

IN THE SUPREME COURT OF THE STATE OF NEVADA

STANLEY KONS CHOMER, JEFFREY
ARTHUR HOWCHIN AND BRUCE
KALOSHI,
Appellants,
vs.
THE STATE OF NEVADA,
Respondent.

No. 37469

FILED

OCT 08 2002

ORDER OF AFFIRMANCE

JANETTE W. BLOOM
CLERK OF SUPREME COURT
BY *J. Ruben*
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction of conspiracy to cheat at gambling in violation of NRS 465.083 and NRS 465.088(2). On October 17 and 18, 1998, appellants Stanley Chomer, Jeffrey Howchin and Bruce Kaloshi played high-stakes blackjack at the Silver Legacy Hotel and Casino in Reno. After several hours of uneventful play, appellants won approximately \$122,000 within a one-half hour time frame. The Silver Legacy refused to redeem appellants' gaming tokens, asserting that the appellants had cheated, and referred the matter to the Nevada Gaming Control Board.

Barry Fisher, an agent from the Control Board, undertook an extensive investigation. After viewing surveillance tapes from the Silver Legacy as well as other casinos, Fisher determined that appellants had cheated by bending the corners of certain playing cards, aces. Fisher concluded that, in addition to the incident at the Silver Legacy, appellants had previously cheated in the same manner at other establishments; the

Peppermill in Reno, on August 31, 1997,¹ and at the Sundowner in Reno, on January 9, 1998.

Based upon Fisher's investigation, the Control Board determined that appellants bent the corners of aces and, when "cutting" the deck, would position the ace so that it would be dealt to one of the players. Normally, it would be necessary to bend corners at both ends to ensure detection of the marked card by the player. The Control Board determined that the appellants played only with dealers who always turned and shuffled the cards in the same manner. In this way, the appellants could, by facing the bent corner in a certain direction when returning the ace, ensure that the bent corner would always face the player cutting the cards.

A grand jury returned a ten-count indictment charging the appellants with multiple counts of cheating, burglary and conspiracy. After the district court granted a writ of habeas corpus dismissing two burglary counts in the indictment, the State proceeded on the remaining counts.

At trial, the State presented testimony from numerous casino employees, including the blackjack dealers involved. Most of the dealers simply testified that the appellants played and that the tables were generally crowded.

One Silver Legacy dealer, Sivaporn Hurley, testified that she observed a bent ace during appellants' play. She testified that, upon noticing the bent card, she straightened it. On cross-examination, Hurley

¹Kaloshi did not take part in the Peppermill incident, only Chomer and Howchin.

testified that it is not unusual for cards to become bent during normal play.

Ismael Calvo, a shift manager at the Peppermill, testified that he noticed on approximately two occasions that appellants placed large bets on the first hand after shuffling and received blackjacks. He ordered a change of decks, and noticed a bent ace of spades in the retired deck. He turned the deck over to Peppermill's security, with no action taken. He did, however, watch a surveillance video and noticed that the ace of spades was frequently dealt to one of the appellants on the first hand after a shuffle.

Dennis Chute, a shift boss at the Sundowner Casino, testified to an occasion where appellants were the only players at a table. After the conclusion of play, Chute noticed a bent ace in the deck but took no action.

Jennifer Sitts, a Control Board agent, testified to her search of a suitcase left in Kaloshi's hotel room, and that she found a deck of cards with the nine of clubs "bent like you would dog-ear a page."

The State called William Zender as an expert witness. Zender contrasted the manner in which card counters play to the manner in which cheaters use marked cards. The appellants' manner of play was similar to Zender's description of cheaters.

The State's case depended largely on the testimony of agent Fisher. Fisher explained how he conducted investigations, and that he would arrange for an arrest if he believed he had identified an act constituting cheating. Appellants' counsel objected that Fisher was effectively testifying that he believed the appellants were guilty. The district court overruled this objection.

Fisher prepared numerous charts describing portions of the appellants' play, which the district court admitted as summaries of voluminous evidence. A critical column in Fisher's charts was titled "Did player position ace?" By "position," Fisher was attempting to make some reference to turning the card so that it would face the player when the cards were next cut. Yet, it became evident during Fisher's testimony that he did not have a specific definition of the term and did not utilize a consistent standard in determining whether the appellants "positioned" a card.

The charts also contained columns titled "Amounts Bet (Estimates)," or other words to that effect. Because it was difficult to determine the amounts bet from the tapes, Fisher estimated the bets to within one or two chips. On cross-examination, Fisher admitted that many of his estimates exceeded the table limit by as much as \$1,000. The appellants often played with \$500 chips at tables with game limits of \$3,000.

In addition to discussing the charts, Fisher also testified concerning the condition of the playing cards from the appellants' game at the Silver Legacy. The district court excluded the cards as evidence, because the State could not establish a chain of custody. Specifically, once the shift bosses took the cards to the security station, the cards were spread out on a table where various unidentified people handled them over the next two days. The State conceded that many unknown people handled the cards before Fisher received them.

The defense presented no evidence. The jury found appellants guilty of one count of conspiracy to cheat at gambling and acquitted them on the remaining counts. Appellants appeal.

We conclude that substantial evidence supports affirming the conviction of appellants.

Summary of voluminous evidence

The district court admitted several charts prepared by Fisher, which described the surveillance tapes, as summaries of voluminous evidence.

The district court has considerable discretion in admitting or excluding evidence.² NRS 52.275 provides:

1. The contents of voluminous writings, recordings or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary or calculation.

2. The originals shall be made available for examination or copying, or both, by other parties at a reasonable time and place. The judge may order that the originals be produced in court.

While NRS 52.275 allows admission of summaries of voluminous writings, recordings or photographs, it does not define or restrict the term “summary.” Yet, extensive authority exists interpreting Rule 1006 of the Federal Rules of Evidence, on which NRS 52.275 is based. It is widely recognized that an F.R.E. 1006 summary must accurately reflect the contents of the original voluminous evidence without including extraneous

²See Matter of Parental Rights as to N.J., 116 Nev. 790, 804, 8 P.3d 126, 135 (2000); Collins v. Murphy, 113 Nev. 1380, 1383, 951 P.2d 598, 600 (1997).

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