

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALEJANDRO A. MANZO,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 49002

**FILED**

OCT 17 2008

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of conspiracy to commit murder and one count of first-degree murder with the use of a deadly weapon. Eighth Judicial District Court, Clark County; James M. Bixler, Judge. On April 16, 2007, appellant Alejandro A. Manzo was sentenced to serve a prison term of four to ten years for conspiracy to commit murder and a concurrent prison term of life with parole eligibility for first-degree murder, with an equal and consecutive term for the deadly weapon enhancement.

Manzo raises two issues on appeal. First, Manzo claims that there was insufficient evidence to support his convictions for conspiracy to commit murder and first-degree murder with the use of a deadly weapon. In particular, he argues that the testimony of Brandi Robinson-Monge was unreliable because she was a convicted felon and admitted drug user and that some of the testimony was contradictory. Our review of the record on

appeal, however, reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact.<sup>1</sup>

In particular, evidence presented at trial showed that on July 14, 2003, Robinson-Monge and her brother, Robert Monge, traveled with Manzo and Armando Ramirez, Jr., to the Eureka Casino in Las Vegas to meet the victim, Miguel Ortega. Testimony at trial indicated that Robinson-Monge offered the use of her home to go “get high,” but Ramirez declined in favor of going to Ortega’s residence. Ortega left on a bicycle and the other four got in a truck. On the way to Ortega’s apartment, Ramirez instructed his companions to conceal his identity while there. The evidence also showed that prior to arriving at Ortega’s apartment Ramirez was angry with Ortega, threatened to run Ortega over, and asked his companions, “Do you got my back?”

Robinson-Monge testified that just prior to entering Ortega’s apartment, she saw Manzo either fixing or loading a gun. At some point, Ortega and Ramirez began arguing with each other about some guns that belonged to Ramirez. After the situation appeared to calm down, Ramirez, Manzo, and Ortega walked outside. A few seconds later, Ramirez and Ortega were seen wrestling with each other, and then two sets of gunshots were heard. Robinson-Monge testified that she did not see who fired the

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<sup>1</sup>See Wilkins v. State, 96 Nev. 367, 374, 609 P.2d 309, 313 (1980); see also Jackson v. Virginia, 443 U.S. 307, 319 (1979); Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998).

first set of shots, but she saw Manzo firing the second set of shots in the victim's direction. No witnesses saw Ortega with a gun at any time.

A maintenance man who was working on an air conditioning unit on the roof of a nearby building testified that he saw a Hispanic male fire three to four shots at the victim as the victim appeared to be begging for his life. He also stated that he saw the shooter get into the driver's side of a white truck along with a woman and another man and drive off.

Robinson-Monge testified that immediately after the shooting, she and Monge got in the back seat of a white Ford pickup truck driven by Ramirez. They drove a few yards and then Manzo got in the front passenger seat.

Ortega died from multiple gunshot wounds. Forensic analysis of the bullets and shells recovered from the scene and Ortega's body indicated that at least two different guns were used in the shooting.

The jury could reasonably infer from this evidence that Manzo was guilty of conspiracy to commit murder and first-degree murder. It is for the jury to determine the weight of the evidence and the credibility of the witnesses,<sup>2</sup> and the jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict.<sup>3</sup>

Manzo next claims that the district court erred in denying his pretrial motion to sever his trial from Ramirez's. "The decision to sever is

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<sup>2</sup>Nolan v. State, 122 Nev. 363, 377, 132 P.3d 564, 573 (2006).

<sup>3</sup>Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981); see also McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

left to the discretion of the trial court,”<sup>4</sup> and “[i]t is the appellant’s ‘heavy burden’ to show that the district court abused its discretion in failing to sever the trial.”<sup>5</sup> We have stated that “where persons have been jointly indicted they should be tried jointly, absent compelling reasons to the contrary.”<sup>6</sup> “[S]everance should only be granted when there is a ‘serious risk that a joint trial would compromise a specific trial right of one of the defendants, or prevent the jury from making a reliable judgment about guilt or innocence.’”<sup>7</sup>

Manzo argues that his joint trial with Ramirez was improper because it created a Bruton<sup>8</sup> problem. In particular, he claims that Robinson-Monge’s testimony about statements that Ramirez made to her implicated Manzo and therefore violated his Sixth Amendment right to confront the witnesses against him. Specifically, Robinson-Monge testified that two days after the shooting Ramirez came to her apartment and told her that “I never killed anybody before.” She further testified that at one point “[Ramirez] was like emotional, and he said that he felt like he was a

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<sup>4</sup>Amen v. State, 106 Nev. 749, 756, 801 P.2d 1354, 1359 (1990).

<sup>5</sup>Rodriguez v. State, 117 Nev. 800, 809, 32 P.3d 773, 779 (2001) (quoting Amen, 106 Nev. at 756, 801 P.2d at 1359).

<sup>6</sup>Jones v. State, 111 Nev. 848, 853, 899 P.2d 544, 547 (1995).

<sup>7</sup>Rodriguez, 117 Nev. at 808-09, 32 P.3d at 779 (quoting Zafiro v. United States, 506 U.S. 534, 539 (1993)).

<sup>8</sup>Bruton v. United States, 391 U.S. 123 (1968).

man<sup>[9]</sup> and that he wasn't like somebody else." Later, Ramirez's counsel inquired as to whom Ramirez was referring. The State objected, and after a short side-bar, the district court sustained the objection. Despite the district court's ruling, Ramirez's counsel again commented on Ramirez's vague statement to Robinson-Monge during closing argument. Manzo's counsel objected, and a bench conference was held. No further reference was made to the testimony.

In Bruton v. United States, the United States Supreme Court determined that the Confrontation Clause of the Sixth Amendment was violated when a non-testifying defendant's confession, implicating his codefendant, was admitted at their joint trial.<sup>10</sup> In Richardson v. Marsh, the Supreme Court distinguished Bruton and held that the Sixth Amendment was not violated when a codefendant's admitted confession did not expressly implicate the defendant and was not incriminating on its face.<sup>11</sup> In Gray v. Maryland, the Supreme Court further clarified the distinction between Richardson and Bruton, explaining that while the simple redaction of a defendant's name in a codefendant's confession is similar enough to an unredacted confession that it warrants the same

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<sup>9</sup>Later during cross-examination Robinson-Monge clarified that she misspoke and that Ramirez had stated that "he didn't feel like a man."

<sup>10</sup>391 U.S. at 126.

<sup>11</sup>481 U.S. 200, 208 (1987).

legal result, a confession that is only incriminating “when linked with evidence introduced later at trial” falls outside the scope of Bruton.<sup>12</sup>

Here, Ramirez did not expressly implicate Manzo in his comments to Robinson-Monge, and she was not permitted to testify as to whom she thought Ramirez was referring. Although the jury may have inferred from other evidence that Ramirez was referring to Manzo, the fact that such implication was the result of other “linking” evidence places Robinson-Monge’s testimony outside the class of statements to which Bruton’s protections apply. Without the evidence that Manzo was seen shooting at the victim and evidence indicating that Ramirez and Manzo conspired to murder him, the statement cannot be said on its face to implicate Manzo. Accordingly, we conclude that the challenged testimony did not violate Manzo’s Sixth Amendment right to confront the witnesses against him.

Manzo also contends that the district court erred in denying his motion to sever because he and Ramirez had antagonistic defenses. Manzo’s claim is without merit. “Inconsistent or antagonistic defenses . . . do not necessarily entitle defendants to severance, and [i]nconsistent defenses must be antagonistic to the point that they are mutually exclusive.”<sup>13</sup> Manzo fails to describe the manner in which he and Ramirez

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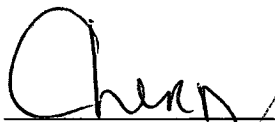
<sup>12</sup>523 U.S. 185, 195-96 (1998) (quoting Richardson, 481 U.S. at 208).

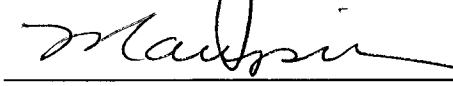
<sup>13</sup>Rodriguez v. State, 117 Nev. 800, 810, 32 P.3d 773, 779-80 (2001) (quoting Amen v. State, 106 Nev. 749, 756, 801 P.2d 1354, 1359 (1990)) (internal citations omitted).

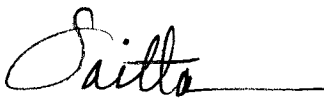
had antagonistic defenses, other than referencing Ramirez's statements addressed above. Our review of closing and opening arguments reveals that defense counsels' strategy was the same in both cases—to call into question the credibility of the witnesses. Therefore, we conclude that the district court did not abuse its discretion in denying Manzo's motion to sever.

Having considered Manzo's claims and concluded that they are without merit, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Maupin

  
\_\_\_\_\_, J.  
Saitta

cc: Hon. James M. Bixler, District Judge  
Paul E. Wommer  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk