

IN THE SUPREME COURT OF THE STATE OF NEVADA

PATRICK MICHAEL JIMENEZ,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 51131

**FILED**

MAR 27 2009

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY J. Alvarado  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of conspiracy to commit robbery, one count of burglary while in possession of a deadly weapon, four counts of first-degree kidnapping with the use of a deadly weapon, one count of attempted first-degree kidnapping with the use of a deadly weapon, and two counts of robbery with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

In this appeal, Patrick Michael Jimenez argues that the district court abused its discretion in admitting evidence seized from an investigatory stop and that there was insufficient evidence to sustain his convictions for robbery and kidnapping such that the jury should not have been instructed on these charges. We disagree and conclude that the district court did not abuse its discretion in admitting evidence and that there was sufficient evidence to sustain Jimenez's convictions for robbery and kidnapping. The parties are familiar with the facts, and we do not recount them here except as necessary to our disposition.

ABUSE OF DISCRETION

First, Jimenez argues that the district court abused its discretion in admitting certain evidence that should have been

suppressed. Jimenez premises his argument on the contention that the police did not have probable cause to seize him, thus making all evidence that flowed from that seizure illegal.

We review a district court's decision whether to admit evidence for an abuse of discretion. See, e.g., Mclellan v. State, 124 Nev. \_\_\_, \_\_\_, 182 P.3d 106, 108 (2008). A police officer may initiate an investigatory stop if the officer has a reasonable articulable suspicion that an individual "has committed, is committing or is about to commit a crime." NRS 171.123(1) (codifying Terry v. Ohio, 392 U.S. 1 (1968)). In determining whether reasonable suspicion exists, the district court must consider the totality of the circumstances. See United States v. Arvizu, 534 U.S. 266, 273 (2002). The district court's factual findings in a suppression hearing will not be disturbed if supported by substantial evidence. State v. Harnisch, 113 Nev. 214, 219, 931 P.2d 1359, 1363 (1997).

We conclude that the district court did not abuse its discretion because there was substantial evidence to support the district court's ruling that Sgt. Walters articulated reasonable suspicion for stopping Jimenez because Morgenstern's description of his accomplices was specific, Jimenez fit the general description, was arrested less than fifteen minutes from the time of the initial call, and less than one mile from the crime scene. Accordingly, the district court did not abuse its discretion in admitting the contested evidence.

#### SUFFICIENCY OF EVIDENCE

Second, Jimenez argues that the State did not introduce sufficient evidence to sustain the convictions for kidnapping because the kidnappings were merely incidental to the robbery. We disagree.

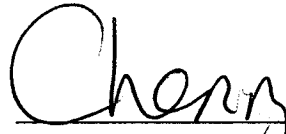
As we established in Stalley v. State, when first-degree kidnapping is charged in connection with another crime, double jeopardy bars a dual conviction for kidnapping and the underlying offense if movement or restraint of the victim is merely incidental to the underlying offense. 91 Nev. 671, 675, 541 P.2d 658, 661 (1975). Recently, in Mendoza v. State, we determined that a defendant may be convicted of kidnapping in addition to an underlying offense only when (1) “the movement or restraint serves to substantially increase the risk of harm to the victim over and above that necessarily present in [the] associated offense,” (2) “the seizure, restraint or movement of the victim substantially exceeds that required to complete the associated crime charged,” or (3) “the movement, seizure or restraint stands alone with independent significance from the underlying charge.” 122 Nev. 267, 273-75, 130 P.3d 176, 180-81 (2006).


In this case, Jimenez continued to keep Kian Mohtadi tied up and held at gunpoint after Mohtadi had opened the safe that Jimenez robbed, indicating restraint substantially exceeding that required for the robbery. Moreover, Jimenez forced Donald Gillum to move by gunpoint when Gillum approached the door before tying him up. Jimenez also left Gillum tied up while he waited for the owner of the house to arrive. We thus conclude that there was sufficient evidence presented regarding robbery and kidnapping because Jimenez’s restraint and movement of the victims by gunpoint served to substantially increase the risk of harm and


substantially exceeded any restraint or movement required to complete robbery.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Saitta

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Valerie Adair, District Judge  
Cristalli & Saggese, Ltd.  
Christopher R. Oram  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk