IN THE SUPREME COURT OF THE STATE OF NEVADA

RAYMOND A. GARRETT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46931

FILED

JUL 10 2006

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, entered pursuant to a jury verdict, of five counts of robbery; two counts of battery causing substantial bodily harm; and one count each of battery with the intent to commit a crime, conspiracy to commit robbery, and possession of a credit or debit card without the cardholder's consent. Eighth Judicial District Court, Clark County; Sally L. Loehrer, Judge. The district court sentenced appellant Raymond A. Garrett to serve various consecutive and concurrent terms of imprisonment totaling 16 to 40 years. Garrett presents four issues for our review.

First, Garrett contends that evidence presented at trial was insufficient to support his convictions. He specifically claims that "[t]he evidence was insufficient to support a finding beyond a reasonable doubt that the [he] committed the crimes of battery and robbery as to Brett Stacy, Manuel Vasquez, and Amy Vasquez, and possession of a credit card without [the] cardholder's consent as to Amy Vasquez." Our review of the record on appeal, however, reveals sufficient evidence to establish Garrett's guilt beyond a reasonable doubt as determined by a rational trier of fact.[1]

[1]See McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

In particular, we note that Brett Stacy testified that he was struck in the face by a man who approached him from behind and asked "What's up." Stacy suffered a broken jaw bone, lost three teeth, and fell to the ground. The man ordered Stacy to hand over his valuables and took Stacy's money and knife. Stacy got a good look at the man's face at the time of the incident and identified Garrett at trial as the man who battered and robbed him.

Manuel and Amy Vasquez each testified that two men approached them from behind and asked for change for $25.00. Manuel responded "no," and the larger of the two men punched him in the face while the smaller man pushed Amy to the ground. As Manuel stumbled, the man ordered him to hand over his money. Amy had given her wallet to Manuel to carry. Manuel gave both wallets to the man. Among other things, Amy's wallet contained her credit card. She did not give anyone permission to have or use her credit card. Manuel identified Garrett in both a photographic line-up and at trial as the man who battered and robbed him and his wife.

The jury also heard testimony that after Manuel and Amy Vasquez were robbed, Amy's credit card was used to purchase gas from a convenience store. And the jury saw a surveillance videotape depicting Garrett and his girlfriend inside a convenience store three minutes after the credit card was used to purchase gas from the pumps located outside the store.

We conclude that a rational juror could reasonably infer from this evidence that Garrett battered and robbed Brett Stacy, Manuel Vasquez, and Amy Vasquez, and that he possessed Amy Vasquez's credit

card without her consent.[2] 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.[3]

Second, Garrett contends that the district court abused its discretion when it denied his motion to sever, causing a spillover effect that unfairly prejudiced him at trial. Garrett claims that the offenses arose from five separate incidents, were spread out over a five-month period, and occurred in different locations. He argues that the State failed to demonstrate that the charged offenses constitute a common scheme or plan. We conclude that the district court did not abuse its discretion.

The joinder of offenses is proper where the activity charged is part of the same transaction, comprises a common scheme or plan, or if the evidence of one charge is cross-admissible as evidence in a separate trial for another charge.[4] The decision to sever offenses is left to the sound discretion of the trial court and will not be reversed on appeal absent an abuse of that discretion.[5] On appeal, errors resulting from misjoinder are subject to a harmless error analysis and will be reversed "only if the error

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[2]See NRS 200.380(1); NRS 200.400(1); NRS 205.690(1).

[3]See Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981); see also McNair, 108 Nev. at 56, 825 P.2d at 573.

[4]NRS 173.115; Tillema v. State, 112 Nev. 266, 268, 914 P.2d 605, 606 (1996).

[5]Robins v. State, 106 Nev. 611, 619, 798 P.2d 558, 563 (1990).

has a 'substantial and injurious effect or influence in determining the jury's verdict.'"[6]

Here, the district court denied Garrett's motion to sever after finding that there was a "tremendous similarity in the events" and concluding that the charged offenses were part of a common plan or scheme. Although the record on appeal does not support a conclusion that the charged offenses were part of a common plan or scheme,[7] it does support the conclusion that evidence of these offenses was cross-admissible to show motive or intent.[8] We note that the district court's instructions for considering evidence alleviated the risk of unfair prejudice, and we conclude that the district court did not abuse its discretion by denying Garrett's motion to sever.[9]

Third, Garrett contends that the district court erred by convicting him of both robbery and battery. He claims that the robbery and battery convictions arise from the same act and are therefore redundant and may violate the Double Jeopardy Clause. However, we

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[6]Id. at 619, 798 P.2d at 564 (quoting Mitchell v. State, 105 Nev. 735, 739, 782 P.2d 1340, 1343 (1989)).

[7]See Richmond v. State, 118 Nev. 924, 933, 59 P.3d 1249, 1255 (2002) (a common plan or scheme requires "'each crime [to] be an integral part of an overarching plan explicitly conceived and executed by the defendant'") (quoting 1 McCormick on Evidence § 190, at 665 (John W. Strong ed., 5th ed. 1999)).

[8]See NRS 48.045(2); Griego v. State, 111 Nev. 444, 449, 893 P.2d 995, 999 (1995), overruled on other grounds by Koerschner v. State, 116 Nev. 1111, 13 P.3d 451 (2000).

[9]See Wyatt v. State, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) (we will affirm the judgment of a district court if it reached the correct result for the wrong reason).

have previously determined that the crimes of battery and robbery do not implicate the Double Jeopardy Clause,[10] and we conclude under the facts of this case that battery and robbery do not constitute redundant convictions.[11] Convictions are redundant if they punish the identical illegal act.[12] Garrett's convictions for robbery and battery punished different illegal acts: "the unlawful taking of personal property"[13] and the "unlawful use of force or violence."[14] Accordingly, we conclude that the district court did not render redundant convictions.

Fourth, Garrett contends that he was denied a fair trial due to prosecutorial misconduct.[15] Garrett claims that during closing argument the prosecutor impermissibly vouched for witnesses and referred to Garrett as a "creature of habit" and a "monster." However, Garrett failed to object to these alleged instances of prosecutorial misconduct. As a

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[10]Zgombic v. State, 106 Nev. 571, 577-78, 798 P.2d 548, 552 (1990), superseded by statute on other grounds as stated in Steese v. State, 114 Nev. 479, 960 P.2d 321 (1998).

[11]See Salazar v. State, 119 Nev. 224, 227, 70 P.3d 749, 751 (2003) (we will reverse redundant convictions that are inconsistent with legislative intent).

[12]State of Nevada v. Dist. Ct., 116 Nev. 127, 136, 994 P.2d 692, 698 (2000).

[13]NRS 200.380(1).

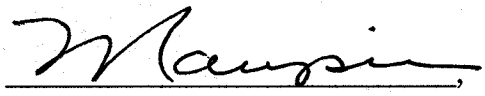
[14]NRS 200.481(1)(a).

[15]Although we elect to review this issue, we note that counsel failed to support her allegations of prosecutorial misconduct with citations to the transcript or appendix where the challenged statements may be found. See NRAP 3C(e)(2). Counsel is cautioned that failure to comply with fast track statement requirements may result in the imposition of sanctions by this court. NRAP 3C(n).

general rule, the failure to object to prosecutorial misconduct precludes appellate review absent plain error.[16] We have considered the prosecutor's comments in context and, while they may have "'exceed[ed] the boundaries of proper prosecutorial conduct,'"[17] we conclude that they do "not rise to the level of improper argument that would justify overturning [Garrett's] conviction."[18]

Having considered Garrett's contentions and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.



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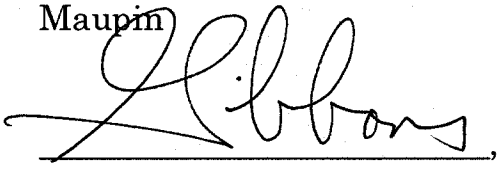
Maupin



_____, J.
Gibbons

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[16]Williams v. State, 103 Nev. 106, 110-11, 734 P.2d 700, 703 (1987).

[17]See Floyd v. State, 118 Nev. 156, 173, 42 P.3d 249, 261 (2002) (quoting Shannon v. State, 105 Nev. 782, 789, 783 P.2d 942, 946 (1989)).

[18]See Greene v. State, 113 Nev. 157, 169-70, 931 P.2d 54, 62 (1997), ("the relevant inquiry is whether the prosecutor's statements so infected the proceedings with unfairness as to make the results a denial of due process"), modified on other grounds by Byford v. State, 116 Nev. 215, 994 P.2d 700 (2000).

cc: Hon. Sally L. Loehrer, District Judge
Steven B. Wolfson, Chtd.
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk