

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY MARTIN SOUSA, A/K/A
ANTHONY LEE MARTIN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44613

FILED

OCT 03 2005

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of two counts of burglary (counts I and III) and one count of grand larceny (count II). Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Judge. The district court sentenced appellant Anthony Martin Sousa to serve concurrent prison terms of 24-90 months for count I, 12-36 months for count II, and 24-90 months for count III.

First, Sousa contends that the evidence presented at trial was insufficient to support the jury's finding that he was guilty beyond a reasonable doubt on all three counts. The charges stemmed from two separate burglaries committed by Sousa. With regard to the JCPenney incident, Sousa claims that: (1) the State failed to present any evidence demonstrating that he had an intent to steal; (2) he never took the items outside the store; and (3) although there was testimony indicating that the items taken had a value over \$250.00, "the value of the items should have

been calculated by reference to the sale price.”¹ Sousa also claims that the State failed to prove he had any intent to steal from the gift shop at the Treasure Island Hotel & Casino because “[i]t was not until after [he] had several drinks and cocaine that he stole the items in question.” We disagree with Sousa’s contentions.

Our review of the record on appeal reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact.² In particular, we note that on May 27, 2004, JCPenney’s loss prevention officer, William Macias, watching through security cameras, observed Sousa in the young men’s department carrying a black “oversized large duffle bag . . . [and] piling up clothes . . . on one arm.” Sousa moved on to the catalog department and then the men’s suit department where he entered a dressing room. Macias testified that the security cameras followed Sousa, and that his movements were recorded. When Sousa emerged from the dressing room, he approached an unattended cash register and took some JCPenney bags from behind the counter. Sousa then returned to the dressing room, and when he later emerged, he

¹Sousa has not provided this court with any authority or case law in support of this novel contention. Moreover, this court has stated that the price tags attached to stolen merchandise serve as “competent evidence of the value of the stolen goods for purposes of establishing grand larceny.” Calbert v. State, 99 Nev. 759, 759-60, 670 P.2d 576, 576 (1983).

²See Wilkins v. State, 96 Nev. 367, 609 P.2d 309 (1980); see also Mason v. State, 118 Nev. 554, 559, 51 P.3d 521, 524 (2002) (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979)).

was carrying his black duffel bag and a JCPenney bag, both full of merchandise. Macias watched Sousa exit the store without attempting to pay for the items. Macias alerted another JCPenney loss prevention officer, Buddy Kroll, who tried to stop Sousa. Kroll testified that when he identified himself to Sousa, Sousa ran back inside the store. Kroll caught up to Sousa, and there was a struggle. Macias quickly arrived at the scene, handcuffed Sousa, and escorted him to the security office where he called the police. Macias searched Sousa for safety purposes and discovered that he was carrying no identification and had no way of paying for the merchandise. Macias testified that the total value of the merchandise taken by Sousa amounted to \$435.95; the State later conceded that the calculated total, based on Macias' testimony, actually amounted to \$363.96.

At approximately midnight on June 13, 2004, Elda Berones, a security investigator at Treasure Island, observed Sousa enter one of the hotel's gift shops carrying a small, empty, plastic bag. Berones testified at trial that she watched Sousa take a black bag, several shirts, women's clothing, pens, a magazine, and sunglasses off the shelves. Sousa carried all the items into the dressing room, and soon after emerged with his plastic bag full. Sousa gave three of the shirts he had taken to a retail cashier, and without paying for the remaining items, exited the shop. When two security officers approached Sousa outside the shop, he tried to flee but was soon apprehended.

Based on the above, we conclude that the jury could reasonably infer from the evidence presented that Sousa committed the crimes of burglary and grand larceny.³ It is for the jury to determine the weight and credibility to give conflicting testimony, and the jury's verdict will not be disturbed on appeal where, as here, sufficient evidence supports the verdict.⁴ We also note that circumstantial evidence alone may sustain a conviction.⁵ Therefore, we conclude that the State presented sufficient evidence to sustain the conviction.

Second, Sousa contends that the district court erred in granting the State's motion to consolidate the two cases for trial. At the hearing on the motion, the State argued that "judicial economy and the striking similarity between the cases" required consolidating the cases. Without explanation, the district court granted the State's motion. Sousa argues that the two burglaries "were completely unrelated, and do not evidence [sic] any common scheme or plan."⁶

³See NRS 205.060(1); NRS 205.220(1).

⁴See Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981); see also McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

⁵See Buchanan v. State, 119 Nev. 201, 217, 69 P.3d 694, 705 (2003); see also Grant v. State, 117 Nev. 427, 435, 24 P.3d 761, 766 (2001) (holding that "[i]ntent need not be proven by direct evidence but can be inferred from conduct and circumstantial evidence").

⁶NRS 173.115(2) states that multiple offenses may be joined and charged in a single, consolidated information if the offenses are "[b]ased on
continued on next page . . .

We agree with Sousa, but conclude that the district court's error was harmless beyond a reasonable doubt.⁷ The joinder of charges is reversible only if the simultaneous trial of the offenses has a "substantial and injurious effect or influence in determining the jury's verdict."⁸ In reviewing the issue of joinder on appeal, this court will consider the quantity and quality of the evidence supporting the individual convictions.⁹ As noted above, the State presented overwhelming evidence of Sousa's guilt, and therefore, Sousa cannot demonstrate that he was prejudiced or that the jury's verdict was influenced by the consolidation of the two cases for trial.

Finally, Sousa contends that comments made by the district court prejudiced the jury against him. Sousa cites to three exchanges

... continued

two or more acts or transactions connected together or constituting parts of a common scheme or plan."

⁷See NRS 178.598 ("Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.").

⁸Robins v. State, 106 Nev. 611, 619, 798 P.2d 558, 564 (1990) (quoting United States v. Lane, 474 U.S. 438, 450 (1985)).

⁹See, e.g., Brown v. State, 114 Nev. 1118, 1124-25, 967 P.2d 1126, 1130-31 (1998) (overwhelming evidence of guilt, along with other factors, supported joinder); Middleton v. State, 114 Nev. 1089, 1108, 968 P.2d 296, 309 (1998) (no error in joining charges where sufficient evidence supported convictions); Mitchell v. State, 105 Nev. 735, 739, 782 P.2d 1340, 1343 (1989) (joinder did not have substantial and injurious effect where convincing evidence supported each conviction).

between himself and the district court during his direct examination that were allegedly improper. Sousa claims that the district court “could have also used a much more kindly tone . . . so that the jury would not get the impression that the judge thought he was guilty.” We disagree with Sousa’s contention.

The district court is required to “exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence” in order “[t]o make the interrogation and presentation effective for the ascertainment of truth” and “[t]o avoid needless consumption of time.”¹⁰ “While the district court must protect the defendant’s right to a fair trial, ‘[a] trial judge is charged with providing order and decorum in trial proceedings,’ and must also concern itself with the flow of trial and protecting witnesses.”¹¹

In this case, we conclude that the district court did not commit judicial misconduct. The comments directed towards Sousa by the district court “were made in the appropriate interests of controlling the flow of the proceedings, saving time and avoiding confusion.”¹² Moreover, Sousa cannot demonstrate that he was prejudiced by the district court’s efforts.

¹⁰NRS 50.115(1)(a)-(b).

¹¹Rudin v. State, 120 Nev. 121, 140, 86 P.3d 572, 584 (2004) (quoting Parodi v. Washoe Medical Ctr., 111 Nev. 365, 367, 892 P.2d 588, 589 (1995)).

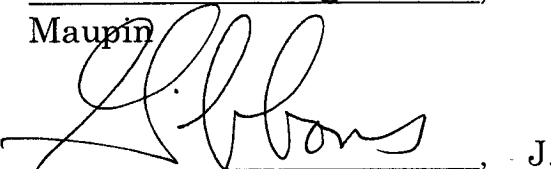
¹²Id. at 140, 86 P.3d at 584-85.

Therefore, having considered Sousa's contentions and concluded that they are without merit,¹³ we

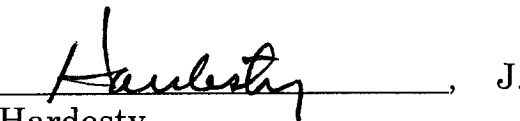
ORDER the judgment of conviction AFFIRMED.¹⁴

 J.

Maupin

 J.

Gibbons

 J.

Hardesty

¹³Because Sousa is represented by counsel in this matter, we decline to grant him permission to file documents in proper person in this court. See NRAP 46(b). Accordingly, the clerk of this court shall return to Sousa unfiled all proper person documents he has submitted to this court in this matter.

¹⁴On May 9, 2005, and June 9, 2005, this court directed court reporter Tom Mercer to file the requested transcript of proceedings conducted in the district court on June 21, 2004. Our review of the record reveals that the rough draft transcript request form filed by counsel for Sousa was in error and that no proceedings in this case were conducted in the district court on that date. Accordingly, we relieve court reporter Tom Mercer of this obligation.

cc: Hon. Joseph T. Bonaventure, District Judge
Amesbury & Schutt
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk
Tom Mercer, Court Reporter
Anthony Martin Sousa