IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JAMIL GERONIMO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 80497-COA

ORDER OF AFFIRMANCE

Jamil Geronimo appeals from a judgment of conviction, pursuant to a jury verdict, for murder with the use of a deadly weapon, battery with the use of a deadly weapon, discharging a firearm within or from a vehicle, battery with the use of a deadly weapon, battery with the use of a deadly weapon, assault with a deadly weapon, discharging a firearm within or from a structure, and unlawfully carrying a concealed weapon. Second Judicial District Court, Washoe County; Scott N. Freeman, Judge.

This case arises from two separate shootings during the same morning.[1] Counts 4-8 relate to the first incident (the Loving Cup incident) and counts 1-3 relate to the second incident (the Galena incident).

In the first incident, Geronimo burst through the back door of the Loving Cup, a bar in Reno, and began shooting down a hallway, hitting two people, one in her left heel, and another in her buttocks. Security footage showed Geronimo firing and then fleeing the scene with his two codefendants, Daniel Moore and Tyler Hernandez. Video footage also showed that Moore might have had a verbal confrontation with a man at the bar, which may have prompted Geronimo to fire his gun. The State

[1]We do not recount the facts except as necessary to our disposition.

charged only Geronimo, but not Moore or Hernandez, for the Loving Cup incident.

The Galena incident occurred less than an hour later. After leaving the Loving Cup, Geronimo and his codefendants drove around town and eventually went to a house party where they saw a man, later identified as Paul Dobbins. Moore exited the car with a gun in his hand, pointed it at Dobbins, and then threatened to kill him. Dobbins momentarily left the confrontation to retrieve a rifle. When he returned, Moore fired his gun at Dobbins, ran back to the car, and stood on the threshold of the opened driver-side passenger door and continued firing over the car. Geronimo, who remained in the car, simultaneously fired from the passenger side window.

Dobbins was killed by the gunfire and another man was injured. Ballistics analysis later confirmed that the shell casings found at the Loving Cup and the Galena incidents were from bullets fired from the same weapon.

The State charged Geronimo with: (1) murder with the use of a deadly weapon; (2) battery with the use of a deadly weapon; (3) discharging a firearm within or from a vehicle; (4) battery with the use of a deadly weapon; (5) battery with the use of a deadly weapon; (6) assault with a deadly weapon; (7) discharging a firearm within or from a structure; and (8) unlawfully carrying a concealed weapon. The jury convicted Geronimo of all counts.

Geronimo's appeal focuses on two procedural matters. Prior to trial, Geronimo filed a motion to sever the counts relating to his role in the Loving Cup incident from the counts arising from the Galena incident. In his motion, Geronimo argued that there was no basis for joinder because

the incidents were not part of the same act or transaction, and the incidents were not connected. He also argued that joinder unfairly prejudiced him for three reasons. First, he claimed that because he was the only person charged in counts 4-8, the jury would believe him to be more violent than his codefendants. Second, he argued that the security footage from the Loving Cup incident would mislead the jury into thinking that he was the shooter who killed Dobbins at the Galena incident, despite there being multiple shooters involved in that incident. Third, he argued that he would not be able to testify on his own behalf regarding one incident without also being subjected to cross-examination on the other. He also argued that the other codefendants were unfairly prejudiced because their defense revolved around alleging that Geronimo acted alone at the Loving Cup incident, but the jury would assume they were involved if the jury heard that they were nearby. The district court denied the motion.

Geronimo's arguments before the district court lacked any reference to a self-defense theory. However, Geronimo now avers on appeal that the district court erred when it denied his motion to sever charges because holding a trial on two separate incidents diminished his ability to present a self-defense theory for each incident. Further, he argues that joinder was improper because the two shootings did not share a single scheme or motive, and that the only commonalities tying the two incidents together was that they involved the same weapon on the same date.

This court generally reviews a district court's decision to join or sever charges for an abuse of discretion. *Weber v. State*, 121 Nev. 554, 570, 119 P.3d 107, 119 (2005), *overruled on other grounds by Farmer v. State*, 133 Nev. 693, 405 P.3d 114 (2017). A district court abuses its discretion when its decision is arbitrary or capricious or if it exceeds the bounds of law

or reason. *Jackson v. State*, 117 Nev. 116, 120, 17 P.3d 998, 1000 (2001). "We base our review on the facts as they appeared at the time of the district court's decision." *Rimer v. State*, 131 Nev. 307, 320, 351 P.3d 697, 707 (2015). We first review whether the district court had a proper basis for joinder, and if so, whether unfair prejudice mandated separate trials. *Id.*

NRS 173.115(1) allows the State to charge two or more offenses in the same information when the offenses are "(a) [b]ased on the same act or transaction; or (b) [b]ased on two or more acts or transactions connected together or constituting parts of a common scheme or plan." In the joinder context, separate crimes are "connected together" when "evidence of either crime would be admissible in a separate trial regarding the other crime." *Weber*, 121 Nev. at 573, 119 P.3d at 120. Additionally, "the term 'common plan' describes crimes that are related to one another for the purpose of accomplishing a particular goal. In contrast, [t]he term 'common scheme' describes crimes that share features idiosyncratic in character." *Farmer*, 133 Nev. at 698, 405 P.3d at 120 (alteration in original) (internal quotation marks and citations omitted).

A "common scheme" exists when offenses "share such a concurrence of common features as to support the inference that they were committed pursuant to a common design." *Id.* at 699, 405 P.3d at 121. Factors relevant to this analysis include: "(1) degree of similarity of offenses; (2) degree of similarity of victims; (3) temporal proximity; (4) physical proximity; (5) number of victims; and (6) other context-specific features." *Id.* (internal citations omitted).

As noted, even if the district court has a proper basis for joinder, we must nonetheless examine whether unfair prejudice mandated separate trials. *See Rimer*, 131 Nev. at 320, 351 P.3d at 707; *see also* NRS 174.165(1)

(providing that the district court may grant relief from prejudicial joinder). Such prejudice must be so manifestly prejudicial that it outweighs the dominant concern of judicial economy. *Tabish v. State*, 119 Nev. 293, 304, 72 P.3d 584, 591 (2003). The Nevada Supreme Court has recognized three types of prejudice that would constitute manifest prejudice:

> "(1) the jury may believe that a person charged with a large number of offenses has a criminal disposition, and as a result may cumulate the evidence against him or her or perhaps lessen the presumption of innocence; (2) evidence of guilt on one count may "spillover" to other counts, and lead to a conviction on those other counts even though the spillover evidence would have been inadmissible at a separate trial; and (3) defendant may wish to testify in his or her own defense on one charge but not on another."

Rimer, 131 Nev. at 323, 351 P.3d at 709 (quoting 1A Charles Alan Wright & Andrew D, Leipold, *Federal Practice and Procedure* § 222 (4th ed. 2008)). But to *require* severance, the defendant must prove that joinder rendered the trial fundamentally unfair such that it violated due process. *Id.* at 324, 351 P.3d at 710.

Further, even if charges were improvidently joined, the harmless error doctrine may still apply. *Id.* at 320-21, 351 P.3d at 708. Under the harmless error doctrine, we "reverse only if 'the error had a substantial and injurious effect or influence in determining the jury's verdict.'" *Id.* at 321, 351 P.3d at 708 (quoting *Tabish*, 119 Nev. at 302, 72 P.3d at 590).

Here, the district court did not abuse its discretion when it denied Geronimo's motion to sever because it had proper bases for joinder and joinder was not unfairly prejudicial. Although the district court decided Geronimo's motion orally from the bench and did not enumerate which

joinder ground it relied on, this court upholds the district court's decisions if the court reaches the right result, albeit for the wrong reasons. *See Bellon v. State*, 121 Nev. 436, 443, 117 P.3d 176, 180 (2005). The district court had a proper basis to deny the motion to sever because the two incidents were interrelated by, among other things, identity, motive, intent, and common plan or scheme. Evidence from the Loving Cup incident tended to establish Geronimo's identity as the shooter at the Galena incident, as ballistics evidence indicated the same gun was fired at both scenes and video footage showed Geronimo as the shooter at the Loving Cup. Moreover, the two incidents constituted evidence of motive or intent and a common scheme, as both incidents were temporally and physically near each other, and the incidents suggested that Geronimo was willing to violently assist his codefendant Moore when Moore engaged in an altercation with someone, thus demonstrating why Geronimo fired his weapon in support of Moore in both incidents. *See* NRS 48.045(2) (providing that while evidence of other crimes is not admissible to prove conduct in conformity, "[i]t may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident").

Geronimo also has not demonstrated that joinder was so manifestly prejudicial that, despite having a basis for joinder, the district court was required to sever the incidents into separate trials. Geronimo did not argue below that joinder would prejudice a self-defense theory, and he cannot seek reversal on appeal based on new arguments that he did not first make to the district court. *See Rimer*, 131 Nev. at 332, 351 P.3d at 715 (explaining that arguments are not preserved for review when the defendant either fails to object and state specific grounds for the objection

at trial or asserts arguments on appeal that differ from those presented below). The district court is given discretion to carefully balance the existence of any prejudice against the value obtained by joinder. When Geronimo failed to present this self-defense argument to the district court, he prevented the district court from engaging in this balancing, and therefore cannot now complain on appeal about the district court's decision.

Finally, any error was harmless beyond a reasonable doubt. Overwhelming evidence supported the jury's verdict regarding both incidents, including surveillance video, testimony by multiple eyewitnesses, and ballistics evidence linking his gun to both crimes. Geronimo merely speculates that the jury might have done something different had the charges been different. His claim that the jury may have been less likely to believe his self-defense theory is likewise speculative. Moreover, as the district court instructed the jury, the first aggressor cannot claim self-defense, and there is no genuine dispute that Moore and Geronimo were the first aggressors in the Galena incident. Thus, we conclude that Geronimo's argument lacks merit.

Geronimo also assigns error to two rejected jury instructions. The first, rejected jury instruction C, provided an iteration of the "two reasonable interpretations" instruction:

> If the evidence in this case is susceptible to two constructions or interpretations, each of which appears to you to be reasonable, and one of which points to the guilt of the defendant, and the other his innocence, it is your duty, under the law, to adopt the interpretation which will admit of the defendant's innocence, and reject that which points to his guilt. You will notice that this rule applies only when both of two possible opposing conclusions appear to you to be reasonable. If, on the other hand, one of the possible conclusions should appear

> to you to be reasonable and the other to be unreasonable, it would be your duty to adhere to the reasonable deduction and to reject the unreasonable, bearing in mind, however, that even if the reasonable deduction points to the defendant's guilt, the entire proof must carry the convincing force required by law to support a verdict of guilt.

The second, rejected jury instruction D, read: "If you find that Jamil Geronimo fired in self-defense, you must find him not guilty of murder. Intent to shoot in self-defense shall not be construed as premeditation and/or malice, either express or implied."

We review the district court's broad discretion regarding jury instructions for an abuse of discretion or judicial error. *Brooks v. State*, 124 Nev. 203, 206, 180 P.3d 657, 658-59 (2008). The district court abuses its discretion when its decision is arbitrary or capricious or if it exceeds the bounds of law or reason. *Jackson*, 117 Nev. at 120, 17 P.3d at 1000.

As to rejected jury instruction C, Geronimo acknowledges that the Nevada Supreme Court has repeatedly held that a district court may properly reject a "two reasonable interpretations" jury instruction when the jury is properly instructed on reasonable doubt. *See, e.g., Mason v. State*, 118 Nev. 554, 559, 51 P.3d 521, 524 (2002). Geronimo has not provided a cogent legal argument for why he believes the Nevada Supreme Court wrongly decided these cases, and even if he did, we cannot overturn Nevada Supreme Court jurisprudence. *See Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) ("It is appellant's responsibility to present relevant authority and cogent argument; issues not so presented need not be addressed by this court."); *see also People v. Solorzano*, 63 Cal. Rptr. 3d 659, 664 (Ct. App. 2007), *as modified* (Aug. 15, 2007) ("The Court of Appeal must follow, and has no authority to overrule, the decisions of [the California

Supreme Court]." (alteration in original) (internal quotation marks omitted)).

As to rejected jury instruction D, Geronimo avers that the instruction would have assisted the jury in determining how to balance intent to kill within the context of self-defense. "It is not error for a court to refuse an instruction when the law in that instruction is adequately covered by another instruction given to the jury." *Doleman v. State*, 107 Nev. 409, 416, 812 P.2d 1287, 1292 (1991). Moreover, a defendant is not entitled to instructions that are misleading, inaccurate, or duplicative. *Sanchez-Dominguez v. State*, 130 Nev. 85, 89-90, 318 P.3d 1068, 1072 (2014). The district court adequately covered the law on self-defense in the jury instructions provided, including providing an instruction that required the State to prove beyond a reasonable doubt that Geronimo did not act in self-defense. Thus, the district court did not abuse its discretion when it denied Geronimo's requested jury instruction on self-defense because the jury instruction would have been duplicative and potentially misleading. Accordingly, we conclude that the district court did not abuse its discretion in rejecting the two proposed jury instructions.

Therefore, we

ORDER the judgment of conviction AFFIRMED.

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

cc: Hon. Scott N. Freeman, Chief Judge, Second Judicial District Court
David Kalo Neidert
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk