

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM JONES BROOKS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44873

FILED

MAR 22 2006

JANEY CAL BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a direct appeal from a judgment of conviction. Eighth Judicial District Court, Clark County; Michael A. Cherry, Judge. Appellant William Brooks sold drugs to an undercover officer, but the police did not arrest him at the time of the transaction. A few months later, a probation officer found drugs in Brooks' home during a routine inspection. A jury convicted Brooks of one count of trafficking in a controlled substance of more than 14 but less than 28 grams, one count of trafficking of more than 28 grams, one count of trafficking of more than 4 but less than 14 grams, and one count of possession of a controlled substance for purposes of sale.

We conclude that the district court (1) did not err in denying Brooks' motion to suppress evidence of drugs found in his home because Brooks consented to the probation officer's search of the residence, (2) did not abuse its discretion by denying his motion to sever counts because the October 2002 trafficking count would have been cross-admissible at trial for the April 2003 counts, and (3) did not abuse its discretion by denying his motion for a mistrial because the State witness's reference to a firearm found in Brooks' car was brief and inadvertent.

Suppression of evidence

We disagree with Brooks' contention that the district court erred when it failed to suppress evidence of drugs found in his home during Probation Officer David Noyes' routine search.¹ The Fourth Amendment to the United States Constitution and Article 1, Section 18 of the Nevada Constitution prohibit all unreasonable searches and seizures. "Warrantless searches 'are per se unreasonable under the Fourth Amendment subject only to a few specifically established and well delineated exceptions.'"²

However, as part of his probation, Brooks agreed to routine searches of his home. "Probation officers have long enjoyed extensive powers to search probationers under their supervision."³ A probationer "[cannot] assert, save in a limited number of circumstances, Fourth Amendment guarantees against correctional authorities who supervise them."⁴ Here, Brooks consented to the search of his home, including his bedroom where Noyes found contraband. We conclude that the district

¹"Suppression issues present mixed questions of law and fact. While this court reviews the legal questions de novo, it reviews the district court's factual determinations for sufficient evidence." Johnson v. State, 118 Nev. 787, 794, 59 P.3d 450, 455 (2002).

²Barrios-Lomeli v. State, 113 Nev. 952, 957, 944 P.2d 791, 793 (1997) (quoting Katz v. United States, 389 U.S. 347, 357 (1967)).

³Seim v. State, 95 Nev. 89, 93-94, 590 P.2d 1152, 1154 (1979).

⁴Id. at 94, 590 P.2d at 1154-55; see also Barrett v. State, 105 Nev. 361, 363-64, 775 P.2d 1276, 1277 (1989) (holding that the district court did not err when it denied defendant's motion to suppress evidence found in an ex-felon's apartment, where the premises were subject to a probation search and the probationer consented to the search).

court did not err when it denied Brooks' motion to suppress evidence found in his home because, pursuant to the terms of his probation, Brooks consented to the search.

Severing counts

Under NRS 173.115, two or more offenses may be charged in the same indictment if they are "[b]ased on the same act or transaction[] or [] [b]ased on two or more acts or transactions connected together or constituting parts of a common scheme or plan." Further, this court has concluded that "[i]f . . . evidence of one charge would be cross-admissible in evidence at a separate trial on another charge, then both charges may be tried together and need not be severed."⁵ Under NRS 48.045(2), evidence of other crimes is admissible if it is offered to prove "motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident."

Brooks argues that the district court denied him a fair trial by allowing prosecution of the October 2002 trafficking count during the same trial as the counts stemming from the April 2003 home inspection. However, we conclude that the district court properly denied Brooks' motion to sever count one from the April 2003 counts because it ruled that evidence from the October 2002 undercover drug sale would be cross-admissible as proof of motive, opportunity or intent.⁶ As a result, there was no reason to conduct a separate proceeding for count one because the

⁵Id. at 738, 782 P.2d at 1342.

⁶We will not interfere with the decisions of the district court regarding motions to sever counts absent an abuse of discretion. Lisle v. State, 113 Nev. 679, 693, 941 P.2d 459, 469 (1997).

evidence would be admissible at trial for the remaining counts. The district court did not err in denying Brooks' motion to sever counts.

Motion for mistrial

We will not disturb the district court's determination to grant or deny a motion for mistrial absent an abuse of discretion.⁷ Brooks contends that a witness's reference during her testimony to a firearm found in Brooks' car unfairly prejudiced the jury and warranted declaration of a mistrial. We disagree.

Here, the witness's remark about the gun found in Brooks' vehicle was inadvertent and brief. The defense did not make an immediate objection but chose to make a motion for mistrial after the witness concluded her testimony. The district court offered to provide a curative instruction to the jury, and the defense reserved its right to request such an instruction. Therefore, the district court did not abuse its discretion by denying the motion for a mistrial.

Accordingly, we

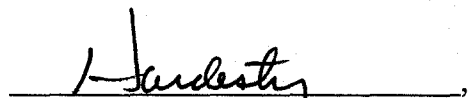
ORDER the judgment of the district court AFFIRMED.

 J.

Maupin

 J.

Gibbons

 J.

Hardesty

⁷Owens v. State, 96 Nev. 880, 883, 620 P.2d 1236, 1238 (1980).

cc: Hon. Michael A. Cherry, District Judge
Attorney General George Chanos/Carson City
Clark County Public Defender Philip J. Kohn
Clark County District Attorney David J. Roger
Clark County Clerk