

IN THE SUPREME COURT OF THE STATE OF NEVADA

DONNY H. MURPHY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51294

FILED

MAY 04 2009
TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of four counts of robbery with the use of a deadly weapon, three counts of conspiracy to commit robbery, and one count of burglary while in possession of a deadly weapon. Eighth Judicial District Court, Clark County; Jennifer Togliatti, Judge. Appellant Donny Murphy was sentenced to various concurrent and consecutive prison terms totaling a minimum of 152 months and a maximum of 840 months.

Murphy was originally charged via three separate criminal informations. The first charged him with committing robbery with the use of a deadly weapon and conspiracy to commit robbery on May 19, 2007, the second charged him with committing robbery with the use of a deadly weapon and conspiracy to commit robbery on May 25, 2007, and the third charged him with committing two counts of robbery with the use of a deadly weapon, conspiracy to commit robbery, and burglary while in possession of a deadly weapon on June 8, 2007. The district court subsequently granted the State's motion to consolidate, and the case proceeded to trial on an amended information containing all eight charges.

Murphy contends that the district court erred by granting the State's motion to consolidate as the charges stemmed from three separate robberies occurring in different locations on different days. Specifically, Murphy asserts that he "suffered from extreme spill over prejudice, the jury was likely confused over the issues, and the evidence in each case would not have been cross admissible in the event the trials were separate." We disagree.

Pursuant to NRS 174.155, a district "court may order two or more indictments or informations. . . to be tried together if the offenses . . . could have been joined in a single indictment or information." Multiple "offenses may be charged in the same indictment or information. . . if the offenses charged . . . are . . . [b]ased on two or more acts or transactions connected together or constituting parts of a common scheme or plan." NRS 173.115(2). Individual crimes are connected together if evidence of each "crime would be admissible in a separate trial regarding the other crime[s]." Weber v. State, 121 Nev. 554, 573, 119 P.3d 107, 120 (2005). Evidence of other crimes is not admissible as character evidence but may be used to show "motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." NRS 48.045(2). In order to be admissible, evidence of other crimes must be relevant, be proven by clear and convincing evidence and have probative value that is not substantially outweighed by the danger of unfair prejudice. Tinch v. State, 113 Nev. 1170, 1176, 946 P.2d 1061, 1064-65 (2004).

This court reviews a district court's decision to join or sever charges for an abuse of discretion. Weber, 121 Nev. at 570, 119 P.3d at 119. In reviewing the issue of joinder on appeal, this court will consider the quantity and quality of the evidence supporting the individual

convictions. See, e.g., Brown v. State, 114 Nev. 1118, 1124-25, 967 P.2d 1126, 1130-31 (1998) (overwhelming evidence of guilt, along with other factors, supported joinder). Moreover, “[e]rror resulting from misjoinder of charges is harmless unless the improperly joined charges had a substantial and injurious effect on the jury’s verdict.” Weber, 121 Nev. at 570-71, 119 P.3d at 119.

We conclude that joinder of the three informations was proper under NRS 173.115(2) because the offenses charged constituted a common scheme or plan; each offense involved a Suzy’s Deals clothing store, was carried out with the same co-conspirator, employed a similar *modus operandi*, and occurred in the same general vicinity within a very short period of time.

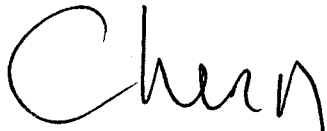
We further conclude that the crimes are connected together under NRS 173.115(2) because the charges in each information would have been admissible at separate trials on the other informations. Evidence of the robberies is relevant to demonstrate Murphy’s plan and to show that the same person committed all three robberies. Further, each of the charges is supported by clear and convincing evidence.¹ Finally, in light of the substantial evidence presented by the State at trial, Murphy has failed to demonstrate that joinder of the charges confused the jury, substantially influenced the jury’s verdict, rendered his trial

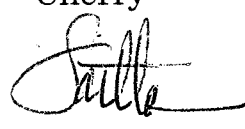
¹Specifically, Murphy confessed to each robbery, at least one eyewitness identified Murphy as the perpetrator of each robbery, and receipts from the stores and the bags which contained the stolen money were found in Murphy’s apartment.


fundamentally unfair, or was manifestly prejudicial.² Therefore, we conclude that the district court did not abuse its discretion in granting the State's motion to consolidate the three cases.³

Having considered Murphy's assertions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

²Murphy alleges that he was prejudiced when the district court granted the State's motion to consolidate shortly before trial. However, the district court specifically offered to grant Murphy whatever continuances he needed in order to prepare for trial. Moreover, trial was in fact continued and did not begin until more than two months after the motion to consolidate was granted. Thus, we conclude no prejudice arose from the timing of consolidation.

³Murphy also contends that the district court erred in failing to consider his opposition to the State's motion to consolidate. While it appears from the record that this contention is correct, we conclude that any error is harmless as the informations were properly joined.

cc: Hon. Jennifer Togliatti, District Judge
Thomas A. Ericsson, Chtd.
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk