

IN THE SUPREME COURT OF THE STATE OF NEVADA

JUAN CARLOS TADEO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 37757

FILED

JUN 05 2002

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

ORDER OF AFFIRMANCE

Juan Carlos Tadeo appeals his judgment of conviction for burglary, robbery, first-degree kidnapping, murder and third-degree arson.

First, Tadeo asserts that the district court abused its discretion by giving the jury a conspiracy instruction that was not supported by the evidence. The district court gave the following instruction in regard to conspiracy:

There are in the law three possible theories in which a person may be criminally liable, to-wit: (1) having directly committed the offense; (2) having aided or abetted in its commission or (3) as a member of a conspiracy.

....

Liability as a member of a conspiracy is as follows:

A conspiracy is an agreement between two or more persons to commit any criminal or unlawful act.

Where two or more people join together in a common design to commit any unlawful act, each is criminally responsible for the acts of his confederates committed in furtherance of the common design or where the unlawful act is the probable and natural consequence of the common design. In contemplation of law, the act of one is the act of all.

It is not necessary in proving a conspiracy to show a meeting of the alleged conspirators or the making of an express or formal agreement. The formation and existence of a conspiracy may be inferred from all circumstances tending to show the common intent and may be proved in the same way as any other fact may be proved, either by direct testimony of the fact or by circumstantial evidence, or by both direct and circumstantial evidence.

Tadeo argues that the district court abused its discretion because there was no evidence of any conspiratorial meetings, conversations or even a common intent between Tadeo and his accomplice, Jesus Celestin, to support the existence of a conspiracy.

A district court has broad discretion when settling jury instructions and deciding upon evidentiary issues.¹ A district court abuses its discretion when its "decision is arbitrary or capricious or if it exceeds the bounds of law or reason."² Accordingly, absent an abuse of discretion or judicial error, a district court's decision to give a particular instruction will not be overturned.³

Despite Tadeo's assertions to the contrary, the record is teeming with facts that support the existence of a conspiracy. As indicated by the instruction itself, the existence of a conspiratorial agreement can be inferred from the facts of a case.⁴ Here, Tadeo and Celestin knowingly created and fostered Conrad Sandoval's mistaken

¹Jackson v. State, 117 Nev. 116, 120, 17 P.3d 998, 1000 (2001).

²Id.

³Id.

⁴Thomas v. State, 114 Nev. 1127, 1143, 967 P.2d 1111, 1122 (1998).

belief that Rina Kimenker was Celestin's sister. Tadeo and Celestin verbally agreed to "jump" Sandoval later in the evening, and they both relied upon Kimenker to lure Sandoval to the apartment complex. Once at the apartment complex, Tadeo shot Sandoval with a gun given to him by Celestin. Finally, Tadeo and Celestin fled the scene together with Sandoval's money and proceeded to destroy the evidence of the crime. The above facts provide an adequate evidentiary basis for inferring that Tadeo and Celestin entered into a conspiracy. Therefore, we conclude that the district court did not abuse its discretion by instructing the jury on conspiracy.

Second, Tadeo asserts that the district court erred when it refused to supply the jury with an accessory after the fact instruction, which stated:

Every person who:

(1) harbors, conceals or aids an offender;

(2) after the commission of a felony;

(3) with the intent that the offender may avoid or escape from arrest, trial conviction or punishment; and

(4) that person had knowledge at the time of such harboring, concealing or aiding that the offender had committed a felony or was liable to arrest is an accessory to the felony.


The mere finding that a person is an accessory to a felony is insufficient to support a finding that the person is a principal. A mere accessory to the felony cannot be proceeded against nor punished as the principal.

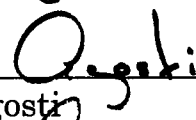
Tadeo argues that he was entitled to the instruction because a defendant in a criminal case is entitled to have the jury instructed on his theory of

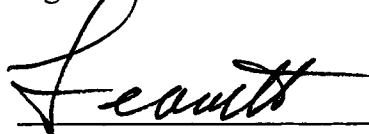
the case, however improbable the evidence supporting that theory may be.⁵

While Tadeo correctly notes that a criminal defendant is entitled to have the jury instructed on his theory of the case, however improbable the evidence supporting that theory may be, Tadeo has failed to point to any facts that support the theory that he was an accessory after the fact.⁶ On the contrary, all the evidence suggests that Tadeo was a primary actor from the beginning until the end.⁷ Therefore, we conclude that the district court did not err when it declined to submit Tadeo's accessory after the fact instruction to the jury. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

⁵See Allen v. State, 97 Nev. 394, 398, 632 P.2d 1153, 1155 (1981); Hooper v. State, 95 Nev. 924, 926, 604 P.2d 115, 116 (1979).

⁶See Allen, 97 Nev. at 397, 632 P.2d at 1155; Hooper, 95 Nev. at 926, 604 P.2d at 116.

⁷For instance, Tadeo set the stage for later events by misleading Sandoval into believing that Kimenker was Celestin's sister. Tadeo agreed at the party to help Celestin "jump" Sandoval later on that evening. Tadeo took the gun from Celestin, ordered Sandoval to exit the car and then shot him. Finally, Tadeo drove the car away from the scene and, eventually, to Lake Mead to be burned.

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