IN THE SUPREME COURT OF THE STATE OF NEVADA

RALPH JARBRA BROWN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 57653

FILED

NOV 18 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
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DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of battery constituting domestic violence. Eighth Judicial District Court, Clark County; Linda Marie Bell, Judge.

Sufficiency of the evidence

Appellant Ralph Jarbra Brown contends that insufficient evidence was adduced to support the jury's verdict. Brown raised a necessity defense at trial and claims on appeal that he pulled his drunk girlfriend's hair in order to get her out of the middle of the street and away from oncoming traffic. We disagree and conclude that the evidence, when viewed in the light most favorable to the State, is sufficient to establish guilt beyond a reasonable doubt as determined by a rational trier of fact. See Jackson v. Virginia, 443 U.S. 307, 319 (1979); Mitchell v. State, 124 Nev. 807, 816, 192 P.3d 721, 727 (2008).

Witnesses testified that the victim was in the middle of the street when Brown caught up to her, grabbed her by the hair from behind, slammed her to the ground, and then tried pulling her across the street by her hair. The victim was nearly struck by traffic as Brown was pulling and dragging her. Two witnesses testified that the victim managed to break away and reached the sidewalk when Brown again caught up to her,

grabbed her by the hair, and pulled her down to the ground. It did not appear to the witnesses that Brown was attempting to assist the victim. Officer Germain Murdoch testified that she commanded Brown to release the victim multiple times and he refused until she took out her Taser. Officer Murdoch also heard Brown instruct the victim to "be quiet, don't say anything."

It is for the jury to determine the weight and credibility to give conflicting testimony and a jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict. See NRS 33.018; NRS 200.481(1)(a); NRS 200.485(1)(c); McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992); Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981). Additionally, circumstantial evidence alone may sustain a conviction. See Buchanan v. State, 119 Nev. 201, 217, 69 P.3d 694, 705 (2003).

Expert testimony/lay witness

Brown contends that the district court erred by allowing Officer Murdoch to testify as an expert on domestic violence without proper notice and qualifying her as an expert witness. See NRS 50.275 (testimony by experts); NRS 174.234(2) (notice provisions relating to expert testimony); see also NRS 50.265 (lay witness testimony). "We review a district court's decision to admit or exclude evidence for an abuse of discretion." Mclellan v. State, 124 Nev. 263, 267, 182 P.3d 106, 109 (2008). Here, although the district court abused its discretion by allowing the admission of Officer Murdoch's generalized expert testimony regarding credibility issues with domestic violence victims, see generally Abbott v. State, 122 Nev. 715, 728, 138 P.3d 462, 471 (2006) (witness acts as an expert "when he does more than merely relate the facts and instead

analyzes the facts and/or states whether there was evidence that the victim was coached or biased against the defendant"), Brown fails to demonstrate that the testimony had a "substantial and injurious effect or influence in determining the jury's verdict," Mclellan, 124 Nev. at 269-70, 182 P.3d at 111 (internal quotation marks omitted), and we conclude, in light of the overwhelming evidence of his guilt, that the error was harmless beyond a reasonable doubt. See id. at 271, 182 P.3d at 112; see also NRS 178.598.

Motion for a mistrial

Brown contends that the district court erred by denying his motion for a mistrial based on multiple discovery violations and an investigating officer's alleged reference to other bad acts. We will not reverse a district court's decision to deny a motion for a mistrial absent an abuse of discretion. Rose v. State, 123 Nev. 194, 206-07, 163 P.3d 408, 417 (2007). Here, the State did not violate the pretrial discovery order to turn over exculpatory evidence because one of the challenged statements admitted at trial was in fact included in a police report provided to the defense and the other, which the State was not aware of and was not included in any police report, was not exculpatory. Further, Brown extensively cross-examined Officer Murdoch about her failure to include the non-exculpatory statement in her report. And finally, although the district court found that Officer Morris did not specifically refer to prior bad acts committed by Brown, it nevertheless provided the jury, at defense counsel's request, with a limiting instruction in order to clarify the officer's testimony and cure any misunderstanding. See generally Leonard v. State, 117 Nev. 53, 66, 17 P.3d 397, 405 (2001) (providing that this court presumes that the jury follows the district court's instructions). Therefore,

we conclude that the district court did not abuse its discretion by denying Brown's motion for a mistrial.

Criminal history

Brown contends that the victim's reference to his criminal history during her trial testimony warrants the reversal of his conviction. We disagree. The victim's reference to Brown's outstanding warrant was spontaneous, not solicited by the prosecutor, and was followed by an immediate admonishment to the jury to disregard the statement. See Rose, 123 Nev. at 207, 163 P.3d at 417; Geiger v. State, 112 Nev. 938, 942, 920 P.2d 993, 995-96 (1996) (discussing factors to consider when evaluating the prejudicial effect of an inadvertent reference to prior criminal activity); see also Leonard, 117 Nev. at 66, 17 P.3d at 405. Therefore, we conclude that any error was harmless beyond a reasonable doubt. See NRS 178.598 ("Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.").

Batson challenges

Brown contends that the district court erred by denying his objection to the State's use of peremptory challenges to remove jurors 70, 89, and 90 because the prosecutor's reasons were based on race. See U.S. Const. amends. VI, XIV § 1; Nev. Const. art. 1, §§ 3, 8; Batson v. Kentucky, 476 U.S. 79 (1986). We disagree.

"Appellate review of a Batson challenge gives deference to '[t]he trial court's decision on the ultimate question of discriminatory intent.'" Hawkins v. State, 127 Nev. ___, ___, 256 P.3d 965, 966 (2011) (quoting Diomampo v. State, 124 Nev. 414, 422-23, 185 P.3d 1031, 1036-37 (2008)); see also Felkner v. Jackson, 562 U.S. ___, ___, 131 S. Ct. 1305, 1307 (2011). The district court found that the prosecutor's reasons for

excusing the jurors were credible, race neutral, and not a pretext for racial discrimination. See Kaczmarek v. State, 120 Nev. 314, 333, 91 P.3d 16, 29 (2004) ("'Unless a discriminatory intent is inherent in the prosecutor's explanation, the reason offered will be deemed race neutral.'" (quoting Hernandez v. New York, 500 U.S. 352, 360 (1991))). Because the record supports the district court's determination, we conclude that the district court did not err by rejecting Brown's Batson challenge.

Cumulative error

Brown contends that cumulative error deprived him of a fair trial and requires the reversal of his conviction. Balancing the relevant factors, we conclude that Brown's contention is without merit. See Valdez v. State, 124 Nev. 1172, 1195, 196 P.3d 465, 481 (2008). Accordingly, we

ORDER the judgment of conviction AFFIRMED.

_____, J.
Douglas

_____, J.
Hardesty

_____, J.
Parraguirre

cc: Hon. Linda Marie Bell, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk