

IN THE SUPREME COURT OF THE STATE OF NEVADA

JESUS IGNASIO FLORES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56940

FILED

SEP 14 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of burglary while in possession of a firearm, robbery with the use of a deadly weapon against a victim sixty years of age or older, first-degree kidnapping with the use of a deadly weapon against a victim sixty years of age or older, battery with the use of a deadly weapon against a victim sixty years of age or older and conspiracy to commit robbery. Eighth Judicial District Court, Clark County; Linda Marie Bell, Judge.

Appellant Jesus Ignacio Flores contends that the district court committed reversible error when it denied his motion for a mistrial. Specifically, Flores argues that he was denied his right to due process because he was forced to share peremptory challenges with codefendants who were pursuing conflicting defenses and the sudden absence of his codefendants, after the district court granted their motion for severance following opening statements, interfered with the jury's ability to be fair and impartial.

"The decision to deny a motion for a mistrial rests within the district court's discretion and will not be reversed on appeal absent a clear


showing of abuse.” Ledbetter v. State, 122 Nev. 252, 264, 129 P.3d 671, 680 (2006) (internal quotations omitted). Here, Flores has not alleged that he would have challenged or selected any particular member of the venire in a manner contrary to his codefendants. See U.S. v. Sandoval, 847 F.2d 179, 184 (5th Cir. 1988) (allegations that codefendant exercised peremptory challenges in manner contrary to defendant’s wishes are insufficient absent facts showing that impaneled jury was impartial). Furthermore, peremptory challenges arise from the exercise of a privilege granted by the legislature and this “privilege must be taken with the limitations placed upon the manner of its exercise.” White v. State, 83 Nev. 292, 297, 429 P.2d 55, 58 (1967) (quoting Anderson v. State, 81 Nev. 477, 480, 406 P.2d 532, 533 (1965)) (explaining that disagreement as to joint exercise of peremptory challenges does not invalidate NRS 175.015 (recodified as NRS 175.041)). Therefore, we find no prejudice arising from Flores’ exercise of peremptory challenges in concert with his codefendants.

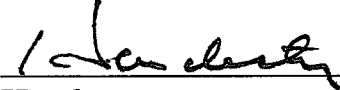
In addition, the mere absence of codefendants at the trial table following opening statements is not grounds for a mistrial. Rudin v. State, 120 Nev. 121, 144, 86 P.3d 572, 587 (2004) (“A defendant is not entitled to a perfect trial, only a fair trial.”). Here, the district court informed the jury that the codefendants would not be participating in the trial and admonished them not to speculate as to why. See, e.g., U.S. v. Daniele, 886 F.2d 1046, 1055 (8th Cir. 1989) (affirming denial of mistrial where jury was admonished not to consider absence of codefendants). Furthermore, Flores declined the district court’s offer to administer further limiting instructions pertaining to the absence of his codefendants.

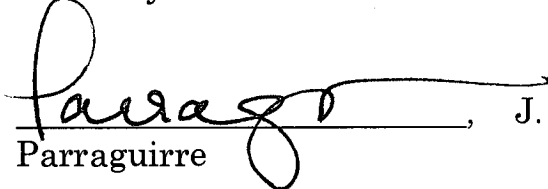
Accordingly, we find no error in the district court's denial of Flores' motion for a mistrial.

Having considered Flores' arguments and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Douglas


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. Linda Marie Bell, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk