


IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY NOE MARTINEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 87048

FILED

AUG 14 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of conspiracy to commit murder, two counts of first-degree murder with the use of a deadly weapon, attempted murder with the use of a deadly weapon, discharge of a firearm from or within a structure or vehicle, and discharge of a firearm at or into an occupied structure, vehicle, aircraft, or watercraft. Eighth Judicial District Court, Clark County; Jacqueline M. Bluth, Judge.

Appellant Anthony Martinez and his codefendant, Ocean Camacho, met Brandon Morales, Joshua Nunez, and Humberto Ocegueda Ramos at a gas station for a Xanax drug deal. Martinez and Camacho arrived in a bluish-gray Nissan Maxima, while Morales, Nunez, and Ramos arrived in a white Kia. Once there, Martinez left the Nissan and got into the backseat of Morales's Kia. Morales, Nunez, and Ramos stole the Xanax from Martinez and pushed him out of the car. A car chase ensued, with shots being fired from the Nissan at the individuals in the Kia. During the chase, Nunez and Ramos were shot and killed.

A jury found Martinez guilty on all charges, including two counts of first-degree murder with use of a deadly weapon and one count of

attempted murder with use of a deadly weapon. On appeal, Martinez argues that the district court abused its discretion by refusing to sever his trial from his codefendant Camacho's trial, overruling his objection to a flight instruction provided to the jury, and denying his motion to play a video about unconscious bias during voir dire.

The district court did not abuse its discretion by denying Martinez's motion to sever his trial from that of his codefendant

Martinez argues that the district court's failure to sever his trial from Camacho's denied Martinez a fair trial. First, Martinez contends that his and Camacho's defenses were mutually antagonistic, in part because Martinez's theory was that he was not present at the shooting and that someone else was responsible for it. Second, Martinez argues that the State used one of Camacho's stipulations—that Camacho was in the car during the shooting—against Martinez in violation of Martinez's Sixth Amendment right to confront witnesses against him because Camacho did not testify. And third, Martinez references Camacho's stipulation that he authored certain text messages. The State responds that antagonistic defenses do not automatically require severance and that Martinez fails to demonstrate how Camacho's stipulations were used against Martinez.

A district court may sever a joint trial if the joinder appears prejudicial to the defendant. NRS 174.165(1). But "the [severance] doctrine is a very limited one," *Jones v. State*, 111 Nev. 848, 854, 899 P.2d 544, 547 (1995), and "[m]utually antagonistic defenses are not prejudicial per se," *Marshall v. State*, 118 Nev. 642, 646-47, 56 P.3d 376, 379 (2002) (alteration in original) (quoting *Zafiro v. United States*, 506 U.S. 534, 538 (1993)). To show prejudice, a defendant must demonstrate that joinder with a codefendant "compromised a specific trial right or prevented the jury from

making a reliable judgment regarding guilt or innocence.” *Id.* at 648, 56 P.3d at 380. One such trial right is the defendant’s right not to have a codefendant’s unredacted inculpatory statement about the defendant admitted without an opportunity to confront the codefendant. *See Zafiro*, 506 U.S. at 539 (listing examples of trial rights, such as a defendant’s rights under *Bruton v. United States*, 391 U.S. 123 (1968)). “[T]he district court has a continuing duty at all stages of the trial to grant a severance if prejudice does appear.” *Marshall*, 118 Nev. at 646, 56 P.3d at 379 (internal quotation marks omitted). The court’s order denying a motion to sever is reviewed for abuse of discretion and will only be reversed “if it has a substantial and injurious effect on the verdict.” *Id.* at 646-47, 56 P.3d at 379.

Here, although both Martinez and Camacho argued during the hearing on the severance motion that they would blame each other for the crimes, it does not appear from the trial record that they did so. At trial, Martinez argued that he was not in the Nissan during the shooting. Camacho stipulated that he was in the Nissan because, in his view, that fact was “not subject to much dispute or debate,” but his stipulation that he was in the car did not inculcate Martinez. *See Ducksworth v. State*, 113 Nev. 780, 794-95, 942 P.2d 157, 166-67 (1997) (concluding that the codefendant’s reference to another unnamed person that the jury likely deduced was the defendant probably inculpated the defendant). Both Martinez and Camacho attacked the State’s case by highlighting discrepancies between eyewitness accounts and the State’s version of events. For example, eyewitnesses described the victims and suspects as African American, even though Martinez is Hispanic. Even if these

defenses were mutually antagonistic, Martinez fails to show prejudice because he does not demonstrate that a specific trial right was violated. As for Camacho's stipulation respecting the text messages, Martinez does not argue or establish prejudice. Therefore, we conclude that the district court did not abuse its discretion by denying Martinez's motion to sever.

Martinez also contends that during closing arguments the prosecutor used Camacho's stipulation that he (Camacho) was in the car to implicate Martinez. The prosecutor stated that "we're all agreeing that these two were in the car" and referred to the "identification of somebody that we all agree is already there." But Martinez did not object to the prosecutor's statements at trial. *See Rose v. State*, 123 Nev. 194, 208-09, 163 P.3d 408, 418 (2007) (noting that a failure to object to prosecutorial misconduct precludes appellate review unless the error "had a prejudicial impact on the verdict" or "seriously affect[ed] the integrity or public reputation of the judicial proceedings") (internal quotation marks omitted). Further, during his opening argument, Martinez acknowledged his presence at the gas station. On this record, we conclude that Martinez has not shown that the prosecutor's comments rose to a level of prejudice warranting severance.

The district court's error in giving the jury a flight instruction was harmless

Martinez challenges the district court's decision to give a flight instruction over his objection. Martinez maintains that if a flight instruction was appropriate where the perpetrators continued to drive down the street following a shooting, then it would be appropriate in virtually every criminal case. The State responds that the flight instruction was proper here because Martinez pursued the victims and then left the crime

scene without stopping to render aid or to call 9-1-1. Further, the State contends that if the district court erred by giving a flight instruction, that error was harmless.

A district court may give a flight instruction when there is evidence that the defendant fled “with a consciousness of guilt” and to “avoid[] arrest.” *Weber v. State*, 121 Nev. 554, 582, 119 P.3d 107, 126 (2005) (internal quotation marks omitted). Flight is “more than a mere going away.” *Id.* (internal quotation marks omitted). “[T]his court carefully scrutinizes the record to determine if the evidence actually warranted the instruction.” *Weber*, 121 Nev. at 582, 119 P.3d at 126. A district court’s decision to give a flight instruction is reviewed for an abuse of discretion. *See, e.g., Tavares v. State*, 117 Nev. 725, 734-35, 30 P.3d 1128, 1133-34 (2001), *holding modified on other grounds by McLellan v. State*, 124 Nev. 263, 182 P.3d 106 (2008).

The only evidence that the State points to in support of the flight instruction is that Martinez pursued and shot the victims and then left the scene. Viewed through the lens of the trial, where Martinez’s guilt was not yet decided, the State’s argument both improperly presupposes that Martinez was in the car during the shooting (a key and disputed part of the State’s theory of the case), and falls short of demonstrating what specific evidence showed that Martinez left the crime scene with a consciousness of guilt and for the purpose of avoiding arrest, as opposed to merely going away. Without more evidence of Martinez’s reason for leaving the scene, we conclude the district court abused its discretion by giving a flight instruction.

But this error was harmless in light of the evidence of Martinez's guilt. *See Potter v. State*, 96 Nev. 875, 876, 619 P.2d 1222, 1222-23 (1980) (affirming a judgment of conviction despite the district court's erroneous use of a flight instruction because it did not result in a miscarriage of justice or prejudice the defendant's substantial rights). We first note that Martinez did not file a reply brief and did not argue in his opening brief that the error was not harmless. Martinez admitted he was at the gas station. Cell phone data placed Martinez's phone in the area of the shooting at the time of the shooting. Additionally, victim Brandon Morales identified Martinez and Camacho as the perpetrators. Moreover, other evidence suggested that Martinez was in the car at the time of the shooting. We conclude that the jury would have reached the same result even in the absence of the flight instruction.

The district court did not abuse its discretion by denying Martinez's motion to play a video about unconscious bias during voir dire

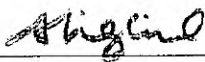
Martinez challenges the district court's denial of his motion to play a video during voir dire about unconscious bias. The State responds that the court should not consider this issue, because Martinez does not support it with cogent legal argument. Even if the court reaches it, the State continues, the district court did not abuse its discretion by refusing to play the video because the court allowed defense attorneys to question jurors about bias.

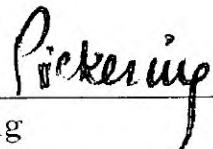
The scope of voir dire is within the district court's sound discretion. *Oliver v. State*, 85 Nev. 418, 424, 456 P.2d 431, 435 (1969). On review, this court gives the district court's discretion "considerable latitude." *Cunningham v. State*, 94 Nev. 128, 130, 575 P.2d 936, 937-38 (1978) (internal quotation marks omitted). Here, although the district court

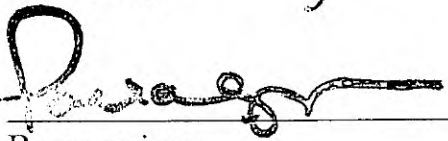
denied the motion to play the video, it allowed the attorneys to address unconscious bias during voir dire. Therefore, we conclude that the district court did not abuse its discretion by denying the motion to play the video.

Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Stiglich


_____, J.
Pickering


_____, J.
Parraguirre

cc: Hon. Jacqueline M. Bluth, District Judge
Brian Rutledge PC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk