

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRADLEY ROBEY FITZGERALD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45919

FILED

MAR 07 2006

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 one count of battery with the use of a deadly weapon causing substantial bodily harm. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge. Appellant Bradley Fitzgerald was adjudicated a habitual criminal and sentenced to a prison term of 60-240 months.

Fitzgerald's sole contention is that the district court erred by refusing to grant a mistrial after a prosecution witness stated Fitzgerald went to the victim's house to sell drugs on the night of the crime. 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."¹

In this instance, the State asked what happened after a knock on the door. In response, the victim testified, "He, [Fitzgerald] asked me if I wanted to buy any marijuana." The district court sustained Fitzgerald's objection and admonished the jury to disregard the answer.

¹Randolph v. State, 117 Nev. 970, 981, 36 P.3d 424, 431 (2001).

"A jury is presumed to follow its instructions."² The district court then inquired about what, if anything, the State did to prevent such testimony. The district court determined that the State engaged in measures to attempt to prevent the evidence of drugs from being introduced to the jury.

"A witness's spontaneous or inadvertent references to inadmissible material, not solicited by the prosecution, can be cured by an immediate admonishment directing the jury to disregard the statement."³ The remark was isolated and unintended, and we conclude that any prejudice flowing from it was adequately cured by the district court. Therefore we,

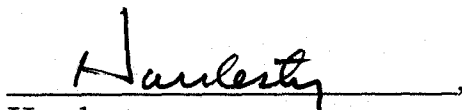
ORDER the judgment of conviction AFFIRMED.

 J.

Maupin

 J.

Gibbons

 J.

Hardesty

²Weeks v. Angelone, 528 U.S. 225, 234 (2000).

³Carter v. State, 121 Nev. ____, ____, 121 P.3d 592, 599.

cc: Hon. Stewart L. Bell, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk