

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

FRANCISCO ALVAREZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 69056

FILED

APR 20 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction entered pursuant to a jury verdict of four counts of burglary while in possession of a deadly weapon, six counts of conspiracy to commit robbery, three counts of robbery with the use of a deadly weapon, two counts of burglary, two counts of robbery, and one count of attempted robbery with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge.

Appellant Francisco Alvarez claims the district court erred by denying his motions to sever his trial from the trial of his codefendants. Alvarez argues he suffered unfair prejudice when a codefendant's cross-examination of one witness brought about his in-court identification as a robber and a codefendant's cross-examination of a second witness resulted in testimony regarding his ownership of a vehicle used during one of the robberies. Alvarez asserts this evidence was especially prejudicial because these topics were not broached during the State's direct-examination or his cross-examination of these witnesses.


“The decision to sever a joint trial is vested in the sound discretion of the district court and will not be reversed on appeal unless the appellant carries the heavy burden of showing that the trial judge abused his discretion.” *Chartier v. State*, 124 Nev. 760, 764, 191 P.3d 1182, 1185 (2008) (alteration and internal quotation marks omitted). “[I]t is well settled that where persons have been jointly indicted they should be tried jointly, absent compelling reasons to the contrary.” *Jones v. State*, 111 Nev. 848, 853, 899 P.2d 544, 547 (1995). “A district court should grant a severance ‘only if 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.’” *Marshall v. State*, 118 Nev. 642, 647, 56 P.3d 376, 379 (2002) (quoting *Zafiro v. United States*, 506 U.S. 534, 539 (1993)). However, “the district court has a continuing duty at all stages of the trial to grant a severance if prejudice does appear.” *Id.* at 646, 56 P.3d at 379 (internal quotation marks omitted).

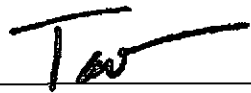
Here, the district court denied Alvarez’s first severance motion after concluding the codefendant did not deliberately elicit the witness’s in-court identification and there no was evidence of differing defense strategies that would warrant severance. And the district court resolved Alvarez’s second severance motion by striking a witness’s answer to the question about the vehicle and instructing the jury to disregard the answer.

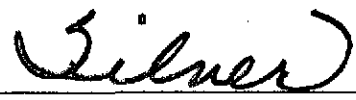
We conclude Alvarez failed to carry his burden to demonstrate the type of prejudice that would require the district court to sever a joint

trial. *See generally id.* at 647, 56 P.3d at 379 (“[I]t is not prejudicial for a codefendant to introduce relevant, competent evidence that would be admissible against the defendant at a severed trial.”). Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Elissa F. Cadish, District Judge
Aisen Gill & Associates LLP
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk