

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVEN VALDEZ A/K/A STEVEN D.
BALDEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46636

FILED

DEC 11 2006

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, entered pursuant to a jury verdict, of two counts of conspiracy to commit robbery, two counts of robbery with the use of a deadly weapon, and one count of attempted robbery with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Judge. The district court sentenced appellant Steven Valdez to various concurrent and consecutive terms of imprisonment, amounting to 8 to 20 years.

First, Valdez contends that the district court erred by denying his motion for a continuance to locate two alibi witnesses. "The decision to grant or deny trial continuances is within the sound discretion of the district court and will not be disturbed absent a clear abuse of discretion."¹ A district court's decision to deny a motion for "a reasonable continuance

¹Wesley v. State, 112 Nev. 503, 511, 916 P.2d 793, 799 (1996).

may be an abuse of discretion 'where the purpose of the motion is to procure important witnesses and the delay is not the particular fault of counsel or the parties.'"² To determine whether an abuse of discretion occurred, this court weighs the prejudice to the defendant if the continuance is denied against the prejudice to the district court and the administration of justice if the continuance is granted.³

The record before us reveals that any prejudice that Valdez may have sustained from the district court's denial of his motion for a continuance was minimal. Valdez failed to demonstrate that the unlocated alibi witnesses could be found within a reasonable period of time and that their expected testimony would be material to his defense. If a continuance had been granted, the prejudice to the district court and the administration of justice would have been significant. Valdez's trial had already been continued twice — a total delay of more than six months — so that he could file motions and further investigate his case. We conclude that the district court's decision to deny Valdez's third motion for a continuance was neither unreasonable nor an abuse of discretion.

Second, Valdez contends that the district court erred by failing to suppress the in-court identification, which was irreversibly tainted by

²Mulder v. State, 116 Nev. 1, 9-10, 992 P.2d 845, 850 (2000) (quoting Lord v. State, 107 Nev. 28, 42, 806 P.2d 548, 557 (1991)).

³See id. at 9, 992 P.2d at 850; Lord, 107 Nev. at 42, 806 P.2d at 556-57).

an improper photographic lineup identification. "[C]onvictions based on eyewitness identification at trial following a pretrial identification by photograph will be set aside on that ground only if the photographic identification procedure was so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable misidentification."⁴ A court must consider the totality of the circumstances in evaluating whether a photographic lineup is impermissibly suggestive.⁵

The record reveals that on the day of the robberies, a detective asked each victim to look through a book containing approximately 100 photographs. Each victim was alone in a room with the detective when he or she looked at the photographs. There is no indication that the detective suggested which person was under suspicion or otherwise failed to follow appropriate photographic lineup procedures. One victim testified that the book contained photographs of three or four light-skinned persons. Another victim testified that no one else in the book had a complexion similar to that of Valdez. All three victims independently identified Valdez from his photograph. Under the totality of these circumstances, we conclude that the photographic lineup was not impermissibly suggestive and did not taint the victims' in-court identifications.

⁴Simmons v. United States, 390 U.S. 377, 384 (1968); see Cunningham v. State, 113 Nev. 897, 904, 944 P.2d 261, 265 (1997).

⁵Simmons, 390 U.S. at 383.

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

ORDER the judgment of conviction AFFIRMED.

Becker, J.
Becker

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

cc: Hon. Joseph T. Bonaventure, District Judge
Amesbury & Schutt
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk