE STATE OF NEVADA

VERNON WESLEY NELSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42872

FILED

JUL 11 2005

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

This is an appeal from a district court judgment of conviction, upon a jury verdict, of burglary while in possession of firearm; 4 counts of battery with intent to commit a crime; open or gross lewdness; attempted sexual assault with use of deadly weapon; first-degree kidnapping with use of deadly weapon; burglary; and 3 counts of sexual assault. Eighth Judicial District Court, Clark County; Nancy M. Saitta, Judge.

Appellant Vernon Wesley Nelson was convicted in connection with two incidents involving attacks on two women in Las Vegas, Nevada. The first incident involved a woman who testified that Nelson forced her into her car in a casino parking lot at knife and gunpoint and attempted to sexually assault her before she escaped. The second incident, eleven days later, involved a woman who testified that she found Nelson standing outside her apartment when she arrived home in the early morning hours. According to the state's evidence, when she opened her door, he forced his way in and raped her. Nelson appeals, arguing that the district court erred in denying his motion to sever, granting the State's motion to exclude the victim's subsequent misdemeanor conviction for prostitution and allowing a CSI photographer to testify as to the cause of one of the victim's injuries.

We conclude that Nelson's contentions lack merit and, therefore, affirm his convictions.

Denial of motion to sever

Nelson argues that the district court abused its discretion by denying his motion to sever and that joinder unfairly prejudiced his case. He asserts that the two incidents differed significantly and did not arise out of a common plan or scheme.

The decision to join or sever charges against a defendant is reviewed for abuse of discretion.¹ "The test is whether joinder is so manifestly prejudicial that it outweighs the dominant concern with judicial economy and compels the exercise of the court's discretion to sever."² Multiple charges may be joined, even when they are based upon separate acts, when those acts form part of a common criminal scheme or plan.³

The record reveals no abuse of discretion by the district court in denying the motion to sever the counts. The court noted that the incidents occurred 11 days apart and within blocks of each other, both victims were unaccompanied females with small builds, the attacker strangled both victims until they lost consciousness, and the details of the sexual assaults were similar. Thus, sufficient facts support a common scheme or plan. The level of similarity between the incidents resembles

¹Tabish v. State, 119 Nev. 293, 302, 72 P.3d 584, 589-90 (2003).

²Honeycutt v. State, 118 Nev. 660, 667, 56 P.3d 362, 367 (2002) (quoting United States v. Brashier, 548 F.2d 1315, 1323 (9th Cir. 1976)).

³NRS 173.115(2); see, e.g., Floyd v. State, 118 Nev. 156, 163-64, 42 P.3d 249, 254-55 (2002).

the level of similarity in Tillema v. State,⁴ Shannon v. State⁵ and State v. Boueri,⁶ all cases in which we held joinder was proper. Nelson failed to show how joinder prejudiced his case. Thus, his argument lacks merit.

Exclusion of victim's prostitution conviction

Nelson argues that the exclusion of the first victim's subsequent misdemeanor prostitution conviction violated his Sixth and Fourteenth Amendment rights by precluding him from presenting his defense that she was a prostitute who took his money and then refused to perform the agreed upon acts.

At Nelson's trial, the jury heard the first victim testify that she works as an escort. The only subject the defense was unable to explore on cross-examination was information regarding the victim's one subsequent misdemeanor conviction for prostitution. Nothing in the record points to an abuse of discretion in excluding the prostitution conviction, and therefore, Nelson's argument lacks merit.

Photographer's testimony

Finally, Nelson asserts that the district court abused its discretion by allowing the CSI photographer, not qualified as an expert, to testify in an expert capacity as to the cause of the injuries. We will not reverse a district court's determination as to whether a witness will testify as an expert or concerning the scope of a witness' testimony absent an abuse of discretion.⁷ The record reveals no abuse of discretion. The victim

⁴112 Nev. 266, 267-68, 914 P.2d 605, 606-607 (1996).


⁵105 Nev. 782, 784, 786, 783 P.2d 942, 944 (1989).


⁶99 Nev. 790, 796, 672 P.2d 33, 37 (1983).

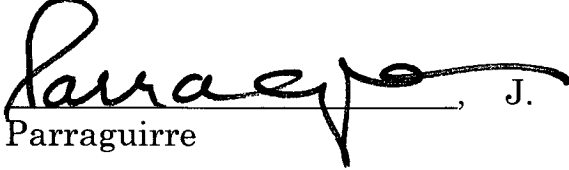
⁷DeChant v. State, 116 Nev. 918, 924, 10 P.3d 108, 112 (2000).

testified that she was stabbed, the photograph depicted some type of wound and the photographer testified that the type of wound he documented had been identified for him many times as characteristic of a stab wound. Moreover, in light of all the evidence, even if the district court abused its discretion in allowing the CSI photographer to testify, the error, if any, is harmless.⁸ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Maupin


_____, J.
Douglas


_____, J.
Parraguirre

cc: Hon. Nancy M. Saitta, District Judge
J. Chip Siegel, Chtd.
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁸See Collman v. State, 116 Nev. 687, 722-23, 7 P.3d 426, 449 (2000).