

IN THE SUPREME COURT OF THE STATE OF NEVADA

FELICIANO AGUILAR FUENTES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41485

FILED

OCT 13 2003

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of level-two trafficking in a controlled substance. The district court sentenced appellant Feliciano Aguilar Fuentes to serve a prison term of 12 to 48 months.

Fuentes first contends that reversal of his conviction is warranted because, in allowing juror questioning, the district court did not adhere to the safeguards established in Flores v. State.¹ Specifically, Fuentes contends that the district court: (1) failed to admonish the jurors not to place undue weight on the responses to the juror questions; (2) failed to administer the juror-questioning procedures uniformly because questions were not asked of the expert witnesses; and (3) allowed a witness not to answer a question based solely on the witness's determination that her response was not relevant to the trial. We conclude that Fuentes' contention lacks merit.

In this case, the district court complied with most of the juror-questioning procedures discussed in Flores by: (1) instructing the jury

¹114 Nev. 910, 965 P.2d 901 (1998). We reject Fuentes' invitation to overrule Flores.

that the purpose of juror questions was to clarify information already presented; (2) requiring written juror questions; (3) discussing the admissibility of juror questions and affording counsel the opportunity to object outside the presence of the jury; and (4) allowing counsel to ask follow-up questions. Additionally, there is no indication in the record on appeal that defense counsel requested additional admonitions or other procedural safeguards for juror questioning.² Although the district court did not strictly comply with all the procedures discussed in Flores, we conclude that the totality of the safeguards employed by the district court was sufficient to eliminate the risk of prejudice to Fuentes.³

Fuentes next contends that reversal of his conviction is warranted because the judge abandoned his neutral role and became an advocate for the State when he elicited testimony from Carson City Sheriff's Officer William Abbott to establish the chain-of-custody over the State's evidence including the scale, pipe, and methamphetamine. Fuentes argues that, in questioning Officer Abbott, the judge "filled in

²See id. at 913, 965 P.2d at 902-03. The remaining safeguards not afforded by the district court include admonitions that jurors may not place undue weight on responses to questions and that only questions permitted under the rules of evidence will be asked.

³We agree with Fuentes that it is improper for a district court to allow a witness to refuse to answer a question based on that witness's own conclusion that her answer would not be relevant. To the extent that occurred at Fuentes' trial, in light of the fact that defense counsel did not lodge a contemporaneous objection and that the juror question involved a collateral matter of questionable relevance, we conclude that Fuentes has failed to demonstrate plain error. See NRS 178.602 ("Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.").

holes in the [S]tate's case" and gave the jury the impression that he was siding with the State thereby violating Fuentes' constitutional right to a fair trial. We disagree.

"A trial judge has the right to examine witnesses for the purpose of establishing the truth or clarifying testimony, but in doing so he must not become an advocate for either party, nor conduct himself in such a manner as to give the jury an impression of his feelings."⁴ In this case, we conclude the trial judge's examination of Officer Abbott merely served to clarify the testimony. In fact, our review of the trial transcripts indicates that the scale, pipe, and methamphetamine were admitted into evidence without objection from defense counsel; therefore, the judge's questions regarding the chain-of-custody did not serve to buttress the State's case. Additionally, at trial, the judge instructed the jury that if he had done anything to indicate that he favored either party, the jurors should disregard it and "not be influenced by such suggestion." Accordingly, we conclude that reversal of Fuentes' conviction is not warranted because his constitutional right to a fair trial was not violated.

Finally, Fuentes contends that the evidence presented at trial was insufficient to support the jury's finding that Fuentes possessed the methamphetamine at issue. Our review of the record on appeal, however, reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact.⁵ In particular, witness Fern Capra testified that the methamphetamine and pipe found in the vehicle


⁴Azbill v. State, 88 Nev. 240, 249, 495 P.2d 1064, 1070 (1972).


⁵See Wilkins v. State, 96 Nev. 367, 609 P.2d 309 (1980); see also Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998).

belonged to Fuentes. Additionally, Officer Abbott testified that he found methamphetamine, as well as Fuentes' identification card, inside a small pack in the backseat of the vehicle Fuentes was driving. Although Fuentes alleges that Capra or another individual in the car where the methamphetamine was found could have possessed the drugs, the jury could reasonably infer from the evidence presented that the methamphetamine belonged to Fuentes. It is for the jury to determine the weight and credibility to give conflicting testimony, and the jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict.⁶

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

ORDER the judgment of conviction AFFIRMED.


_____, J.
Rose


_____, J.
Leavitt


_____, J.
Maupin

⁶See Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981); see also McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

cc: Hon. William A. Maddox, District Judge
State Public Defender/Carson City
Attorney General Brian Sandoval/Carson City
Carson City District Attorney
Carson City Clerk