IN THE SUPREME COURT OF THE STATE OF NEVADA

PRINCE P. JOHNSON A/K/A PRINCE DONNELL JOHNSON, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 55060

FILED

NOV 02 2010

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 burglary while in possession of a deadly weapon, two counts of conspiracy to commit robbery, two counts of robbery with use of a deadly weapon, burglary, obtaining money under false pretenses, possession of credit or debit card without cardholder's consent, and possessing personal identifying information of another. Eighth Judicial District Court, Clark County; David B. Barker, Judge.

The district court sentenced appellant Prince Johnson to 24 to 120 months for burglary while in possession of a deadly weapon, 19 to 48 months each for both counts of conspiracy to commit robbery, 48 to 120 months for one count of robbery with use of a deadly weapon and 24 to 120 months for the other, 28 to 72 months for burglary, 19 to 48 months for obtaining money under false pretenses, 13 to 34 months for possession of credit or debit card without cardholder's consent, and 14 to 36 months for possessing personal identifying information of another. Johnson appeals his conviction on two grounds: (1) that the district court's joinder of the charges arising from the robbery of Leticia Munoz with the charges arising from the robbery of Jaime Espinoza Reyes was improper under NRS 173.115(2), and (2) that there was insufficient evidence to support his

conviction. We disagree with Johnson's arguments, and we affirm the judgment of conviction.

Joinder of the charges

Prior to trial, the State moved to consolidate the Munoz charges with the Espinoza charges under NRS 173.115(2). The district court granted the State's motion and consolidated the charges. On appeal, Johnson argues that joinder was improper under NRS 173.115(2) because the Munoz and Espinoza robberies did not form a common scheme or plan as the robberies involved two different victims and occurred six days apart at different locations. Absent an abuse of discretion, this court will not reverse the decision of the district court to join or sever charges. Weber v. State, 121 Nev. 554, 570, 119 P.3d 107, 119 (2005). Joinder is proper when "(1) the acts leading to the charges are part of the same transaction, scheme, or plan or (2) the evidence of each charge would be admissible in the separate trial of the other charge." Zana v. State, 125 Nev. ___, ___, 216 P.3d 244, 249 (2009). However, the district court should order severance if joinder would unfairly prejudice the defendant. Weber, 121 Nev. at 571, 119 P.3d at 119.

Here, the record reflects that the robberies occurred six days apart and that Munoz and Espinoza each were alone when they were approached in parking lots and asked for directions. Once each victim responded, their attackers brandished a handgun and robbed them at gunpoint. We conclude that the similarities between the two robberies demonstrated a common scheme or plan for purposes of NRS 173.115(2). See Middleton v. State, 114 Nev. 1089, 1107, 968 P.2d 296, 308-09 (1998) (holding that joinder of the charges for the murders of two different women was proper because "the acts charged constituted parts of a

common scheme or plan" showing the similarities in how the defendant met and murdered the women and then disposed of their bodies); Tillema v. State, 112 Nev. 266, 267-68, 914 P.2d 605, 606-07 (1996) (holding that joinder of the charges for two vehicle burglaries and a store burglary was proper because "the two vehicle burglaries evidenced a common scheme or plan" since both vehicles were parked in casino parking garages and the burglaries occurred seventeen days apart, and "the store burglary could clearly be viewed . . . as 'connected together' with the second vehicle burglary" (quoting NRS 173.115(2)); Graves v. State, 112 Nev. 118, 128, 912 P.2d 234, 240 (1996) (holding that joinder of acts charged for two burglaries at two different casinos was proper "because the two charged offenses were part of a common scheme or plan and factually connected").

Additionally, the State argues that joinder was proper because evidence of either crime would have been cross-admissible in a separate trial pursuant to NRS 48.045(2). We agree. NRS 48.045(2) provides, in pertinent part, that evidence of other crimes or acts may "be admissible for . . . proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." Evidence is cross-admissible under NRS 48.045(2) when it is "relevant, . . . proven by clear and convincing evidence, and [has] probative value that is not substantially outweighed by the risk of unfair prejudice." Weber, 121 Nev. at 573, 119 P.3d at 120. In this case, the State presented evidence that clearly demonstrated the similar nature of the crimes charged. And, as discussed below, each robbery was sufficiently proven by clear and convincing evidence. Thus, evidence of either robbery would have been cross-admissible under NRS 48.045(2). Therefore, we conclude that the district court did not abuse its discretion by granting the State's motion to

consolidate the charges, and Johnson was not unfairly prejudiced by the joinder.

Sufficiency of the evidence

Johnson argues that there was insufficient evidence to support his conviction. This court will not reverse a jury verdict that is supported by substantial evidence. Moore v. State, 122 Nev. 27, 35, 126 P.3d 508, 513 (2006). Evidence is reviewed "in the light most favorable to the verdict [to] determin[e] whether "'any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" Berry v. State, 125 Nev. ____, ____, 212 P.3d 1085, 1094 (2009) (quoting Mitchell v. State, 124 Nev. 807, 816, 192 P.3d 721, 727 (2008) (quoting Koza v. State, 100 Nev. 245, 250, 681 P.2d 44, 47 (1984))). It is the jury's task to determine the credibility of a witness's testimony. Buchanan v. State, 119 Nev. 201, 217, 69 P.3d 694, 705 (2003). Circumstantial evidence can be sufficient evidence for a criminal conviction. Id.

Here, the State presented evidence demonstrating that (1) on the same day Munoz was robbed, a pawnshop ticket was written for jewelry matching the description of the pieces stolen from Munoz and identifying Johnson as the person who pawned the jewelry; and (2) Munoz positively identified Johnson at trial as the person who had robbed her. Similarly, the State presented evidence demonstrating that (1) Espinoza's credit card and driver's license were found in Johnson's pocket fifteen minutes after Espinoza was robbed; (2) Espinoza's wallet and social security card were found inside a white Chevrolet pickup matching the description Espinoza gave of the vehicle Johnson arrived and departed in; (3) Johnson and the white Chevrolet pickup were discovered within a few blocks of where Espinoza was robbed; (4) although a gun was not found on

Johnson, one was found hidden inside the mini-mart that Johnson exited immediately prior to his arrest; (5) surveillance tapes from inside the mini-mart showed Johnson placing an object inside a display rack where a gun was found hidden; and (6) Espinoza positively identified Johnson as the person who robbed him both at the scene of Johnson's arrest and at trial. Viewing this evidence in the light most favorable to the verdict, we conclude that a rational trier of fact could have found beyond a reasonable doubt that Johnson was guilty on all charges.

Having considered Johnson's contentions and concluded that they do not warrant reversal, we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Hardesty

_____, J.
Douglas

_____, J.
Pickering

cc: Hon. David B. Barker, District Judge
Law Offices of John P. Parris
Clark County District Attorney's Office
Attorney General/Carson City
Eighth District Court Clerk