

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES EDWARD WILSON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 57241

**FILED**

NOV 18 2011

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY A. Ingerson  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction entered pursuant to a jury verdict of robbery committed against a person 60 years of age or older. Eighth Judicial District Court, Clark County; Jennifer P. Togliatti, Judge.

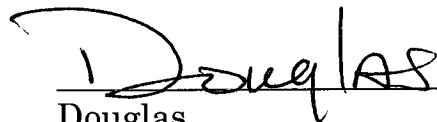
Appellant James Edward Wilson contends that the district court erred by denying his motion to dismiss the case because a police officer violated his Fifth Amendment right against self-incrimination by testifying about his post-arrest silence. The record reveals that the prosecutor asked the arresting officer to describe Wilson's demeanor and the officer responded, "He didn't really -- he didn't want to talk, so I didn't talk to him really." The district court found that the officer was unaware that he had improperly commented on Wilson's post-arrest silence, the comment was not solicited by the prosecutor, and the comment was interrupted by defense counsel's objection. We conclude that the officer's comment was nothing more than a passing reference to Wilson's post-arrest silence, see Morris v. State, 112 Nev. 260, 264, 913 P.2d 1264, 1267-68 (1996), the comment was harmless beyond a reasonable doubt, see id., and the district court did not abuse its discretion by denying the motion to

dismiss the case, see Hill v. State, 124 Nev. 546, 550, 188 P.3d 51, 54 (2008).

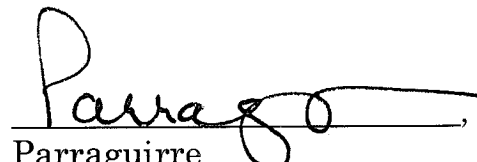
Wilson also contends that the district court erred by denying his motion for a mistrial because some of the jurors gave ambiguous answers when questioned as to whether they could be fair and impartial in light of a witness's expression of frustration. The record reveals that the district court canvassed each juror individually, none of the jurors indicated that they would be anything less than fair and impartial, and counsel did not seek clarification of any of the jurors' answers during questioning. We conclude that the district court was in the best position to determine whether the jurors would be fair and impartial, see Leonard v. State, 117 Nev. 53, 67, 17 P.3d 397, 406 (2001) ("The trial court is better able to view a . . . juror's demeanor than a subsequent reviewing court."), and did not abuse its discretion by denying Wilson's motion for a mistrial, see Ledbetter v. State, 122 Nev. 252, 264, 129 P.3d 671, 680 (2006).

Having considered Wilson's contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

cc: Hon. Jennifer P. Togliatti, District Judge  
Clark County Public Defender  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk