

IN THE SUPREME COURT OF THE STATE OF NEVADA

NICHOLAS M. CAYAFAS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 35837

**FILED**

SEP 06 2000

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

ORDER DISMISSING APPEAL

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of possession of a controlled substance. The district court sentenced appellant to serve 12 to 48 months in prison.

Appellant's sole contention is that the district court erred in denying his motion for a mistrial. We disagree.

During voir dire of the prospective jurors, the district court asked the prosecutor to explain the nature of the charges against appellant. The prosecutor told the jurors, "The Defendant has been charged by way of an Information with Trafficking in a Controlled Substance. The Information alleges that he possessed approximately five-point-five grams of a controlled substance, cocaine." However, prior to the start of trial, the State amended the information to charge appellant with possession of a controlled substance rather than trafficking because the State's chemist had retested the substance and determined that it weighed only 3.85 grams, not the 5.5 grams the arresting officer had measured. Appellant objected to the amendment and

moved for a mistrial, arguing that he would be prejudiced by the amendment because the jury had been lead to believe that it would hear a drug trafficking case. The district court denied the motion and permitted the amendment, concluding that appellant would not be prejudiced in facing only the lesser included offense of possession of a controlled substance. The court later instructed the jury to disregard anything it had heard regarding trafficking in a controlled substance and that the trial would involve a charge of possession of a controlled substance.

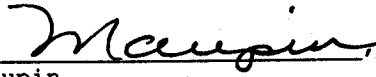
"[I]t is within the sound discretion of the trial court to determine whether a mistrial is warranted. Absent a clear showing of abuse of discretion, the trial court's determination will not be disturbed on appeal." *Geiger v. State*, 112 Nev. 938, 942, 920 P.2d 993, 995 (1996) (citation omitted).

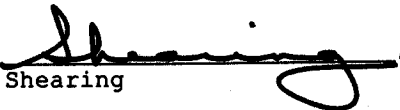
Based on our review of the record, we conclude that the district court did not abuse its discretion in denying appellant's motion for a mistrial. The prosecutor simply informed the potential jurors of the nature of the charges against appellant. At the time, appellant was charged with trafficking in a controlled substance. After the charge was amended, the district court instructed the jury to disregard any mention of the trafficking charge. We must presume that the jury followed the court's admonition. See *Owens v. State*, 96 Nev. 880, 885, 620 P.2d 1236, 1240 (1980). Moreover, considering the overwhelming evidence of appellant's guilt and the defusion of any possible prejudice by the trial court's admonition to the jury, we conclude that any error was

harmless.<sup>1</sup> See Allen v. State, 99 Nev. 485, 491, 665 P.2d 238, 242 (1983).

Having considered appellant's contention and concluded that it lacks merit, we

ORDER this appeal dismissed.

  
Maupin J.

  
Shearing J.

  
Becker J.

cc: Hon. Lee A. Gates, District Judge  
Attorney General  
Clark County District Attorney  
Clark County Public Defender  
Clark County Clerk

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<sup>1</sup>We note that the evidence adduced at trial established that while appellant was being booked into jail on another charge, officers discovered several baggies containing cocaine in appellant's sock.