

IN THE SUPREME COURT OF THE STATE OF NEVADA

DARYL EDDY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39945

FILED

MAR 13 2003

JANE F. M. BLOOM
CLERK OF SUPREME COURT
BY *J. Ruband*
CHIEF DEPUTY CLERK

ORDER AFFIRMING IN PART AND REMANDING IN PART
TO CORRECT JUDGMENT OF CONVICTION

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of grand larceny of an automobile and one count of robbery. The district court sentenced appellant to a prison term of 22 to 96 months for grand larceny and a consecutive prison term of 35 to 156 months for robbery.

Appellant first contends that the district court erred by denying appellant's motion for a mistrial. Specifically, appellant argues that the State was allowed, in essence, to make two opening arguments to the jury. During voir dire, the district judge asked the prosecutor to introduce himself to the potential jurors, briefly explain the case, and to read a list of witnesses. The prosecutor complied with the district judge's request by explaining the charges against appellant, and briefly stating the name of each potential witness, each witness' occupation, and how each witness related to the case.

"Denial of a mistrial is within the sound discretion of the district court, and that ruling will not be reversed unless it was an abuse of discretion."¹ We conclude that the prosecutor's comments were not inappropriate, and that the district court did not therefore abuse its discretion by denying the motion for a mistrial.

Appellant also argues that the State improperly presented evidence to the jury during opening argument, namely photographs, charts, and maps that had not yet been offered or admitted. In support of his argument, appellant cites to a case from the Eighth Circuit Court of Appeals, wherein that court held that a prosecutor should not refer to evidence that was of questionable admissibility until it had actually been admitted.² In this case, the admissibility of the photos, charts and maps was apparently never in question, and they were, in fact, admitted. We conclude that the district court did not abuse its discretion by denying the motion for a mistrial on this ground.

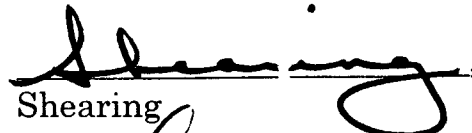
This court notes, however, that the judgment of conviction states that appellant was convicted pursuant to a guilty plea when, in fact, he was convicted pursuant to a jury verdict. Accordingly, we affirm the

¹Lisle v. State, 113 Nev. 679, 700, 941 P.2d 459, 473 (1997) modified on other grounds by Middleton v. State, 114 Nev. 1089, 968 P.2d 296 (1998).

²United States v. Hernandez, 779 F.2d 456, 459 (8th Cir. 1985).

judgment of conviction and remand this matter to the district court for the limited purpose of entering a corrected judgment of conviction.


It is so ORDERED.

 J.

Shearing

 J.

Leavitt

 J.

Becker

cc: Hon. John S. McGroarty, District Judge
Paul E. Wommer
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk