IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT EARL "RED" DYER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40953

FILED

FEB 11 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 verdict, of subornation of perjury (count I), perjury (count II) and attempted bribery of a witness to influence testimony (count III). The district court sentenced appellant Robert Earl Dyer to serve a prison term of 13 to 33 months for count I, a concurrent prison term of 13 to 33 months for count II, and a consecutive prison term of 13 to 33 months for count III.

Dyer contends that the district court erred in denying his motion to dismiss based on improper venue. In particular, Dyer argues that the State did not proffer any evidence that Dyer committed acts constituting the crimes of perjury, subornation of perjury, and attempted bribery of a witness to influence testimony in Nye County. We conclude that Dyer's contention lacks merit.

NRS 171.030 provides that "[w]hen a public offense is committed in part in one county and in part in another or the acts or effects thereof constituting or requisite to the consummation of the offense occur in two or more counties, the venue is in either county." (Emphasis added.) Moreover, where a criminal offense involves conduct affecting an

ongoing judicial proceeding, venue is proper in the county where the judicial proceeding is conducted.[1]

In this case, we conclude that venue was proper in Nye County. The State presented sufficient evidence that Dyer engaged in conduct violating NRS 199.120 and NRS 195.020 in Nye County, including evidence that, while in Nye County, Dyer and his wife encouraged witness Erna Damon to lie under oath at Dyer's preliminary hearing, and evidence that Dyer drove Damon to the preliminary hearing in Nye County where she, in fact, committed perjury by lying under oath. Moreover, we conclude that venue was proper in Nye County because the subornation of perjury, perjury, and attempted bribery of a witness counts involved conduct affecting a judicial proceeding originating in Nye County. Accordingly, the district court did not err in denying Dyer's motion to dismiss.

Dyer also contends that the district court erred in failing to sever the attempted bribery count from the perjury counts. Specifically, Dyer argues that the attempted bribery count should have been severed

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[1]See generally 22 C.J.S. Criminal Law § 186 (1989 & Supp. 2003); United States v. Frederick, 835 F.2d 1211 (7th Cir. 1987) (discussing the majority rule in federal circuit courts -- that venue for the federal offense of obstruction of justice may be brought in the district of the judicial proceeding that the accused sought to obstruct even if the obstructing acts took place in a different district); but see United States v. Swann, 441 F.2d 1053 (D.C. Cir. 1971) (holding that venue for intimidating a witness was only proper in the district where the acts constituting witness intimidation occurred).

because it involved a different potential witness, a different court proceeding, and occurred approximately one year after the events leading up to the perjury. We conclude that Dyer's contention lacks merit.

It appears that Dyer did not move to sever the attempted bribery charge or object to the reading of the charges. Therefore, this issue has not been preserved for appeal.[2] Nonetheless, even assuming Dyer had moved to sever the attempted bribery count, the district court could have properly denied the motion because the perjury and attempted bribery counts were sufficiently connected to constitute a single common scheme; namely, Dyer's plan to procure and present perjured witness testimony affecting his upcoming criminal trial on numerous theft-related charges.[3] Moreover, the perjury and attempted bribery counts were properly joined because the evidence of the perjury would have been cross-admissible in evidence at a separate trial on the attempted bribery to show motive and intent.[4] Accordingly, we conclude that the district court did not err by failing to sever the counts sua sponte.

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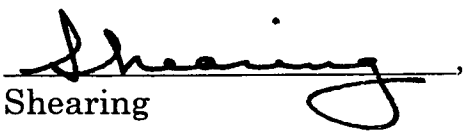
[2]See McCullough v. State, 99 Nev. 72, 74, 657 P.2d 1157, 1158 (1983).

[3]See NRS 173.115(2) (providing that the district court may join two or more charges if the offenses are "[b]ased on two or more acts or transactions connected together or constituting parts of a common scheme or plan").

[4]See Floyd v. State, 118 Nev. 156, 163-64, 42 P.3d 249, 254-55 (2002), cert. denied, 537 U.S. 1196 (2003); Mitchell v. State, 105 Nev. 735, 738, 782 P.2d 1340, 1342 (1989).

Having considered Dyer's contentions and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.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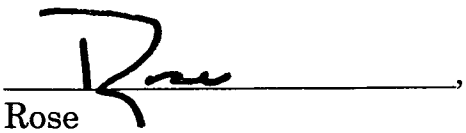
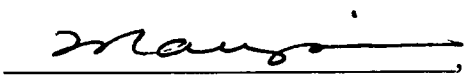

_____, J.
Rose


_____, J.
Maupin

cc: Hon. Robert W. Lane, District Judge
Andrew S. Fritz
Attorney General Brian Sandoval/Carson City
Nye County District Attorney/Tonopah
Nye County Clerk