

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALAN DANIELS,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 35594

FILED

JUN 07 2000

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Bloom*
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of two counts each of burglary while in possession of a firearm and robbery with the use of a deadly weapon. The district court sentenced appellant to four consecutive and two concurrent terms of twenty-four (24) to ninety (90) months.

Appellant's sole contention is that the district court abused its discretion in denying appellant's motion to sever the counts involving Pepe Muldoon's from those involving the Inn Zone. We disagree.

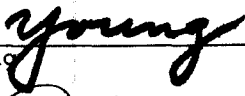
NRS 713.115 provides that two or more offenses may be charged in separate counts in the same information if the offenses are "[b]ased on the same act or transaction," "connected together" or constitute a "common scheme or plan." The decision to permit two or more offenses to be joined in a single charging document is within the sound discretion of the district court and will not be disturbed on appeal absent an abuse of discretion. *Robins v. State*, 106 Nev. 611, 619, 798 P.2d 558, 563 (1990).


We conclude that the district court did not abuse its discretion in denying the motion to sever the charges. Given the closeness of the acts and the similar modus operandi, we conclude that the criterion of a common scheme or plan was sufficiently satisfied in this case. See *Shannon v. State*, 105 Nev. 782, 786, 783 P.2d 942, 944 (1989). Moreover, even if the charges were not part of a common scheme or plan, we further conclude that the charges could be tried together because the

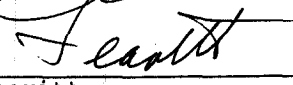
evidence of the Inn Zone robbery would have been admissible at a separate trial on the charges involving Pepe Muldoon's. See Tillema v. State, 112 Nev. 266, 268, 914 P.2d 605, 606 (1996); Griego v. State, 111 Nev. 444, 449, 893 P.2d 995, 999 (1995); Mitchell v. State, 105 Nev. 735, 738, 782 P.2d 1340, 1342 (1989). In particular, we conclude that the district court could have admitted the Inn Zone evidence in a separate trial on the charges involving Pepe Muldoon's to show identity. See NRS 48.045(2); Tinch v. State, 113 Nev. 1170, 946 P.2d 1061 (1997).

Having considered appellant's contention and concluded that it lacks merit, we

ORDER this appeal dismissed.


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

cc: Hon. Joseph T. Bonaventure, District Judge
Attorney General
Clark County District Attorney
Clark County Public Defender
Clark County Clerk