

IN THE SUPREME COURT OF THE STATE OF NEVADA

PATRICK A. SHELTON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41514

FILED

OCT 05 2004

ORDER OF AFFIRMANCE

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

Appeal from judgment of conviction, pursuant to a jury verdict, of robbery with use of a deadly weapon. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

Patrick Shelton appeals from a final judgment of conviction entered following a jury verdict of guilty of robbery with use of a deadly weapon. On appeal, Shelton argues that the district court abused its discretion in the following instances: (1) refusing to instruct the jury on his theory of defense—the right to use lawful resistance to prevent the commission of a public offense; (2) denying his motion for a mistrial following a police officer’s statement that the police have had “several contacts” with Shelton; and (3) allowing the State to pose a hypothetical to prospective jurors during voir dire. We conclude that his arguments lack merit.

Theory of defense instruction

Shelton argues that the district court should have given his proposed jury instructions on his right to use force to prevent the commission of a public offense. We disagree.

NRS 193.230(1) states that “[l]awful resistance to the commission of a public offense may be made . . . [b]y the party about to be injured.” The victim of the robbery, Zeke DeRose, and Shelton relayed

conflicting accounts about what occurred prior to Shelton drawing his knife. DeRose claimed that when he responded negatively to Shelton's solicitation, Shelton drew his knife and demanded that DeRose give him \$80. According to DeRose, he did not have \$80, so Shelton demanded that he drive to an ATM to get more money. On the other hand, Shelton claimed that he performed sexual services for DeRose after receiving a down payment from him. When Shelton was finished, DeRose refused to pay Shelton the rest of the money and tried to push him out of his vehicle, so Shelton drew his knife for protection. DeRose then agreed to drive to an ATM to get money for Shelton. Even assuming Shelton first used his knife to protect himself, Shelton drew his knife again when they arrived at the ATM, without provocation, in order to get the money from DeRose. Consequently, the evidence does not support a lawful resistance jury instruction. Accordingly, we conclude that the district court did not abuse its discretion in refusing to give Shelton's instruction on his theory of defense.¹

Motion for mistrial

Shelton argues that the district court should have granted his motion for a mistrial following Officer Roger Price's testimony. The State asked Officer Price whether he knew Shelton at the time of Shelton's arrest, and he responded, "Yes, ma'am, we've had several contacts with him." Shelton objected to Officer Price's response and moved to strike it from the record. A bench conference was held off the record, and the

¹Jackson v. State, 117 Nev. 116, 120, 17 P.3d 998, 1000 (2001) (noting that because the district court has broad discretion in settling jury instructions, this court reviews a district court's decision regarding jury instructions for an abuse of discretion or judicial error).

district court subsequently informed the jury to disregard Officer Price's answer. After the court adjourned, Shelton requested a mistrial, arguing that the insinuations behind Officer Price's statement "fundamentally robbed the integrity of the trial." The district court disagreed, denying Shelton's motion for mistrial.

We conclude that Officer Price's single statement about having had contact with Shelton several times was not clearly prejudicial and, thus, does not provide sufficient basis for declaring a mistrial.² Moreover, any alleged prejudice was cured by the district court's instruction to the jury to disregard Officer Price's answer.³ Therefore, the district court did not abuse its discretion in denying Shelton's motion for mistrial.⁴

Hypothetical during voir dire

Shelton argues that the district court erred in allowing the State to pose a hypothetical to prospective jurors during voir dire. Shelton maintains that by posing the hypothetical, the State was indirectly allowed to argue the merits of its case.

EDCR 7.70 provides, in part:

Upon request of counsel, the trial judge may permit counsel to supplement the judge's examination by oral and direct questioning of any

²Meegan v. State, 114 Nev. 1150, 1155, 968 P.2d 292, 295 (1998).

³See Hardison v. State, 104 Nev. 530, 533, 763 P.2d 52, 54 (1988) (concluding that a mistrial was not warranted, despite an inappropriate comment made by a witness, when the district court admonished the jury to disregard the response).

⁴See Cramer v. Peavy, 116 Nev. 575, 580, 3 P.3d 665, 669 (2000) (observing that a denial of a motion for mistrial can only be reversed where there is a clear abuse of discretion).

of the prospective jurors. The scope of such additional questions or supplemental examination must be within reasonable limits prescribed by the trial judge in the judge's sound discretion.

The following areas of inquiry are not properly within the scope of voir dire examination by counsel:

....

(c) Questions touching on the verdict a juror would return when based upon hypothetical facts.

(d) Questions that are in substance arguments of the case.


The State posed a hypothetical to the jury to ascertain whether the jurors would be able to apply the law as instructed by the district court. The State offered a hypothetical where a person was charged with possession of marijuana, and at trial, the defendant explained that he used the marijuana for medicinal purposes. The State explained that the law is that possession of controlled substances, regardless of the purpose, is unlawful. The State then asked whether the jurors could apply the law as instructed, even though there were special circumstances explaining the defendant's possession of the marijuana.


We conclude that Shelton failed to demonstrate how the State's use of the hypothetical allowed the State to indirectly argue the merits of its case. The State's hypothetical was based on unrelated facts and used to ascertain whether the prospective jurors could apply the law as instructed by the district court. It did not require the jury to pledge or speculate as to whether it could apply the law of the case. Accordingly, we

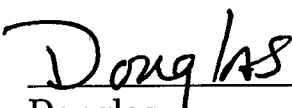
conclude that the district court did not abuse its discretion in allowing the State to pose the hypothetical.⁵

Having considered Shelton's arguments on appeal and concluding they lack merit, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Douglas

cc: Hon. Jackie Glass, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁵See Witter v. State, 112 Nev. 908, 915, 921 P.2d 886, 891 (1996) (noting that this court generally gives considerable deference to a district court's decision related to the scope of voir dire).