

IN THE SUPREME COURT OF THE STATE OF NEVADA

RODNEY MYERS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46457

FILED

MAY 19 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of coercion with the use of violence or threat of violence. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge. The district court sentenced appellant Rodney Myers to a prison term of 28 to 72 months.

Myers first contends that his conviction must be reversed because the victim's testimony was not corroborated. Specifically, Myers argues that the version of NRS 175.301 in effect at the time of the crime required that corroboration.¹ The district court found that NRS 175.301 did not apply where an individual was charged with using force to coerce the victim into prostitution.

Even assuming that the district court's ruling was erroneous, we conclude that the victim's testimony in this case was sufficiently corroborated. In particular, we note that evidence of the victim's injuries was admitted, and that evidence was consistent with the victim's testimony. Further, Myers testified that he was with the victim during

¹Prior to its amendment, NRS 175.301 required corroborating testimony where a defendant was charged with "inveigling, enticing, or taking away any person for the purpose of prostitution." 2005 Nev. Stat., ch. 113, §1, at 308.

the time period in question. We therefore conclude that the evidence was sufficient and reversal is not warranted.

Myers next contends that the district court erred by denying his motion to suppress statements made to police officers without the benefit of Miranda² warnings. The district court found that Myers was not in custody when he made the statements. "Findings of fact in a suppression hearing will not be disturbed on appeal if supported by substantial evidence."³ We conclude that the district court's finding that Myers was not in custody is supported by substantial evidence, and Myers has failed to demonstrate that the district court erred.

Myers also contends that the district court erred by admitting evidence of other uncharged bad acts. Specifically, Myers argues that the district court should not have allowed the victim to testify that Myers forced her to have sex on more than one occasion and against her will. The district court allowed the testimony as rebuttal after Myers testified that he and the victim had sex on only one occasion and that was with the victim's consent. When the State initially sought to cross-examine Myers on the matter, the district court conducted a short hearing outside the presence of the jury. During that hearing, defense counsel apparently conceded that the victim's testimony was admissible, as it went to Myers' credibility. There was no objection when the victim was later called to rebut Myers' testimony.

Moreover, we conclude that Myers' forcing the victim to submit to his sexual advances was part of the pattern of violence that constituted the coercion. It was, therefore, not another uncharged bad act,

²Miranda v. Arizona, 384 U.S. 436 (1966).

³State v. Johnson, 116 Nev. 78, 80, 993 P.2d 44, 45-46 (2000).

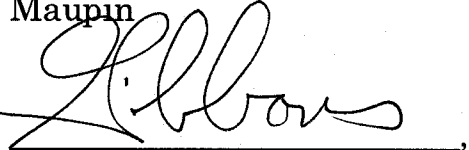
but actually part of the crime with which Myers was charged, and we conclude that the district court did not err by allowing the testimony.

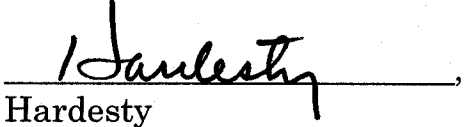
Finally, Myers contends that the district court erred by denying a motion for mistrial after one of the jurors asked whether a gun was found when Myers was arrested. Initially, we note that "it is within the sound discretion of the trial court to determine whether a mistrial is warranted. Absent a clear showing of abuse of discretion, the trial court's determination will not be disturbed on appeal."⁴ In this case, there were two passing references to the fact that Myers was seen with a gun. The district court ordered the references stricken and instructed the jury that they were not to consider any mention of a gun. We conclude that the district court did not err in denying the motion for a mistrial.

Having considered appellant's contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.

 J.

Maupin
 J.
Gibbons

 J.
Hardesty

⁴Geiger v. State, 112 Nev. 938, 942, 920 P.2d 993, 995 (1996) (citations omitted).

cc: Hon. Steven R. Kosach, District Judge
Washoe County Public Defender
Attorney General George Chanos/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk