

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRUCE BOLDEN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44894

FILED

APR 21 2006

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

ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of burglary while in possession of a firearm, one count of robbery of a victim 60 years of age or older with the use of a deadly weapon, two 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, two counts of first-degree kidnapping with the use of a deadly weapon, one count of failure to stop on the signal of a police officer, 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. 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

¹Honeycutt v. State, 118 Nev. 660, 667-68, 56 P.3d 362, 367 (2002), overruled on other grounds by Carter v. State, 121 Nev. ___, 121 P.3d 592 (2005).

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

joinder of the charges violated his right to due process. Moreover, in light of the fact that appellant was acquitted of the charges relating to the first incident, any error in refusing to sever the charges was harmless beyond a reasonable doubt.

Appellant also contends that the jury was improperly instructed as to the elements of kidnapping. Specifically, appellant argues that jury instruction number 11 allowed the jury to find him guilty of kidnapping based on the physical restraint of the victims alone, without a finding of increased risk of harm or independent significance. The district court allowed jury instruction number 11 based on this court's decision Hutchins v. State.³

This court recently clarified the holding in Hutchins in Mendoza v. State.⁴ In Mendoza, this court held

that to sustain convictions for both robbery and kidnapping arising from the same course of conduct, any movement or restraint must stand alone with independent significance from the act of robbery itself, create a risk of danger to the victim substantially exceeding that necessarily present in the crime of robbery or involve movement, seizure or restraint substantially in excess of that necessary to its completion.⁵

We therefore conclude that the jury in this case was improperly instructed as to the kidnapping charges. Moreover, we

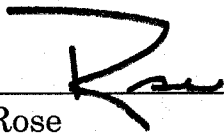
³110 Nev. 103, 108, 867 P.2d 1136, 1139-40 (1994) (holding that physical restraint establishes kidnapping as a separate offense).

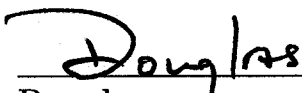
⁴122 Nev. ___, 130 P.3d 176 (2006).

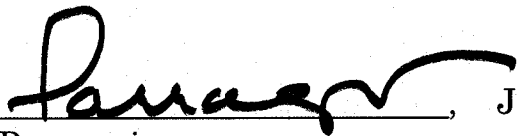
⁵Id. at ___, 130 P.3d at 181.

conclude that such error was not harmless,⁶ and that appellant's convictions for kidnapping must be reversed. Accordingly, we

ORDER the judgment of conviction AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.⁷


_____, C.J.
Rose


_____, J.
Douglas


_____, J.
Parraguirre

cc: Hon. Lee A. Gates, District Judge
Kirk T. Kennedy
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk
Bruce Bolden

⁶See Collman v. State, 116 Nev. 687, 722-23, 7 P.3d 426, 449 (2000).

⁷Because 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.