

IN THE SUPREME COURT OF THE STATE OF NEVADA

JONATHON JDIJAH HINTON A/K/A  
JONATHAN HINTON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 48849

**FILED**

NOV 08 2007

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

On January 8, 2007, the district court convicted appellant Jonathon Hinton, pursuant to a jury verdict, of burglary while in possession of a firearm, first-degree kidnapping with the use of a deadly weapon, robbery with the use of a deadly weapon, and attempted murder with the use of a deadly weapon. The district court adjudicated Hinton a habitual criminal for the robbery count, and sentenced him to a term of life in prison without the possibility of parole. The district court imposed various sentences on the remaining counts to run consecutively to one another. This appeal followed.

The sole issue Hinton raises on appeal is whether the district court committed reversible error by refusing to strike the words "and/or sexual assault" from the amended information as one of two theories supporting his charge for kidnapping with the use of a deadly weapon. Hinton argues that this language, coupled with the State's suggestion during closing argument that he had "some ulterior motive" for kidnapping the victim, constituted the improper admission of highly prejudicial and inflammatory prior bad act evidence. We disagree.

Prior to the start of trial, Hinton's counsel moved to strike the "sexual assault" language from the amended information. The district court denied the motion.

Although there was no direct evidence that Hinton attempted to sexually assault the victim, Hinton has failed to demonstrate that he was prejudiced by the "and/or sexual assault" language in the amended information or the State's remark during closing arguments that he had "some ulterior motive" for the attack. Initially, we note that Hinton's suggestion that an information and closing argument can constitute inadmissible prior bad act evidence is misplaced. Charging documents and closing arguments are not evidence.

Here, the evidence showed that Hinton approached the victim, held a knife to her throat, forced her into her own car, attempted to drive away, and stabbed her when she attempted to flee. The evidence supports the inference that Hinton's motive may have involved more than robbery, and the State did not argue that Hinton sexually assaulted the victim. Moreover, we have held that a general verdict will stand on appeal when the State pursues alternative legally valid theories of guilt and insufficient evidence supports one of those theories, so long as sufficient evidence supports the other theory.<sup>1</sup> Assuming it was error for the "sexual assault" language to remain in the amended information to support the kidnapping charge,<sup>2</sup> the jury found Hinton guilty of robbery, and we conclude that overwhelming evidence supports Hinton's kidnapping conviction under a

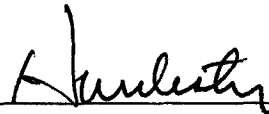
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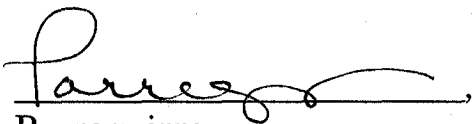
<sup>1</sup>Rhyne v. State, 118 Nev. 1, 10, 38 P.3d 163, 169 (2002).

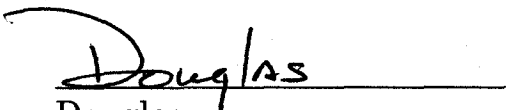
<sup>2</sup>See NRS 200.310 (defining kidnapping).

robbery theory. Hinton has failed to demonstrate that he is entitled to relief on this matter. Accordingly, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, J.  
Douglas

cc: Hon. Michelle Leavitt, District Judge  
Clark County Public Defender Philip J. Kohn  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk