

IN THE SUPREME COURT OF THE STATE OF NEVADA

DONALD RAY THOMAS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51873

FILED

FEB 04 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of conspiracy to commit robbery (count I), robbery with the use of a deadly weapon (count II), conspiracy to commit grand larceny auto (count III), and grand larceny auto (IV). Eighth Judicial District Court, Clark County; Jackie Glass, Judge. The district court sentenced appellant Donald Ray Thomas to serve a prison term of 12-36 months for count I, two consecutive prison terms of 48-120 months for count II, 12 months in jail for count III, and a prison term of 22-96 months for count IV. The district court ordered the prison terms for counts I-III to run concurrently and the prison term for count IV to run consecutively.

Thomas contends that the district court erred by denying his pretrial motion to sever counts II and IV of the amended indictment—robbery with the use of a deadly weapon and grand larceny auto. Thomas claims the two counts should have been tried separately because “the facts do not demonstrate a common plan or scheme, the same transaction or that the crimes were connected together” and he was “likely . . . judged not on the merits of each charge, but rather on the fact that both crimes

consisted of the theft of a vehicle involving black males and weapons.” We disagree with Thomas’ contention.

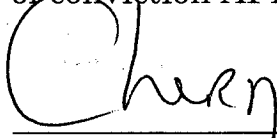
Under NRS 173.115(2), the State may charge two or more offenses in the same information, with a separate count for each offense, if the offenses are “[b]ased on two or more acts or transactions connected together or constituting parts of a common scheme or plan.” This court reviews a district court’s decision to join or sever charges for an abuse of discretion. Weber v. State, 121 Nev. 554, 570, 119 P.3d 107, 119 (2005); Tabish v. State, 119 Nev. 293, 302, 72 P.3d 584, 589-90 (2003). 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; Honeycutt v. State, 118 Nev. 660, 667, 56 P.3d 362, 367 (2002) (“[t]he test is whether joinder is so manifestly prejudicial that it outweighs the dominant concern with judicial economy and compels the exercise of the court’s discretion to sever” (quoting United States v. Brashier, 548 F.2d 1315, 1323 (9th Cir. 1976))), overruled on other grounds by Carter v. State, 121 Nev. 759, 121 P.3d 592 (2005).


In this case, the district court conducted a hearing on Thomas’ motion and found that the two counts were “clearly connected together.” We agree and conclude that joinder was proper under NRS 173.115(2) because the charged offenses constituted a common scheme or plan on Thomas’ part to steal vehicles, with the same coconspirator, in the same

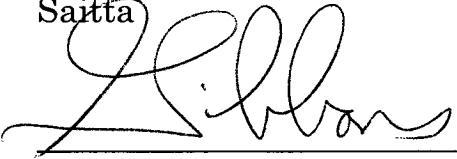
general vicinity, within approximately a one-month period. Additionally, in light of the sufficient evidence presented by the State at trial, Thomas has failed to demonstrate that joinder of the charges substantially influenced the jury's verdict, rendered his trial fundamentally unfair, or was manifestly prejudicial. Therefore, we conclude that the district court did not abuse its discretion in denying Thomas' motion to sever the counts of robbery with the use of a deadly weapon and grand larceny auto.

Having considered Thomas' contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Jackie Glass, District Judge
Christiansen Law Offices
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk