IN THE SUPREME COURT OF THE STATE OF NEVADA

GLENFORD EDWARD ENNIS, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 39228
GLENFORD EDWARD ENNIS, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 39230

FILED

JUN 18 2003

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

ORDER OF AFFIRMANCE

Appellant, Glenford E. Ennis, in these consolidated appeals, challenges judgments of conviction entered following a jury trial for coercion, attempted murder and second-degree murder with use of a deadly weapon.[1] We affirm.

Factual and Procedural Background

This case involves a lengthy history of escalating domestic violence between Ennis and his former girlfriend, Michelle Welch, eventually leading to her death.

On February 18, 2001, Ennis and Ms. Welch engaged in a serious altercation at their home in North Las Vegas. During the fight, in which he inflicted severe injuries upon her, he repeatedly stated that he would kill her. Although he tried to prevent her from leaving, she eventually escaped and ran to a neighbor's house. The neighbor summoned the police and medical assistance. While being treated by

[1]See NRS 177.015(3).

paramedics at the neighbor's residence, Ms. Welch related the incident to Officer Leonard Cardinale of the North Las Vegas Police Department. Officers ultimately placed Ennis under arrest on a charge of domestic violence the following day.

Immediately following the February 18 incident, Ms. Welch obtained a temporary protective order against Ennis and she moved into her family's home on Nairobi Lane in North Las Vegas. She requested police assistance on several occasions because Ennis violated the protective order by either calling her or appearing at her family residence.

On March 30, 2001, Ennis entered the Nairobi residence and killed Ms. Welch with a large butcher knife. Post-mortem evidence included deep wounds to her neck and torso in addition to several defensive wounds. Police eventually captured Ennis in Alabama and returned him to Nevada.

The State charged Ennis with coercion, attempted murder, burglary and murder with use of a deadly weapon in connection with the separate incidents. At the preliminary examination conducted on May 9, 2001, the State relied heavily upon the hearsay testimony of Officer Cardinale to link Ennis to the events on February 18, 2001. Officer Cardinale testified that, when he spoke with Ms. Welch, she was sitting in an ambulance with a paramedic attending to her injuries, that her hands were trembling, and that she seemed frightened or traumatized. He also observed bruises and scratches on Ms. Welch's upper torso, arms, and head.

Officer Cardinale testified that Ms. Welch told him that Ennis argued with her, began punching her and throwing her around one of the rooms, and that Ennis told her that he was going to jail anyway, so he

might as well kill her. According to the officer, Ms. Welch claimed she was crying during the attack, begged Ennis to stop, and when he did so, Ennis said he was not going to jail and he needed to think of a way to kill her.

Officer Cardinale further testified to Ms. Welch's statement that, when she attempted to escape though a window, Ennis grabbed her by the hair and threw her back on the floor, that Ennis said again that he was not going to jail and that she was going to die, and that he then resumed punching her. Officer Cardinale finally described Ms. Welch's account of her escape to a neighbor's house where they called the police.

The justice court found that Officer Cardinale's description of Ms. Welch's physical and emotional state was sufficient to show that she was still under the "stress of excitement" from the events she related to the officer. The judge therefore admitted the hearsay testimony into evidence under the "excited utterance" hearsay exception[2] and admitted Ennis's threats as statements of a party opponent offered against him.[3]

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[2]See NRS 51.095, which states:

> A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition is not inadmissible under the hearsay rule.

[3]See NRS 51.035(3)(a), which states:

> "Hearsay" means a statement offered in evidence to prove the truth of the matter asserted unless:
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> 3. The statement is offered against a party and is:
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> (a) His own statement, in either his individual or representative capacity.

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To establish probable cause in connection with the murder and burglary charges at the preliminary hearing, the State presented a medical examiner's testimony, testimony from police officers regarding their investigation of the crime scene, and testimony from Ms. Welch's grandmother who claimed to have heard Ms. Welch scream to her that Ennis was in the house.

In light of the above, the justice court bound Ennis over for trial in district court. On May 11, 2001, the State filed two informations against Ennis. The first contained two counts related to the events of February 18, 2001: (1) felony coercion and (2) attempted murder. The second information contained two counts relating to the events of March 30, 2001: (1) burglary and (2) murder with use of a deadly weapon.

On June 28, 2001, Ennis filed a pre-trial petition for a writ of habeas corpus, contending that the State failed to establish probable cause at the preliminary hearing in support of the coercion and attempted murder cases. In this, he claimed that the justice of the peace improperly relied upon Officer Cardinale's hearsay testimony, without which there was insufficient proof of his culpability in connection with the events leading to those charges. The district court denied this petition.

The district court joined the two cases and held a Petrocelli[4] hearing on the admissibility of the escalating incidents of domestic

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See also NRS 51.067, which states:

> Hearsay included within hearsay is not excluded under the hearsay rule if each part of the combined statements conforms to an exception to the hearsay rule provided in this chapter.

[4]Petrocelli v. State, 101 Nev. 46, 692 P.2d 503 (1985).

violence between Ennis and Ms. Welch. It ultimately ordered, in limine, that it would admit evidence of Ennis's prior bad acts towards Ms. Welch, as well as her alleged acts of violence against Ennis.[5]

At trial, notwithstanding his claim of self-defense as to all charges, the jury convicted Ennis of coercion with physical force, attempted murder, and second-degree murder with the use of a deadly weapon. The district court imposed the following consecutive sentences: 26 to 72 months for coercion; 96 to 240 months for attempted murder; and consecutive life sentences, with parole eligibility, for second-degree murder with use of a deadly weapon.

On appeal, Ennis contends the State produced insufficient evidence at the preliminary hearing in support of the February 18, 2001 offenses, and that the district court abused its discretion when it joined the cases against him. We conclude that Ennis's arguments lack merit and therefore affirm his convictions.

DISCUSSION

Probable cause

"[T]o establish probable cause to bind a defendant over for trial, the state must show that (1) a crime has been committed and (2) there is probable cause to believe the defendant committed it."[6] Probable cause "'[m]ay be based on "slight," even "marginal" evidence, . . . because it

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[5]On at least three occasions between September 27, 1999, and February 18, 2001, either Ms. Welch or Ennis required police assistance because of the actions of the other.

[6]Sheriff v. Middleton, 112 Nev. 956, 961, 920 P.2d 282, 285 (1996).

does not involve a determination of the guilt or innocence of an accused.'"[7] Additionally, "'[t]o commit an accused for trial, the State is not required to negate all inferences which might explain his conduct, but only to present enough evidence to support a reasonable inference that the accused committed the offense.'"[8]

Ennis argues that, because the State only presented Officer Cardinale's hearsay recitation of Ms. Welch's statements to link him to the February 18 offense, insufficient probable cause existed to bind him over for trial. Ennis contends that the excited utterance hearsay exception under which the district court admitted those statements was inapplicable because Officer Cardinale could not testify as to the exact timeframe between the events Ms. Welch was relating and the time at which she made the statements. Thus, Ennis argues that Ms. Welch was not under the "stress of excitement" when she spoke to Officer Cardinale and so the hearsay exception does not apply. The State asserts that the testimony of Officer Cardinale was admissible and so provided probable cause to bind the defendant over for trial on the alleged February 18 offenses.

We conclude that the justice court properly admitted Officer Cardinale's testimony. The present case is similar to Dearing v. State,[9] in

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[7]Sheriff v. Milton, 109 Nev. 412, 414, 851 P.2d. 417, 418 (1993) (quoting Sheriff v. Hodes, 96 Nev. 184, 186, 606 P.2d 178, 180 (1980)).

[8]Id. (quoting Kinsey v. Sheriff, 87 Nev. 361, 363, 487 P.2d 340, 341 (1971)); see also NRS 171.206 ("If from the evidence it appears to the magistrate that there is probable cause to believe that an offense has been committed and that the defendant has committed it, the magistrate shall forthwith hold him to answer in the district court . . . .").

[9]100 Nev. 590, 592, 691 P.2d 419, 420-21 (1984).

which a police officer interviewed a "nervous and upset" victim approximately an hour-and-a-half after an event.[10] We held in Dearing that the district court properly admitted the police officer's testimony concerning those statements.[11] Unlike the "present sense" hearsay exception,[12] the excited utterance hearsay exception does not set time limit for when a declarant is under the "stress of excitement."

While Officer Cardinale could not precisely testify as to how long after the events he spoke with Ms. Welch, he noticed "her hands were trembling . . . [s]he spoke in a very monotone voice . . . [s]he seemed like she was traumatized, [and] like she was very scared, possibly hurt." Additionally, when the officer conducted the interview, the paramedics had just commenced treatment. Thus, the justice court could properly infer that the paramedics had just arrived on the scene, not long after the events in question, and that she was still under "the stress of excitement caused by the event."

Because the justice court properly admitted Officer Cardinale's testimony, the testimony provided probable cause to believe that (1) criminal offenses occurred and (2) that Ennis committed them. While the State presented limited evidence of Ennis's actions on February 18 at the preliminary hearing, it nevertheless provided sufficient probable cause for Ennis to answer all of the charges in the district court.

Joinder

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[10]Id.

[11]Id.

[12]See NRS 51.085.

NRS 174.155 governs a district court's decision to consolidate separate informations or indictments filed against a defendant into a single trial.[13] These "joinder decisions are within the sound discretion of the trial court and will not be reversed absent an abuse of discretion."[14] Also, "'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.'"[15] "Finally, the standard of review for alleged error concerning joinder of claims falls under the harmless error analysis."[16] Therefore, we will reverse error arising from misjoinder only

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[13]NRS 174.155 states:

> The court may order two or more indictments or informations or both to be tried together if the offenses, and the defendants if there is more than one, could have been joined in a single indictment or information. The procedure shall be the same as if the prosecution were under such single indictment or information.

See also NRS 173.115, which states:

> 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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> 1. Based on the same act or transaction; or
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> 2. Based on two or more acts or transactions connected together or constituting parts of a common scheme or plan.

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

[15]Id. (quoting Mitchell v. State, 105 Nev. 735, 738, 782 P.2d 1340, 1342 (1989)).

[16]Id. at 611, 798 P.2d at 564.

if the error has a ""substantial and injurious effect or influence in determining the jury's verdict."""[17]

Ennis argues that joinder was improper and that he suffered "obvious prejudice." He cites no persuasive authority in his briefs before this court[18] and presents no concrete or specific arguments in support of his claims of prejudice in connection with the joinder of the charges.[19] We therefore conclude that his failure to cite relevant authority in support of this alleged error removes this issue from appellate consideration.[20] Additionally, we find no prejudice in the record from joinder of the cases against Ennis.

We also conclude that the evidence from both sets of charges was cross-admissible to show intent, motive, or a common scheme on the part of Ennis to injure or kill Ms. Welch.[21] Accordingly, the two

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[17]Id. (quoting Mitchell, 105 Nev. at 739, 782 P.2d at 1343 (quoting United States v. Lane, 474 U.S. 438, 450 (1985))).

[18]Ennis does cite to a law review article for the historical basis of the exclusion of evidence of prior crimes or bad acts that dates back to 1695. See Tomas J. Reed, Trial by Propensity: Admission of Other Criminal Acts Evidenced in Federal Criminal Trials, 50 U. Cin. L. Rev. 713, 717 (1981).

[19]Ennis argues that severance was proper because the police did not find his fingerprints on the butcher knife found at Ms. Welch's residence. We find this argument unpersuasive and irrelevant in light of Ennis's trial testimony and his theory of the case that he killed Ms. Welch in self-defense after engaging in mutual combat.

[20]See Lovell v. State, 92 Nev. 128, 132, 546 P.2d 1301, 1303-04 (1976).

[21]See NRS 48.045(2) which states:

> Evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in

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informations could have been initially brought in a single charging document under NRS 173.115(2).[22] Thus, we find no error in the district court's decision to join the cases against Ennis.

Additionally, the district court ameliorated whatever prejudice Ennis claims he incurred from the joinder. It conducted a complete Petrocelli hearing, and gave a limiting instruction at trial concerning the probative value of the various acts of domestic violence. The district court also warned the jury not to consider evidence of Ennis's prior actions for which he was not on trial as proof that he was either a person of bad character, or that he labored under a predisposition to commit the offenses for which he stood trial.

Conclusion

We conclude that the justice court properly found that probable cause existed to bind over Ennis for trial. Additionally, we conclude that the district court properly consolidated the cases against Ennis. Evidence of Ennis's actions of February 18 would have been cross-admissible in a separate trial concerning his actions on March 30, and vice versa. Finally, Ennis has not shown how consolidation prejudiced the trial proceedings below. Accordingly, we

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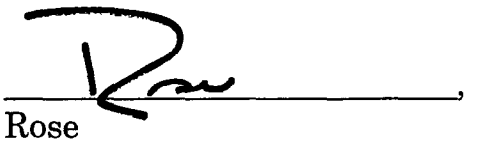
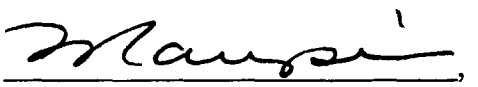
> order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

[22]See Honeycutt v. State, 118 Nev. ___, ___, 56 P.3d 362, 367 (2002) (joinder of charges under NRS 173.115 was proper if charges factually related and cross-admissibility exists between charges).

ORDER the judgments of the district court AFFIRMED.[23]



_____, J.
Rose



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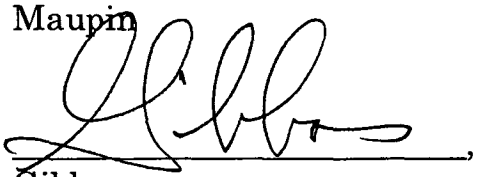

_____, J.
Gibbons

cc: Hon. Nancy M. Saitta, District Judge
Clark County Public Defender
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

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[23]Ennis makes no claim in this appeal that insufficient evidence supports the verdicts entered against him. In this connection, we note his admission that he killed Ms. Welch, but that he did so in self-defense. Our review of the record indicates that sufficient and legally admissible evidence supports these verdicts. Also, because his challenge to the bind-over on the February 18, 2001 offenses, is based upon improper admission of hearsay evidence, we have also chosen to treat this claim as a challenge to the use of that evidence at trial.

Further, Ennis makes no claims of error in connection with the district court's failure to give lesser-included jury instructions. Accordingly, we will not consider this issue in this appeal.