IN THE SUPREME COURT OF THE STATE OF NEVADA

CASHMEN ROBINSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 86208

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of first-degree murder with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Jacqueline M. Bluth, Judge.[1]

Surveillance video introduced at trial showed appellant Cashmen Robinson stab Davelle Johnson, Jr. in the neck after encountering Johnson on a street in Las Vegas. Robinson did not dispute stabbing Johnson but argued it was justified because Johnson's words and actions made Robinson believe that Johnson possessed a firearm and intended to attack Robinson. Robinson raises two contentions on appeal.

First, Robinson argues that the district court should have granted the defense motion for mistrial based on an emotional outburst by Johnson's family during opening statements. Alternatively, Robinson asserts that the court erred by not barring the family from the courtroom or giving a curative instruction to the jury.

During the prosecutor's opening remarks, members of Johnson's family had an audible, emotional reaction to surveillance footage

[1]Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal.

showing Robinson stabbing Johnson. The district court immediately dismissed the jury from the courtroom. Robinson moved for a mistrial asserting that the reaction contaminated the jury. The district court denied the motion for mistrial, stating its belief that it handled the outburst quickly enough to mitigate any prejudicial effect and noting that a curative instruction could be issued. The court reassured the parties that it would admonish Johnson's family and asked the State to coordinate with the victim witness advocate to forewarn the family about potentially upsetting evidence. Ultimately, the district court resumed the proceedings without issuing a cautionary instruction to the jury.

We discern no abuse of discretion, *Randolph v. State*, 117 Nev. 970, 984, 36 P.3d 424, 433 (2001) (citing *Smith v. State*, 110 Nev. 1094, 1102-03, 881 P.2d 649, 654 (1994)), because Robinson was not prejudiced to the extent that he did not receive a fair trial, *Rudin v. State*, 120 Nev. 121, 144, 86 P.3d 572, 587 (2004). According to the record before us, the outburst was brief and the district court acted quickly to shield the jury from it. *See Johnson v. State*, 122 Nev. 1344, 1358-59, 148 P.3d 767, 777 (2006) (recognizing that isolated incident of victim's brother passing out in response to crime scene photograph did not render the penalty hearing fundamentally unfair). The district court admonished the family members and coordinated with the State to prepare them for the remainder of trial. These measures appear to have been sufficient as the record does not reveal any further disturbances. *See Simmons v. State*, 840 S.E.2d 365, 367 (Ga. 2020) (holding that district court did not err in denying mistrial, not questioning jurors, and not issuing a cautionary instruction to address jurors passing emotionally upset members of the victim's family in the hall). Although the district court was open to giving a curative instruction,

Robinson did not request one or object to resuming opening statements without such an instruction. *See Flanagan v. State*, 112 Nev. 1409, 1423, 930 P.2d 691, 700 (1996) (recognizing that the failure to object to or request an instruction precludes appellate review unless the error is "patently prejudicial"). In addition, at the close of evidence, the district court instructed the jury that it was to consider only the evidence presented in reaching a verdict and it should not be influenced by sympathy, prejudice, or public opinion; we presume that the jurors followed these instructions. *See Leonard v. State*, 117 Nev. 53, 66, 17 P.3d 397, 405 (2001) (presuming that jury follows instructions it receives). Accordingly, the district court did not abuse its discretion in denying the motion for mistrial and not providing the additional remedies Robinson identifies.

Second, Robinson contends that the district court erred in denying the defense motion to play a video describing unconscious bias for the venire during jury selection. We disagree.

Criminal defendants have "a constitutional right to be tried by a fair and impartial jury." *Azucena v. State*, 135 Nev. 269, 273, 448 P.3d 534, 538 (2019) (citing U.S. Const. amend. VI; Nev. Const. art. 1, § 3). The process of voir dire is vital to ensure that the seated jurors can follow the district court's instructions and evaluate the evidence, *id.*, as well as to ensure the jury is "free from ethnic, racial, or political prejudice, or predisposition about the defendant's culpability," *Gomez v. United States*, 490 U.S. 858, 873 (1989) (citations omitted). *See also* NRS 16.030(6) (recognizing counsel's right to conduct examination of prospective jurors during voir dire). Courts have recognized that a more probing inquiry may be necessary to reveal "unconscious or unacknowledged bias." *Darbin v. Nourse*, 664 F.2d 1109, 1113 (9th Cir. 1981). To this end, some courts have

shown potential jurors a video about unconscious bias, *United States v. Young*, 6 F.4th 804, 811-12 (8th Cir. 2021) (Kelly, J., concurring); *see* Sarah Desautels, *Limitations of Washington Evidence Rule 413*, 95 Wash. L. Rev. 429, 448-49 (March 2020) (describing implicit bias video produced by District Court for the Western District of Washington), but others have declined to do so, *see, e.g.*, *United States v. Caldwell*, 81 F.4th 1160, 1176 (11th Cir. 2023); *United States v. Mercado-Gracia*, 989 F.3d 829, 840 (10th Cir. 2021); *United States v. Jessamy*, 464 F. Supp. 3d 671, 678 (M.D. Pa. 2020). While it may have been within the district court's discretion to use the video, no authority compelled the court to use it. And because the district court did not prevent Robinson from otherwise questioning potential jurors about unconscious bias, Robinson has not demonstrated that the district court abused its discretion in denying the video request. *See Azucena*, 135 Nev. at 271, 448 P.3d at 537 (recognizing district court's "broad discretion in conducting voir dire"); *see also Aldridge v. United States*, 283 U.S. 308, 310 (1931) ("The exercise of this discretion, and the restriction upon inquiries at the request of counsel, [are] subject to the essential demands of fairness.").

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

ORDER the judgment of conviction AFFIRMED.

_____, J.
Herndon

_____, J.
Lee

_____, J.
Bell

cc: Hon. Jacqueline M. Bluth, District Judge
Brian Rutledge PC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk