

IN THE SUPREME COURT OF THE STATE OF NEVADA

JESSIE GONZALES MENDOZA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44828

FILED

MAR 16 2006

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of two counts of robbery and one count of conspiracy to commit robbery. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge. The district court sentenced appellant Jessie Gonzales Mendoza to serve a prison term of 24 to 96 months for each count of robbery, and a prison term of 24 to 60 months for conspiracy to commit robbery. The prison terms were imposed to run concurrently. Mendoza presents two issues for our review.

First, Mendoza contends that the district court improperly joined unrelated cases. We agree. The district court may order two or more cases to be tried together if the charged offenses could have been joined in a single indictment or information.¹ Offenses may be joined in a single indictment or information if they are "(1) Based on the same act or transaction; or (2) Based on two or more acts or transactions connected together or constituting parts of a common scheme or plan."² Offenses

¹NRS 174.155.

²NRS 173.115; see also NRS 174.155; Honeycutt v. State, 118 Nev. 660, 667, 56 P.3d 362, 367 (2002) (joinder of charges under NRS 173.115 is
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may also be joined and tried together "if . . . evidence of one charge would be cross-admissible in evidence at a separate trial on another charge."³

The State charged Mendoza with two separate robberies in two separate informations. The first robbery occurred on October 12, 2003, inside a grocery store. Where, acting alone, Mendoza approached the change person in the slots department to cash out his winnings. When the change person opened the cash drawer, Mendoza pushed her out of the way, took the 10- and 20-dollar bills from the drawer, and fled in a car. The second robbery occurred on July 6, 2004, and, unlike the first robbery, it occurred outside and involved several perpetrators -- an unknown perpetrator grabbed the victim's purse and made his getaway in a car driven by Mendoza.

Under these facts, we conclude that the robberies did not constitute the same act or transaction, they were not connected, and they were not part of a common scheme or plan. Moreover, given the distinct nature of each of these offenses, we conclude that the evidence was not cross-admissible.⁴ Nonetheless, we conclude that the misjoinder was harmless because the offenses did not present the jury with close issues of fact, there was sufficient evidence to support the individual convictions, and the district court instructed the jury to consider each charge and the

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proper if the charges are factually connected), overruled on other grounds by *Carter v. State*, 121 Nev. ___, 121 P.3d 592 (2005).

³*Mitchell v. State*, 105 Nev. 735, 738, 782 P.2d 1340, 1342 (1989).

⁴See NRS 48.045(2).

evidence pertaining to the charge separately so as to avoid any spillover effect.⁵

Second, Mendoza contends that the district court improperly instructed the jury. He claims that (a) the trial court failed to give a limiting instruction to the jury regarding criminal propensity and the interpretation of evidence in unrelated cases, (b) the trial court failed to instruct the jury as to which counts the jury could consider different theories of culpability, and (c) the trial court's failure to adequately instruct the jury was compounded by its refusal to permit jury voir dire on the issue of propensity. We conclude that the jury was adequately instructed to as to its consideration of the charges and the evidence,⁶ and that the district court's limitations on jury voir dire were not unreasonable.⁷

⁵Tabish v. State, 119 Nev. 293, 302, 72 P.3d 584, 590 (2003) (Errors arising from misjoinder are subject to harmless error analysis and only warrant reversal if they had a "substantial and injurious effect or influence in determining the jury's verdict.").

⁶Instruction No. 3 provided in pertinent part, "Each charge and the evidence pertaining to it should be considered separately. The fact that you may find a defendant guilty or not guilty as to one of the offenses charged should not control your verdict as to any other Defendant offense charged."

⁷See NRS 175.031; Riggins v. State, 107 Nev. 178, 182, 808 P.2d 535, 538 (1991) ("the scope and manner of voir dire examination is within the sound discretion of the district court and, on review, such discretion is accorded considerable latitude"), reversed on other grounds by Riggins v. Nevada, 504 U.S. 127 (1992).

Having considered Mendoza's contentions and concluded that he is not entitled to relief,⁸ we

ORDER the judgment of conviction AFFIRMED.

Douglas, J.
Douglas

Becker, J.
Becker

Parraguirre, J.
Parraguirre

cc: Hon. Stewart L. Bell, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk
Jessie Gonzales Mendoza

⁸Because Mendoza is represented by counsel in this matter, we decline to grant Mendoza permission to file documents in proper person in this court. See NRAP 46(b). Accordingly, the clerk of this court shall return to Mendoza unfiled all proper person documents he has submitted to this court in this matter.