

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICKIE LEE HILL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45712

FILED

FEB 13 2007

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, upon jury verdict, of two counts of sexual assault, one count of first-degree kidnapping, two counts of open and gross lewdness, one count of indecent exposure, and one count of bribing or intimidating a witness. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

The parties are familiar with the facts, and we do not recount them except as they are pertinent to our disposition.

This court reviews a district court's decision to admit or exclude evidence for an abuse of discretion.¹ This court will not overturn a district court's determination of whether a mistrial is warranted absent an abuse of discretion.² Further, "[i]n determining whether an error is harmless beyond a reasonable doubt, we consider 'whether the issue of

¹Jezdik v. State, 121 Nev. 129, 135, 110 P.3d 1058, 1062 (2005).

²Rudin v. State, 120 Nev. 121, 142, 86 P.3d 572, 587 (2004).

innocence or guilt is close, the quantity and character of the error and the gravity of the harm charged.”³

Appellant Rickie Lee Hill argues that the district court should have granted his request for a mistrial when the State disclosed portions of a written transcript of an interview between Detective Dolphis Boucher and Hill that had impermissibly disclosed Hill’s prior criminal history to the jury. Hill further argues that because the district court did not admonish the jury with a curative or limiting instruction about the State’s impermissible disclosure of his prior convictions, his motion for a mistrial should have been granted in light of this court’s decision in Geiger v. State.⁴

Hill further argues that the district court erred when it allowed a letter, which was allegedly left at the victim’s house, to come into evidence. Hill contends that the State failed to authenticate the letter

³Williams v. State, 121 Nev. 934, 948-49, 125 P.3d 627, 636-37 (footnote omitted) (quoting Weakland v. State, 96 Nev. 699, 701, 615 P.2d 252, 254 (1980)).

⁴112 Nev. 938, 942, 920 P.2d 993, 995-96 (1996) (“To determine whether an inadvertent reference to a prior criminal activity is so prejudicial that it cannot be cured by an admonition to the jury, the following four factors may be considered: (1) whether the remark was solicited by the prosecution; (2) whether the district court immediately admonished the jury; (3) whether the statement was clearly and enduringly prejudicial; and (4) whether the evidence of guilt was convincing.”).

We note that Hill’s trial counsel never submitted a motion to the district court to admonish the jury with a limiting or curative instruction after the State had disclosed the written transcript of the Boucher interview to the jury.

as being attributed to him and that the letter was nonetheless inadmissible hearsay.

As to the State's disclosure of Hill's prior convictions, the State responds and argues that Hill was not unjustly prejudiced by the single reference in the written transcript to his prior conviction for sexual assault. Further, the State argues that any prejudice suffered by Hill was harmless, as the information relating to Hill's prior convictions became open to permissible disclosure by the State when Hill subjected himself to cross-examination on the witness stand.

As to the letter allegedly left at the victim's house, the State argues that it was not required to prove that the letter was personally written and delivered by Hill to justify the admission of the letter into evidence. The State further argues that because Hill was charged pursuant to NRS 199.240 with the crime of intimidating a witness, the issue was not with the admissibility of the letter, as suggested by Hill, but rather the weight of the letter as evidence. With regard to Hills' hearsay argument, the State simply responds that it presented an abundance of credible evidence to show that the letter was Hill's own statement in either his individual or representative capacity; thus, the State argues that the letter was not hearsay.

We conclude that even though the written transcript of the Boucher interview impermissibly disclosed Hill's prior convictions,⁵

⁵See NRS 48.045(1), which states that "[e]vidence of a person's character or a trait of his character is not admissible for the purpose of proving that he acted in conformity therewith on a particular occasion," subject to certain exceptions. NRS 48.045(2) further states that "[e]vidence of other crimes, wrongs or acts is not admissible to prove the
continued on next page . . .

abundant evidence in the record establishing Hill's guilt renders the error harmless beyond a reasonable doubt.⁶

Accordingly, we will not overturn Hill's conviction based on his contention that a mistrial was warranted as a result of the State's impermissible disclosure of Hill's prior convictions.⁷

As to Hill's contention that the district court should have admonished the jury with a curative or limiting instruction, as noted previously, Hill did not submit a motion to the district court to admonish the jury. However, upon review, we conclude that any error in that regard was harmless beyond a reasonable doubt.

As to the letter allegedly left at the victim's house, we conclude that the district court did not abuse its discretion when it held that there was sufficient evidence to support the introduction of the letter into evidence, as the jury could reasonably find with the evidence presented that Hill was a catalyst for the letter being written. Further,

... continued

character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes[.]”


⁶See Chapman v. California, 386 U.S. 18, 24 (1967); see also Williams v. State, 121 Nev. 934, 948, 125 P.3d 627, 636 (2005) (holding that this court will not overturn a judgment where an improperly admitted prior conviction was harmless error).

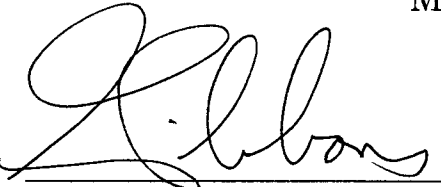
⁷We note that there are no issues of compelled testimony in this appeal, as Hill's trial counsel had stated in his opening statement during trial that Hill would be taking the witness stand during his case in chief. Thus, we conclude that any argument that Hill was compelled to take the witness stand because of the State's impermissible disclosure of Hill's prior convictions is without merit.


we agree with the State that because Hill was charged pursuant to NRS 199.240 with intimidating a witness, the issue was not so much the admissibility of the letter, but rather the weight of the letter as evidence.⁸

Therefore, we will not overturn Hill's conviction based on his contention that the district court abused its discretion in admitting the letter into evidence.⁹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Maupin


_____, J.
Gibbons


_____, J.
Douglas

cc: Hon. Donald M. Mosley, District Judge
Kenneth G. Frizzell III
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁸See Lay v. State, 110 Nev. 1189, 1192, 886 P.2d 448, 450 (1994) (holding that "it is exclusively within the province of the trier of fact to weigh evidence and pass on the credibility of witnesses and their testimony").

⁹We do not address appellant's hearsay argument because it was not raised below and because we conclude that there was no plain error. See Gallego v. State, 117 Nev. 348, 365, 23 P.3d 227, 239 (2001).