

IN THE SUPREME COURT OF THE STATE OF NEVADA

SCOTT ANTHONY CANNADY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40138

FILED

DEC 08 2003

ORDER OF AFFIRMANCE

JANEITE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of two counts of battery with a deadly weapon, one count of robbery with the use of a deadly weapon and one count of conspiracy to commit robbery. Appellant, Scott Anthony Cannady, was sentenced to consecutive prison terms of four to ten years as to Count II, battery with a deadly weapon; four to ten years as to Count III, robbery with the use of a deadly weapon, with a like consecutive term of imprisonment for four to ten years for the deadly weapon enhancement; two to ten years as to Count IV, battery with a deadly weapon; and one to six years as to Count V, conspiracy to commit robbery, to be served concurrently with the sentence imposed in Count II.

Cannady appeals his judgment of conviction based upon his alleged involvement in the battery and robbery of two men outside of the Northern Nevada Muslim Center in Sparks, Nevada. On appeal, Cannady asserts that the district court abused its discretion by denying his motion to sever his trial from the trial of his accomplice, David Nolette. We conclude that Cannady's arguments are without merit, and, accordingly, we affirm Cannady's judgment of convictions.

NRS 174.165(1) provides that a district court may grant a severance when necessary to avoid prejudice to the defendant. However,

we have cautioned that a district court must also consider potential prejudice to the State resulting from duplicative trials.¹ Joinder is favored so long as a defendant's right to a fair trial is not undermined.² With regard to the joint trial of co-defendants, we have held that "[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.'"³ We will not reverse a district court's denial of a motion for severance absent an abuse of discretion by the district court.⁴

While Cannady contends that he was prejudiced by the jury's knowledge of Nolette's guilty plea, the State never relied upon Nolette's guilty plea as evidence of Cannady's guilt. Moreover, although Nolette's counsel did inform the jury of Nolette's guilty plea, the record reflects that any potential prejudice flowing from this knowledge was cured by the district court's instructions to the jury, which directed the jury to separately determine each defendant's guilt or innocence as to each offense.⁵ The jury demonstrated that it was able to properly follow these instructions and compartmentalize the evidence against Cannady and Nolette when it acquitted Nolette of attempted murder, but could not

¹Marshall v. State, 118 Nev. ___, ___, 56 P.3d 376, 379 (2002).

²Id.

³Id. (quoting Zafiro v. United States, 506 U.S. 534, 539 (1993)).

⁴Id.

⁵Id. (recognizing that potential prejudice arising from the joint trial of co-defendants may be cured by appropriate instructions from the trial judge).

reach a verdict on the same charge against Cannady. While Cannady argues that the district court failed to properly weigh the factors relevant to severance, this unsupported allegation is belied by the record, which indicates that the district court considered the potential of prejudice to Cannady and the State. Finally, any potential prejudice suffered by Cannady was harmless in light of the overwhelming evidence of his guilt, which included Cannady's own inculpatory admissions. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Becker, J.
Becker

Shearing, J.
Shearing

Gibbons, J.
Gibbons

cc: Hon. James W. Hardesty, District Judge
Washoe County Public Defender
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk