IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAVID LENWARD BROWN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 67560

ORDER OF AFFIRMANCE

This is an appeal from a jury verdict finding appellant guilty of pandering, living from the earnings of a prostitute, conspiracy to commit robbery, attempt robbery, burglary, and bomb threat. Eighth Judicial District Court, Clark County; William D. Kephart, Judge.

As the parties are familiar with the facts, we do not enumerate them here. On appeal, we consider whether the district court abused its discretion[1] by denying appellant David Brown's motion to sever the counts or by allowing expert testimony from a document examiner regarding the handwriting on the robbery demand note. We conclude the district court did not abuse its discretion.

Under NRS 173.115, joinder of charges is appropriate where a proper basis for the joinder exists and the defendant will not suffer unfair prejudice. *Rimer v. State*, 131 Nev. ___, ___, 351 P.3d 697, 707 (2015). Joinder serves "the public's weighty interest in judicial economy" and is

[1]*See Rimer v. State*, 131 Nev. ___, ___, 351 P.3d 697, 708 (2015) (we review a district court's decision regarding joinder of counts for abuse of discretion); *Hallmark v. Eldridge*, 124 Nev. 492, 498, 189 P.3d 646, 650 (2008) (we review a district court's decision to admit expert testimony for abuse of discretion).

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appropriate where two charged crimes are "connected together" in that "'evidence of either crime would be admissible [for a relevant, nonpropensity purpose] in a separate trial regarding the other crime.'" *Id.* at ___, 351 P.3d at 708 (quoting *Weber v. State*, 121 Nev. 554, 573, 119 P.3d 107, 120 (2005)). If joinder is permissible, the defendant bears the burden of showing joinder would nevertheless be unfairly prejudicial. *Id.* at ___, 351 P.3d at 709. Demonstrating that severance would improve the defendant's chances for acquittal is insufficient; rather, the defendant must show that joinder would have "a substantial and injurious effect on the verdict." *Marshall v. State*, 118 Nev. 642, 647, 56 P.3d 376, 379 (2002).

Here, joinder was appropriate. The robbery and pandering crimes were interconnected such that evidence of each would be relevant in a trial regarding the other. The evidence would be admissible under both NRS 48.045(2) to show motive and as res gestae evidence under NRS 48.035. Specifically, Brown's actions in manipulating Thomas into committing prostitution and attempt robbery are relevant to show Brown's motive: to exploit Thomas for financial gain. Further, it would be impossible for Thomas to testify to why she followed Brown's instructions to commit a robbery at the Wynn Hotel and Casino without explaining their relationship and the threats and violence Brown routinely used against her in the context of pandering her. *See Bellon v. State*, 121 Nev. 436, 444, 117 P.3d 176, 181 (2005) (describing res gestae evidence). Further, given the evidence against Brown on each count, joinder did not substantially or injuriously affect the verdict. Accordingly, the district court did not abuse its discretion in denying Brown's motion to sever the charges.

We next consider whether the district court abused its discretion in allowing a document examiner to testify regarding the handwriting on the demand note. NRS 50.275 allows expert testimony where 1) the expert is qualified by specialized knowledge, 2) the knowledge will assist the trier of fact in understanding the evidence or determining a fact in issue, and 3) the testimony is limited to matters within the expert's area of expertise. *Hallmark v. Eldridge*, 124 Nev. 492, 498, 189 P.3d 646, 650 (2008). In considering the first two prongs, the district court may examine a number of factors, including the expert's training or experience, and whether the expert uses reliable methodology or known standards that are generally accepted and are subject to peer review. *Id.* at 499-502, 189 P.3d at 650-52. Nevada courts may consider a wide variety of factors, and are not limited to the standards set forth in *Daubert v. Merrell Down Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). *Higgs v. State*, 125 Nev. 1, 16-17, 222 P.3d 648, 657-58 (2010).

Here, the expert was trained in forensic document examination and had significant experience in that field.[2] The criminalist conducted her analysis pursuant to recognized methodology and utilized a set process for comparing the handwriting samples. Further, her work

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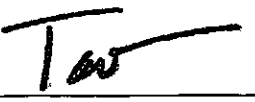
[2]We note NRS 52.045 allows an expert to authenticate a handwritten document, and handwriting experts regularly provide expert testimony in Nevada courts. *See, e.g., Myatt v. State*, 101 Nev. 761, 764, 710 P.2d 720, 722 (1985) (noting the State relied on the testimony of a handwriting expert); *Homewood Inv. Co., Inc. v. Wilt*, 97 Nev. 378, 382, 632 P.2d 1140, 1143 (1981) (noting a handwriting expert testified as to the signature on an agreement); *Barker v. State*, 84 Nev. 224, 226, 438 P.2d 798, 800 (1968) (noting a handwriting expert concluded a hold-up note was written by the defendant).

and conclusions were peer-reviewed. Given these facts, the district court did not abuse its discretion in admitting her testimony. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Gibbons



_____, J.
Tao

_____, J.
Silver

cc: Hon. William D. Kephart, District Judge
Oronoz & Ericsson
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk