

IN THE SUPREME COURT OF THE STATE OF NEVADA

DEWAN BLACKBURN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44831

FILED

JAN 19 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 burglary while in possession of a firearm, four counts of first degree kidnapping with the use of a deadly weapon, four counts of robbery with the use of a deadly weapon, one count of first degree kidnapping of a victim 60 years of age or older with the use of a deadly weapon, one count of robbery of a victim 60 years of age or older with the use of a deadly weapon, and three counts of possession of stolen property. Eighth Judicial District Court, Clark County; Lee A. Gates, Judge.

Appellant first contends that the district court erred by refusing to sever the two robbery offenses. As an initial matter, we note that appellant's co-defendant made the motion to sever, and appellant's counsel actually opposed the motion. Appellant will not be heard to complain that the district court denied a motion that appellant opposed.

Moreover, in reviewing the district court's denial of a motion to sever, reversal is warranted only if joinder is manifestly prejudicial and

renders the trial fundamentally unfair.¹ Additionally, the denial of a motion to sever is subject to harmless error analysis.² We conclude that appellant has not demonstrated that the joinder of the charges violated his right to due process. Moreover, in light of the evidence adduced supporting all of the charges, any error in refusing to sever the charges was harmless beyond a reasonable doubt.

Appellant also contends that the evidence presented at trial was insufficient to support the jury's finding of guilt as to the first of the two burglaries. Our review of the record on appeal, however, reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact.³

In particular, we note that appellant matched one of the victims' description of the perpetrator as to height and build, and that two guns stolen in the first burglary were found in the possession of appellant and his two accomplices a few days later.

The jury could reasonably infer from the evidence presented that appellant was one of the perpetrators of the first burglary. 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, substantial evidence supports the verdict.⁴

¹Honeycutt v. State, 118 Nev. 660, 667-68, 56 P.3d 362, 367 (2002).

²Mitchell v. State, 105 Nev. 735, 738, 782 P.2d 1340, 1342-43 (1989).

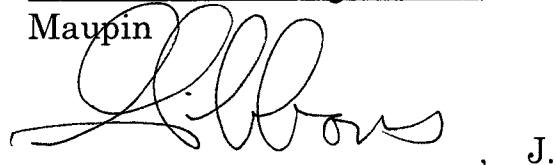
³See Wilkins v. State, 96 Nev. 367, 609 P.2d 309 (1980); see also Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998).

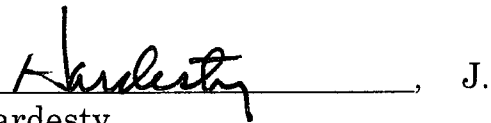
⁴See Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981); see also McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

Having considered appellant's contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.⁵


_____, J.
Maupin


_____, J.
Gibbons


_____, J.
Hardesty

cc: Hon. Lee A. Gates, District Judge
Gensler Earnest
Jonathan E. MacArthur
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk
Dewan Blackburn

⁵Because appellant is represented by counsel in this matter, we decline to grant appellant permission to file documents in proper person in this court. See NRAP 46(b). Accordingly, the clerk of this court shall return to appellant unfiled all proper person documents appellant has submitted to this court in this matter.