IN THE SUPREME COURT OF THE STATE OF NEVADA

VAL DEWAN STALLWORTH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39169
No. 39168

FILED

MAR 0 5 2004

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury trial, of one count of first-degree murder, two counts of first-degree kidnapping with use of a deadly weapon, two counts of robbery with use of a deadly weapon, one count of kidnapping with substantial bodily harm, and one count of robbery. The district court sentenced Val Dewan Stallworth to serve multiple consecutive and concurrent terms in the Nevada State Prison.

Stallworth's conviction arises from two separate incidents in Las Vegas. One occurred at the Travelodge Motel on May 12, 2000, and involved two victims that resulted in five charges: two counts of first-degree kidnapping with use of a deadly weapon, two counts of robbery with use of a deadly weapon, and one count of burglary while in possession of a firearm. The second incident occurred at the Stratosphere Hotel and Casino on May 29, 2000, and involved one victim, resulting in three charges: murder, first-degree kidnapping with substantial bodily harm, and robbery. Stallworth contends that the offenses arising out of the Travelodge incident were improperly joined with the offenses arising out of the Stratosphere incident. We disagree.

Decisions to sever charges "are within the sound discretion of the trial court and will not be reversed absent an abuse of discretion."[1] We place a "heavy burden" on the appellant to establish that the district court abused its discretion.[2] We review alleged errors by the district court under a harmless error analysis.[3]

NRS 173.115, governing joinder of offenses, provides in pertinent part:

> Two or more offenses may be charged in the same indictment or information in a separate count for each offense if the offenses charged, whether felonies or misdemeanors or both, are:
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> . . .
>
> 2. Based on two or more acts or transactions connected together or constituting parts of a common scheme or plan.

However, even if joinder is permissible under NRS 173.115, it may still be inappropriate if joinder unfairly prejudices the defendant.[4] To establish that joinder was prejudicial "'requires more than a mere showing that severance might have made acquittal more likely.'"[5] Reversal for

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[1]Robins v. State, 106 Nev. 611, 619, 798 P.2d 558, 563 (1990).

[2]Honeycutt v. State, 118 Nev. ___, ___, 56 P.3d 362, 367 (2002).

[3]See Robins, 106 Nev. at 619, 798 P.2d at 563.

[4]NRS 174.165(1) (providing that the court may order separate trials of counts if it appears that joinder is prejudicial); see also Middleton v. State, 114 Nev. 1089, 1107, 968 P.2d 296, 309 (1998).

[5]Floyd v. State, 118 Nev. ___, ___, 42 P.3d 249, 255 (2002) (quoting United States v. Wilson, 715 F.2d 1164, 1171 (7th Cir. 1983)).

misjoinder is required only if the error "has a substantial and injurious effect on the jury's verdict."[6]

In the present case, the district court joined the two incidents for judicial economy because the trials for each of the incidents were ultimately scheduled only two weeks apart. Since Stallworth failed to demonstrate that he was unfairly prejudiced by the joinder and that any prejudice outweighed the concern for judicial economy, we conclude that the district court did not abuse its discretion in joining the two incidents.

Additionally, we conclude that the charges were properly joined because evidence of the Travelodge incident would have been cross-admissible in a separate trial for the Stratosphere incident.[7] Evidence of the Travelodge incident, for example, would have been admissible in a separate trial for the Stratosphere incident to prove Stallworth's motive, opportunity, intent, preparation, or plan, pursuant to NRS 48.045(2). Both incidents were remarkably similar occurrences. They both involved the kidnapping and robbery of hotel guests, including binding them with bed sheets, gagging them, and covering them with blankets. Additionally, the two incidents occurred only fifteen days apart. Thus, we conclude that the district court did not abuse its discretion in joining the charges against Stallworth for the Travelodge incident with the charges for the Stratosphere incident.

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[6]Middleton, 114 Nev. at 1108, 968 P.2d at 309.

[7]Tillema v. State, 112 Nev. 266, 268, 914 P.2d 605, 606 (1996) (quoting Mitchell v. State, 105 Nev. 735, 738, 782 P.2d 1340, 1342) (holding "'if . . . evidence of one charge would be cross-admissible in evidence at a separate trial on another charge, then both charges may be tried together and need not be severed.'").

Stallworth, who is African American, also alleges that the district court erred in overruling his objection, made pursuant to Batson v. Kentucky,[8] and allowing the State to use a peremptory challenge to excuse the sole African American in the panel of potential jurors at Stallworth's trial.

The determination of whether to strike a peremptory challenge as an act of racial discrimination is within the sound discretion of the district court.[9] As such, the district court's determination is accorded great deference and will not be disturbed on appeal absent an abuse of discretion.[10]

The racially discriminatory use of peremptory challenges is unconstitutional.[11] The United States Supreme Court has created a three-step analysis for evaluating race-based objections to peremptory challenges, which we follow.[12] First, the opponent of a peremptory strike must establish a prima facie case of racial discrimination.[13] Second, the burden then shifts to the proponent of the peremptory strike to present a

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[8]476 U.S. 79 (1986).

[9]See Thomas v. State, 114 Nev. 1127, 1137, 967 P.2d 1111, 1118 (1998).

[10]See id.

[11]See Batson, 476 U.S. at 84.

[12]See Purkett v. Elem, 514 U.S. 765, 767-68 (1995); see also, Thomas, 114 Nev. at 1136-37, 967 P.2d at 1118 (following Batson and its progeny in analyzing race-based objections to peremptory challenges).

[13]Thomas, 114 Nev. at 1136, 967 P.2d at 1118.

race-neutral explanation for the strike.[14] "Unless a discriminatory intent is inherent in the prosecutor's explanation, the reason offered will be deemed race-neutral."[15] Third, if the proponent offers a facially neutral explanation, the trial court must determine whether the explanation is merely pretextual and whether the opponent has proved purposeful racial discrimination.[16]

After the State used a peremptory strike to remove the African-American juror, Stallworth asserted a Batson challenge. When the district court asked the State for a race-neutral reason for exercising its peremptory strike, the prosecutor responded that the African-American juror was a social worker and that "social workers are often given to understanding and, therefore, forgiving all." The State also indicated reservations about her attitude toward the death penalty based on her answers in the questionnaire and her answers to the district court. The State expressed concern that she would be unable to give the State a fair hearing as to consideration of the death penalty. After hearing the State's reasons, the district court ruled that there was no Batson violation. We agree. The State provided race-neutral explanations for striking the African-American juror and Stallworth failed to, thereafter, prove that the State's explanation was pretextual. Thus, we conclude that Stallworth has failed to meet the high standard for proving purposeful discrimination in a peremptory challenge, and that the district court did not abuse its discretion in denying Stallworth's Batson challenge.

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[14]Id. at 1136-37, 967 P.2d at 1118.

[15]Purkett, 541 U.S. at 768.

[16] Thomas, 114 Nev. at 1137, 967 P.2d at 1118.

Finally, Stallworth argues that the district court erred in denying his motion for a mistrial after the State elicited prior bad act evidence from him during his testimony.

"[I]t is within the sound discretion of the trial court to determine whether a mistrial is warranted."[17] "'Denial of a motion for mistrial can only be reversed where there is a clear showing of an abuse of discretion.'"[18] Also, the determination of whether to admit evidence is within the sound discretion of the district court, and that determination will not be disturbed on appeal unless manifestly wrong.[19] This court has noted that an improper evidentiary ruling is subject to harmless-error analysis.[20]

NRS 50.095, which permits impeachment by evidence of a conviction of a crime, provides in pertinent part:

> 1. For the purpose of attacking the credibility of a witness, evidence that he has been convicted of a crime is admissible but only if the crime was punishable by death or imprisonment for more than 1 year under the law under which he was convicted.
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> 2. Evidence of a conviction is inadmissible under this section if a period of more than 10 years has elapsed since:

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[17]Geiger v. State, 112 Nev. 938, 942, 920 P.2d 993, 995 (1996).

[18]Cramer v. Peavy, 116 Nev. 575, 580, 3 P.3d 665, 669 (2000) (quoting Mortensen v. State, 115 Nev. 273, 281, 986 P.2d 1105, 1111 (1999)).

[19]Domingues v. State, 112 Nev. 683, 694, 917 P.2d 1364, 1372 (1996).

[20]See Smith v. State, 111 Nev. 499, 506, 894 P.2d 974, 978 (1995).

(a) The date of the release of the witness from confinement; or

(b) The expiration of the period of his parole, probation or sentence, whichever is the later date.

Although a defendant may be impeached with evidence of his prior convictions, "'[t]he details and circumstances of the prior crimes are, of course, not appropriate subjects of inquiry.'"[21] However, this court has stated that the "details of prior felony convictions are admissible where the defendant has sought on direct examination to explain them away or to minimize his guilt."[22]

Here, on direct examination, Stallworth testified as to his prior felony convictions; he explained what they were for and when they occurred. However, when the State asked Stallworth if it was his practice to use bed sheets to bind his victims, Stallworth's response was evasive and false. After mischaracterizing his habit of binding his victims, the State proceeded to impeach Stallworth with the details of his prior felony convictions. We conclude that the district court properly allowed the State to question Stallworth about the details of his prior felony convictions for impeachment purposes, as Stallworth denied binding his prior victims with bed sheets. Accordingly, the district court did not abuse its discretion by refusing to grant Stallworth's motion for a mistrial.

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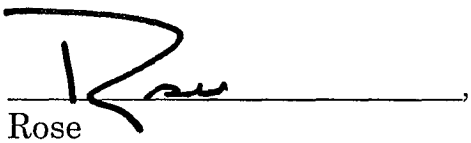
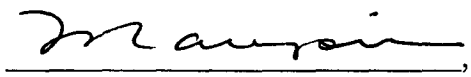
[21]Shults v. State, 96 Nev. 742, 748, 616 P.2d 388, 392 (1980) (quoting Plunkett v. State, 84 Nev. 145, 147, 437 P.2d 92, 93 (1968)).

[22]McCall v. State, 97 Nev. 514, 515, 634 P.2d 1210, 1211 (1981).

Having considered Stallworth's arguments on appeal and having concluded they lack merit, we ORDER the judgment of the district court AFFIRMED.[23]



_____, J.
Rose



_____, J.
Maupin

cc: Hon. Sally L. Loehrer, District Judge
Attorney General Brian Sandoval/Carson City
Clark County Public Defender
Clark County District Attorney David J. Roger
Clark County Clerk

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[23]This matter was submitted for decision by a panel of this court comprised of Justices Rose, Leavitt, and Maupin. Justice Leavitt having died in office on January 9, 2004, this matter was decided by a two-justice panel.