IN THE SUPREME COURT OF THE STATE OF NEVADA

JULIO SMITH PARRA,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 35677

FILED

JUN 12 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count each of possession of a stolen vehicle, possession of a controlled substance, possession of a firearm by an ex-felon, burglary and attempted robbery with the use of a deadly weapon and two counts each of robbery with the use of a deadly weapon and burglary while in possession of a firearm. The district court sentenced appellant to multiple prison terms totaling 104 to 480 months and credited him with 241 days for time served.

Appellant contends that he was denied a fair trial when the district court did not impanel a new jury to hear the count of ex-felon in possession of a firearm, thereby allowing the same jury who had just convicted him on all of the other counts to hear the ex-felon count. Appellant cites Brown v. State, where we stated that "to ensure fairness in those future cases where the State seeks convictions on multiple counts, including a count of possession of a firearm by an ex-felon pursuant to NRS 202.360, we now hold that severance of counts pursuant to NRS 202.360 is required."[1]

We observed in Brown that the State, in proving a violation of NRS 202.360 (ex-felon in possession of a firearm), must introduce evidence of defendant's prior felony

[1]114 Nev. 1118, 1126, 967 P.2d 1126, 1131 (1998).

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convictions as an element of the crime.[2] This evidence of prior felonies exposes the defendant to prejudice on the other counts, not on the count of ex-felon in possession of a firearm.[3] Here, because the count of ex-felon in possession of a firearm was not included in the first phase of the bifurcated trial, appellant suffered no prejudice on any of the counts for which he was tried in that phase of the trial. Only after the jury returned its verdict on the other counts was it informed that the trial would also include a count of ex-felon in possession of a firearm. Therefore, we conclude that the prejudice spoken of in Brown did not arise. Moreover, the district court's bifurcated approach compromised neither judicial economy nor fairness to the defendant -- and thereby did not run afoul of the holding in Brown that fairness to a defendant cannot be compromised in the name of maximizing judicial resources by joinder of all feasible counts into one trial.[4] Accordingly, we affirm.

Appellant also contends that the district court erred in denying his motion to suppress his confession. We disagree.

A freely and voluntarily given confession is admissible.[5] This court looks to the totality of the circumstances in determining whether a confession is freely and voluntarily given, and will uphold the district court's finding of voluntariness unless "clearly untenable."[6] Because

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[2]See id.

[3]See id.

[4]See id.

[5]Chambers v. State, 113 Nev. 974, 981, 944 P.2d 805, 809 (1997) (citations omitted).

[6]Silva v. State, 113 Nev. 1365, 1369, 951 P.2d 591, 593 (1997).

the district court's determination regarding admissibility of a confession is primarily a factual question, that determination will not be disturbed on appeal if supported by substantial evidence.[7] Where the district court's determination is supported by substantial evidence -- "that which a reasonable mind might consider adequate to support a conclusion" -- this court will not substitute its judgment for that of the district court.[8]

Here, the police officer's testimony directly contradicted appellant's version of the incident in virtually every aspect. Based on the record, a reasonable mind might accept the State's evidence as adequate to support the conclusion that appellant was not coerced into confessing. Accordingly, we conclude that appellant's argument lacks merit.

Having considered all of appellant's contentions and concluded that they lack merit, we

ORDER the judgment of the district court AFFIRMED.

Young, J.

Leavitt, J.

Becker, J.

[7]Chambers, 113 Nev. at 981, 944 P.2d at 809.

[8]Steese v. State, 114 Nev. 479, 488, 960 P.2d 321, 327 (1998); see also Echavarria v. State, 108 Nev. 734, 743, 839 P.2d 589, 595 (1992) (stating that the district court is "in a better position than this court to judge the truthfulness of [a defendant's] testimony vis-a-vis the evidence produced by the State").

cc: Hon. Sally L. Loehrer, District Judge
Attorney General
Clark County District Attorney
Clark County Public Defender
Clark County Clerk