

IN THE SUPREME COURT OF THE STATE OF NEVADA

LARRY DEWAYNE BROOKS,

35736

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

MAY 16 2001

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction entered, pursuant to a jury verdict, of one count each of burglary, first-degree kidnapping of a person over the age of sixty-five, robbery of a person over the age of sixty-five, and two counts of sexual assault of a person over the age of sixty-five. The district court sentenced appellant Larry DeWayne Brooks to multiple prison terms, including six consecutive terms of life imprisonment with the possibility of parole.

Brooks first contends that the district court erred in denying his motion to disqualify the district attorney's office because the deputy district attorney assigned to prosecute his case was an alleged victim in another case against Brooks pending at the time of trial. Brooks argues that these circumstances created an appearance of impropriety and that he was denied a fair trial because the prosecutorial function could not be carried out impartially or without any breach of privileged communication.

"The disqualification of a prosecutor's office rests with the sound discretion of the district court. In exercising that discretion, the trial judge should consider all the facts and circumstances and determine whether the prosecutorial function could be carried out impartially and without breach

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of any privileged communication."¹ "[V]icarious disqualification [of the entire district attorney's office] may be warranted in extreme cases where the appearance of unfairness or impropriety is so great that the public trust and confidence in the criminal justice system cannot be maintained without such [disqualification]."²

There is nothing in the record indicating that Brooks was denied a fair trial. The district court in this case was familiar with the facts, the parties, and their counsel, and it found no basis for disqualification. Moreover, the case against Brooks, naming the deputy district attorney as a victim, arose while Brooks was awaiting trial on the charges in this case. If disqualification were required under these circumstances, criminal defendants "bent upon delay or other obstruction, or just wanting to be rid of an effective prosecutor, would have the means to accomplish that objective."³ We will not encourage such tactics. Accordingly, we conclude that the district court did not abuse its discretion by denying Brooks' motion to disqualify the district attorney's office.

Brooks also contends that the evidence adduced at trial was insufficient to support his first-degree kidnapping conviction. Brooks argues that the trial testimony proved only that the movement of the victim was incidental to the burglary, sexual assaults, or robbery and did not increase the risk of harm to her beyond that caused by the other crimes.

¹Collier v. Legakes, 98 Nev. 307, 309, 646 P.2d 1219, 1220 (1982) (citations omitted).

²Id. at 310, 646 P.2d at 1221.

³Millsap v. Superior Court, 82 Cal. Rptr.2d 733, 738 (Cal. Ct. App. 1999).

"[W]hen the sufficiency of the evidence is challenged on appeal in a criminal case, 'the relevant inquiry for this court is "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt."'"⁴ Under NRS 200.310,

[a] person who willfully seizes, confines, inveigles, entices, decoys, abducts, conceals, kidnaps or carries away a person by any means whatsoever with the intent to hold or detain, or who holds or detains, the person for . . . the purpose of committing sexual assault, extortion or robbery upon or from the person . . . is guilty of kidnapping in the first degree which is a category A felony.

However, "where kidnapping is incidental to another crime, the evidence of kidnapping must include an element of asportation, physical restraint, or restraint which either increases the risk of harm to the victim or has an independent purpose and significance."⁵

Our review of the record reveals sufficient evidence from which the jury, acting reasonably and rationally, could have determined that the movement of the victim was not merely incidental to the sexual assault or the robbery. Specifically, the evidence presented at trial showed that Brooks physically restrained the victim after he entered her mobile home and when he took her to the back bedroom, and that the victim suffered injuries as a result of the physical restraint. Additionally, the forcible method Brooks used to

⁴Hutchins v. State, 110 Nev. 103, 107-08, 867 P.2d 1136, 1139 (1994) (quoting Koza v. State, 100 Nev. 245, 250, 681 P.2d 44, 47 (1984) (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979)); see also McNair v. State, 108 Nev. 53, 61, 825 P.2d 571, 577 (1992) (circumstantial evidence alone may support a conviction).

⁵Davis v. State, 110 Nev. 1107, 1114, 881 P.2d 657, 662 (1994); see also Wright v. State, 94 Nev. 415, 417-18, 581 P.2d 442, 443-44 (1978).

relocate the victim to a more secure setting for the assault, coupled with the measures he used to accomplish her restraint, namely, choking her and grabbing her around the neck, created a greater risk of harm to the victim.⁶ Moreover, Brooks' movement of the victim to the back bedroom had the independent purpose and significance of substantially lessening the risk of detection, as did the confinement of her in the office/art studio after the sexual assault and robbery. Accordingly, we conclude that Brooks' conviction of first-degree kidnapping is supported by substantial evidence. And we

ORDER the judgment of the district court AFFIRMED.

Young J.
Young
Leavitt J.
Leavitt
Becker J.
Becker

cc: Hon. Jeffrey D. Sobel, District Judge
Clark County District Attorney
Attorney General
Kajioka, Christiansen & Toti
Clark County Clerk

⁶See Hutchins, 110 Nev. at 108, 867 P.2d at 1140 (holding sufficient evidence existed to support a kidnapping conviction where the victim was physically restrained and forcibly asported to a different part of apartment).