IN THE SUPREME COURT OF THE STATE OF NEVADA

DALE EUGENE HOLCOMB,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 55379

FILED

OCT 12 2010

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 one count of felony domestic violence. Seventh Judicial District Court, White Pine County; Dan L. Papez, Judge.

Motion for mistrial

Appellant Dale Eugene Holcomb claims that the district court erred by denying his motion for a mistrial, arguing that the victim's remarks at trial insinuating that Holcomb had previously committed acts of domestic violence against her so "unavoidably prejudiced" the jury that he was prevented from receiving a fair trial. We disagree. Denial of a motion for mistrial is within the district court's sound discretion and will not be reversed on appeal in the absence of a clear showing of abuse. See Ledbetter v. State, 122 Nev. 252, 264, 129 P.3d 671, 680 (2006). The victim's remarks were not clearly and enduringly prejudicial, the district court admonished the jury regarding each of the brief remarks made on cross-examination, and Holcomb has not demonstrated that the admonitions failed to neutralize any resulting prejudice. See Geiger v. State, 112 Nev. 938, 942, 920 P.2d 993, 995-96 (1996) (factors for determining whether prejudice from inadvertent references to prior

criminal activity can be cured by an admonishment); see also Ledbetter, 122 Nev. at 264-65, 129 P.3d at 680 (spontaneous, inadvertent references to inadmissible material can be cured by an immediate admonishment). Accordingly, we conclude that Holcomb has failed to demonstrate that the district court abused its discretion by denying his motion for a mistrial.

Expert testimony

Holcomb claims the district court erred in allowing expert testimony generally describing battered woman syndrome because it improperly suggested that he was a serial abuser and led the jury to convict him based on implied prior bad acts.

The decision to admit expert testimony rests within the sound discretion of the district court and will not be disturbed absent a clear showing of abuse. See Mulder v. State, 116 Nev. 1, 12-13, 992 P.2d 845, 852 (2000).

The State filed a "Notice of State's Trial Expert Witnesses" informing Holcomb that it would be introducing expert testimony from Dr. Chambers about battered woman syndrome. Although Holcomb did not file a written objection prior to trial, he objected to the admission of Dr. Chambers' testimony at the beginning of the trial and renewed the objection before Dr. Chambers testified. Here, the parties stipulated to the admission of photographs that depicted new and old injuries on the victim. The court determined that because the photographs were in front of the jury, the jury was going to have to "sort out" the injuries and found that Dr. Chambers' testimony was relevant and would help the jury understand what domestic violence is. Given the circumstances, we cannot conclude that the district court abused its discretion by admitting Dr. Chambers' testimony. See NRS 48.061(1) (allowing admission of

expert testimony concerning effect of domestic violence for any relevant purpose); NRS 48.015 (defining relevant evidence).

Juror questions

Holcomb claims that the district court erred by holding unrecorded hearings regarding the admissibility of juror questions and by deciding or asking juror questions without first presenting the questions to counsel. The practice of juror questioning is committed to the sound discretion of the district court, subject to certain procedural safeguards. See Knipes, 124 Nev. 927, 931, 192 P.3d 1178, 1181 (2008) (extending Flores v. State, 114 Nev. 910, 913, 965 P.2d 901, 902-03 (1998)). Here, although the district court held two unrecorded bench conferences to resolve objections to juror questions, the attorneys' objections and the court's rulings were written on each question and therefore the district court substantially complied with the requirement to conduct the hearing on the record. See id. at 937, 192 P.3d at 1184-85. Holcomb does not claim that he was prejudiced by this format or that the district court erred in determining the admissibility of any juror question or asking any question over his objection. Under these circumstances, we conclude that the district court's failure to strictly adhere to the procedural requirement to conduct the hearing on the record was harmless. See id. at 936-37, 192 P.3d at 1184. We further conclude that the district court did not improperly ask any juror question or err by failing to present a question that was not factual in nature and was addressed to the court or attorneys. See Flores, 114 Nev. at 913, 965 P.2d at 902 (juror questions must be factual in nature and directed at a witness).

Cumulative error

Holcomb claims that cumulative error warrants reversal of his conviction. Having balanced the relevant factors, we conclude that the cumulative effect of the errors did not deprive Holcomb of a fair trial. See Rose v. State, 123 Nev. 194, 211, 163 P.2d 408, 419 (2007) (setting forth the relevant factors to consider when deciding whether cumulative error requires reversal).

Having considered Holcomb's claims and concluded that he is not entitled to relief, we

ORDER the judgment of conviction AFFIRMED.

_____, J.
Hardesty

_____, J.
Douglas

_____, J.
Pickering

cc: Hon. Dan L. Papez, District Judge
State Public Defender/Carson City
State Public Defender/Ely
Attorney General/Carson City
White Pine County District Attorney
White Pine County Clerk