IN THE SUPREME COURT OF THE STATE OF NEVADA

BRUCE LEE CUFFEE,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 37460

FILED

JUN 13 2001

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

RONALD WASH,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 37533

ORDER OF AFFIRMANCE

Docket No. 37460 is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count each of conspiracy to commit robbery (count I) and robbery (count II). The district court sentenced appellant Bruce Lee Cuffee to serve a prison term of 28 to 72 months for count I and a concurrent prison term of 36 to 100 months for count II. Docket No. 37533 is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count each of conspiracy to commit robbery (count I) and robbery (count II). The district court adjudged appellant Ronald Wash a habitual criminal and sentenced him to serve a prison term of 10 to 25 years for count I and a concurrent prison term of 10 to 25 years for count II. Because appellants Cuffee and Wash are co-defendants appealing identical issues arising from their joint trial, we elect to consolidate these appeals for disposition.[1]

[1]See NRAP 3(b).

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Appellants first contend that the district court erred in limiting defense counsels' voir dire examination of the jurors. This court will not disturb the district court's ruling on the scope of voir dire unless the trial court abused its discretion or the defendant was prejudiced.[2] We conclude that the district court did not abuse its discretion in limiting defense counsels' voir dire examination of the jurors. The record reveals that defense counsel were able to adequately question prospective jurors to determine whether they could consider the facts impartially and properly apply the law as charged by the court.[3]

Appellants next contend that judicial misconduct in the voir dire phase of the trial impeded their rights to a fair trial. In determining whether judicial misconduct warrants reversal, we consider whether it was "so pervasive and of such a magnitude" that the trial was "discernibly unfair to the defendant."[4] The level of judicial misconduct necessary to reverse a conviction further depends upon the strength of the evidence of guilt.[5]

Although some of the district court's comments discussed by appellants were improper, we conclude that this conduct did not prejudice appellants. There was overwhelming evidence of appellants' guilt, including the testimony of the victim identifying appellants as his attackers and the

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[2]See Witter v. State, 112 Nev. 908, 914, 921 P.2d 886, 891 (1996); Summers v. State, 102 Nev. 195, 199, 718 P.2d 676, 679 (1986); see also NRS 175.031.

[3]See Witter, 112 Nev. at 914, 921 P.2d at 891.

[4]See McNair v. State, 108 Nev. 53, 62, 825 P.2d 571, 577 (1992) (recognizing that a "trial judge must not only be totally indifferent as between the parties, but he must also give the appearance of being so" (quoting Kinna v. State, 84 Nev. 642, 647, 447 P.2d 32, 35 (1968))); see also Oade v. State, 114 Nev 619, 621-24, 960 P.2d 336, 338-40 (1998).

[5]Oade, 114 Nev. at 624, 960 P.2d at 339.

testimony of several police officers that caught appellants fleeing from the scene of the crime. Further, the judicial misconduct that occurred did not pervade beyond the voir dire phase of the trial and any potential prejudice was cured by the district court's pretrial instruction to the jury that it should not "show any prejudice towards the lawyer or his client" because of judicial admonishments.

Appellants last contend that the district court erred in admitting hearsay testimony from a police officer that an unidentified female in a red vehicle said that "an old man just got robbed around the corner" as she pointed out appellants as the individuals who had committed the robbery. Specifically, appellant contends that this statement was inadmissible hearsay and that the present sense impression exception was inapplicable because there was no foundation presented that the declarant actually observed the robbery.[6] We conclude that the district court did not abuse its discretion in admitting this statement under the present sense impression exception to the hearsay rule. There was adequate circumstantial evidence presented that the declarant made this statement while perceiving the appellants flee from the crime scene and immediately after observing the robbery, including the victim's testimony that he saw the declarant near the time of the attack and that she was "following us."[7]

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[6]Because we conclude that this statement was admissible under the present sense impression exception to the hearsay rule, we need not consider whether it was also properly admitted as an excited utterance.

[7]See NRS 51.085 (statement describing an event while the declarant was perceiving it or immediately thereafter is not inadmissible under the hearsay rule); Browne v. State, 113 Nev. 305, 312, 933 P.2d 187, 191 (1997) (noting rationale behind present sense impression exception to the hearsay rule is that statement is more trustworthy if made contemporaneous with event).

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

ORDER the judgments of conviction AFFIRMED.

Young, J.
Young

Leavitt, J.
Leavitt

Becker, J.
Becker

cc: Hon. Sally L. Loehrer, District Judge
Attorney General
Clark County District Attorney
Clark County Public Defender
John L. Duffy
Clark County Clerk