IN THE SUPREME COURT OF THE STATE OF NEVADA

MELVIN JOHNATHAN COLLINS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 86778

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of murder of a victim 60 years of age or older, robbery, obtaining and using the personal identification information of another, 52 counts of fraudulent use of a credit or debit card, and 52 counts of burglary. Eighth Judicial District Court, Clark County; Jacqueline M. Bluth, Judge.

Appellant Melvin Collins' convictions arise from an incident where Collins entered 76-year-old Don Ahern's apartment, killed Ahern by strangulation, and later reentered Ahern's apartment and stole personal property, prescription painkillers, and a debit card. Collins tried to sell the personal property and used the debit card to make numerous purchases. Collins raises seven issues on appeal.

Motion to sever

Collins argues that the district court erred by denying his motion to sever the murder and robbery counts from the other counts because the nature and amount of evidence supporting the burglary and fraudulent use charges created a spillover effect, which caused the jury to improperly infer his guilt for the murder and robbery charges.

NRS 173.115(1)(b) provides that "[t]wo or more offenses may be charged in the same indictment or information . . . if the offenses

charged . . . are . . . [b]ased on two or more acts or transactions connected together or constituting parts of a common scheme or plan." Groups of crimes are connected where "evidence of each group would have been relevant and admissible at separate trials of the other crimes." *Weber v. State*, 121 Nev. 554, 573, 119 P.3d 107, 120 (2005), *overruled on other grounds by Farmer v. State*, 133 Nev. 693, 698, 405 P.3d 114, 120 (2017). A "common plan" exists between crimes where they are committed for the purpose of accomplishing a particular goal. *Farmer*, 133 Nev. at 698, 405 P.3d at 120 (internal quotation marks omitted). Even if not part of a common scheme or plan, crimes can nevertheless be "connected together" when a court determines that "evidence of the offenses would be cross-admissible at separate trials." *Id.* at 697, 405 P.3d at 119 (internal quotation marks omitted). We review the district court's decision for an abuse of discretion, *Tabish v. State*, 119 Nev. 293, 302, 72 P.3d 584, 589-90 (2003), and conclude there was no such abuse here.

The State presented evidence that Ahern's black laptop computer, debit card, and hydrocodone or Lortab pills were missing from his apartment. It also presented evidence that Collins attempted to sell a black laptop and Lortabs the day after Ahern was killed. Further, it presented evidence that 40 minutes after Ahern's apartment was last accessed by key, Collins began using Ahern's debit card, and for 11 days thereafter, Collins used the card over 200 times. The lead detective in the case testified that Ahern's apartment looked ransacked. The evidence showed a nexus between all of the charged crimes: that Collins committed the murder for the common scheme or plan of obtaining access to Ahern's items for financial gain.

Additionally, while evidence of other offenses is inadmissible as character evidence, such evidence may be admissible to prove intent. NRS 48.045(2). Here, the State presented evidence that Collins killed Ahern to gain access to his debit card. Therefore, Collins' subsequent use of the debit card would be admissible in a separate robbery trial to prove motive. It would also be admissible to prove that Collins was the individual that stole Ahern's debit card, which tends to prove Collins' identity as the murderer. Therefore, the counts were properly joined because evidence of each crime was cross-admissible to prove both identity, intent, and motive under NRS 48.045(2). *See Zana v. State*, 125 Nev. 541, 549, 216 P.3d 244, 249 (2009) (concluding that joinder was proper because, had the district court granted the motion to sever the counts, the evidence of each charge would have been admissible in the separate trial of the other charge).

The cross-admissibility also cuts against Collins' argument that the joinder resulted in undue prejudice. *Middleton v. State*, 114 Nev. 1089, 1107, 968 P.2d 296, 309 (1998) (pointing to the cross-admissibility of evidence as indicative of the lack of undue prejudice resulting from joinder). And Collins has not otherwise shown that trying the charges together made the trial fundamentally unfair or that it violated due process rights. *Farmer*, 133 Nev. at 700, 405 P.3d at 121 ("For separate trials to be required, the simultaneous trial of the offenses must render the trial fundamentally unfair, and hence, result in a violation of due process." (alteration and internal quotation marks omitted)); NRS 174.165(1). Although Collins contends that the charges related to the use of Ahern's debit card were supported by stronger evidence than the murder and robbery charges, Collins has not shown that the jury was not able to

distinguish between the evidence produced on each individual count. *See United States v. Tran*, 433 F.3d 472, 478 (6th Cir. 2006) ("A difference in the quantum of evidence as to the two counts 'is not grounds to overturn a denial of severance unless there is a substantial risk that the jury could not compartmentalize or distinguish between the evidence' produced on each count." (quoting *United States v. Williams*, 711 F.2d 748, 751 (6th Cir.1983))). Therefore, we conclude the district court did not abuse its discretion in denying Collins' motion for severance.

Motion to dismiss fraudulent use and burglary counts

Collins contends that the district court abused its discretion in denying his motion to dismiss counts 4 through 107. Collins argues that the State strategically divided an ongoing course of conduct in a manner to enhance for penalty purposes. "We review a district court's decision to grant or deny a motion to dismiss an indictment for an abuse of discretion." *Hill v. State*, 124 Nev. 546, 550, 188 P.3d 51, 54 (2008). We disagree with Collins' contention that the district court abused its discretion. Contrary to Collins' position, *McConnell v State*, 120 Nev. 1043, 102 P.3d 606 (2004), does not stand for the proposition that the State is precluded from charging a defendant for each individual felony they commit merely because the defendant would be subject to a habitual criminal enhancement if convicted.

Collins' argument that the charges do not comport with NRS 205.760 also fails. NRS 205.760(1)(a) provides that "a person who, with the intent to defraud: . . . [u]ses a credit card or debit card to obtain money, goods, property, services or anything of value where the credit card or debit card was obtained or retained in violation of NRS 205.690 to 205.750, inclusive" is guilty of a category D felony. In *Moore v. State*, we clarified

that "use" in NRS 205.760(1)(a) occurs where a credit card is processed and the account is charged. 122 Nev. 27, 34, 126 P.3d 508, 513 (2006). Collins' contention that the State should have charged the multiple transactions where he used Ahern's debit card as a single course of conduct is contrary to the definition of use in *Moore*. Ahern's debit card was processed and charged 256 separate times after his death, constituting 256 uses. Collins' contention that the rule of lenity supports his course of conduct theory ignores this court's application of the rule in *Moore* and its resulting conclusion that use occurs where a debit card is processed and the account is charged.

We also are not persuaded by Collins' argument that the information failed to adequately inform him of the charges against him. The information clearly tied each burglary and fraudulent use count to Collins' entry into a specific establishment on a specific day and his use of Ahern's debit card on each such occasion, such that he was adequately informed of the charges. Nor did this method of charging Collins deprive him of the ability to prepare an adequate defense, as his defense was that the State failed to prove that Ahern did not consent to Collins' use of the card. Therefore, his preparation for this defense would not have changed if the State had identified each individual transaction in the information as it did in the special verdict form. Because each of the transactions Collins made with Ahern's debit card were encompassed by the charged acts of fraudulent use of a debit card, Collins' argument about improper uncharged prior bad act evidence likewise fails. Accordingly, we conclude that the district court did not abuse its discretion in denying Collins' motion to dismiss the fraudulent use and burglary charges.

Sufficiency of the evidence

Evidence supports a criminal conviction if "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt" when the evidence is viewed "in the light most favorable to the prosecution." *Belcher v. State*, 136 Nev. 261, 275, 464 P.3d 1013, 1029 (2020) (emphasis and internal quotations marks omitted). "The jury's verdict will not be disturbed on appeal when there is substantial evidence supporting it." *Brass v. State*, 128 Nev. 748, 754, 291 P.3d 145, 150 (2012). Additionally, circumstantial evidence alone may sustain a conviction. *Buchanan v. State*, 119 Nev. 201, 217, 69 P.3d 694, 705 (2003).

Fraudulent use and burglary

Collins contends that the State presented insufficient evidence that Collins used Ahern's card without Ahern's consent. Testimony, records, and surveillance videos showed that Collins began using Ahern's debit card roughly 40 minutes after Ahern's room was last accessed, and Ahern was already dead in his room at this time. Additionally, the evidence showed that Collins spent over half of Ahern's bank account balance in an 11-day period and did not use the PIN in any of the transactions. Significantly, Ahern's bank account contained only $7,544.23 before Collins began using Ahern's card, Ahern was living in a weekly rental, and this was his only known bank account. Under these facts, where Ahern was already dead and Collins depleted Ahern's account to buy things like cigarettes and beverages, we conclude that any rational trier of fact could have found Collins did not have permission to use Ahern's debit card.

First-degree murder of a victim over 60-years old and robbery

Collins does not identify a particular element of first-degree murder that the State failed to prove, but rather argues the State failed to present direct evidence, such as forensics or eyewitness testimony, to tie him to the crime and the ear-witness was not credible because her story changed over time. To prove murder, the State is required to show "the unlawful killing of a human being . . . [w]ith malice aforethought, either express or implied." NRS 200.010(1). First-degree murder is murder "[p]erpetrated by means of poison, lying in wait or torture, or by any other kind of willful, deliberate and premeditated killing." NRS 200.030(1)(a). Intent "is manifested by the circumstances connected with the perpetration of the offense." NRS 193.200. First-degree felony murder is murder that is committed in the perpetration or attempted perpetration of certain enumerated crimes, including robbery. NRS 200.030(1)(b).

We conclude that the State presented sufficient evidence on which a rational jury could find Collins guilty of first-degree murder under either a felony murder theory or through premeditation and deliberation. The State presented evidence that (1) Ahern's manner of death was homicide and cause of death was strangulation; (2) it takes force to manually strangle a person; (3) Ahern was 76 years old; and (4) Ahern's apartment appeared somewhat ransacked and there was evidence of a struggle, such as the chair being pushed over and the positioning of Ahern's body. On these facts, a rational trier of fact could conclude that Ahern's death resulted from first degree murder. *Leonard v. State*, 117 Nev. 53, 76, 17 P.3d 397, 411 (2001) (concluding that evidence of a ligature strangulation, in which took four minutes for the victim to die, supported an inference of premeditation and deliberation).

As to Collins being the perpetrator, a neighbor, Kassie Smith, testified that Collins acquired some of Ahern's tools before his death and Collins was storing them in her apartment. When she confronted Collins about these tools, he got angry, and removed the tools from her apartment. After Ahern's murder, Smith observed Collins repeating that he should never have returned those tools. Further evidence confirmed that after Ahern's murder, Collins (1) attempted to sell Lortabs and what appeared to be a black laptop, both of which were items taken from Ahern's apartment; and (2) began charging Ahern's debit card only 40 minutes after Ahern's apartment was last accessed by the only guest keycard to his door, which was not found in the room. Additionally, Ahern's next-door neighbor, Doreen Murphy, heard a commotion on the night Ahern died and heard a voice that she later identified as Collins'. While Murphy's testimony changed over the course of the ten years that elapsed before trial, all of her testimony supports that Collins murdered Ahern. On these facts, we conclude that a rational trier of fact could have found that Collins murdered Ahern, either by premeditation and deliberation or during the commission of a robbery where he took Ahern's personal belongings by force.

Ahern's statement to Smith was not hearsay

Collins argues that Smith's testimony that Ahern told her that he was looking for Collins because Ahern believed Collins had stolen Ahern's tools was inadmissible hearsay. The district court overruled Collins' objection to the testimony. This statement is not hearsay because the State did not offer it to prove that Collins actually stole tools from Ahern. NRS 51.035 (defining hearsay as an out of court statement offered to prove the truth of the matter asserted). Instead, this statement was

offered to explain its effect on Smith, namely causing her to confront Collins about the tools. *See Wallach v. State*, 106 Nev. 470, 473, 796 P.2d 224, 227 (1990) (concluding a victim's statement that her assailant tore off her clothes was nonhearsay because it was offered to explain why the detective examined her clothes). Because this statement was offered to explain why Smith confronted Collins and provide context to Collins' later statement that he never should have given the tools back, we conclude that the district court did not abuse its discretion in admitting this statement as an exception to the hearsay rule. *Mclellan v. State*, 124 Nev. 263, 267, 182 P.3d 106, 109 (2008) (reviewing "a district court's decision to admit or exclude evidence for an abuse of discretion").

The district court did not err in giving certain jury instructions

The arguments Collins presents with respect to certain jury instructions have been repeatedly rejected by this court and do not warrant reversal. *Leonard*, 117 Nev. at 79, 17 P.3d at 413 (concluding the implied malice instruction, identical to the one given here, was sufficient); *Byford v. State*, 116 Nev. 215, 236-237, 994 P.2d 700, 714-15 (2000) (approving of the exact premeditation and deliberation instruction given here); *Elvik v. State*, 114 Nev. 883, 898, 965 P.2d 281, 290-91 (1998) (concluding the portion of NRS 175.211 defining reasonable doubt, as quoted in the jury instructions here, does not violate due process); *Leonard v. State*, 114 Nev. 1196, 1209, 969 P.2d 288, 296 (1998) (concluding the "equal and exact" language, as used here, did not deny the defendant the presumption of innocence because a separate instruction informed the jury of that concept and the burden of proof). We decline to reconsider these holdings, *Miller v. Burk*, 124 Nev. 579, 597, 188 P.3d 1112, 1124 (2008) ("[U]nder the doctrine of *stare decisis*,

we will not overturn absent compelling reasons for so doing." (footnote omitted)), and conclude that the district court did not abuse its discretion during the settling of jury instructions, *Crawford v. State*, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005) (reviewing decisions regarding jury instructions for abuse of discretion or judicial error).

Cumulative error

Collins argues that the cumulative effect of errors below violated his due process right to a fair trial and warrants reversal. Because we discern no errors, "there is nothing to cumulate" and Collins' contention is without merit. *Watson v. State*, 130 Nev. 764, 790 n.11, 335 P.3d 157, 175 n.11 (2014). Accordingly, we

ORDER the judgment of conviction AFFIRMED.[1]

Stiglich, J.

Stiglich

Pickering, J.

Pickering

Parraguirre, J.

Parraguirre

[1]Although Collins challenges the admission of evidence showing he lacked a valid driver's license as being unfairly prejudicial, we conclude that an inference of incarceration based on this information is unlikely and, even if such an inference occurred, it would not lead the jury to make their determination based on emotional or sympathetic tendencies. *See Krause Inc. v. Little*, 117 Nev. 929, 935, 34 P.3d 566, 570 (2001) (defining unfair prejudice as an appeal "to the emotional and sympathetic tendencies of a jury, rather than the jury's intellectual ability to evaluate evidence.").

cc: Hon. Jacqueline M. Bluth, District Judge
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