

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSHUA WILLIAM BACHARACH,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 69677

**FILED**

OCT 19 2016

ELIZABETH A. BROWN  
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 attempted murder with the use of a deadly weapon, four counts of discharge of a firearm from or within a structure or vehicle, four counts of assault with a deadly weapon, stop required upon signal of police officer, resisting a public officer with the use of a firearm, possession of a firearm with altered or obliterated serial number, and three counts of felon in possession of a firearm. Eighth Judicial District Court, Clark County; Douglas Smith, Judge.

Appellant Joshua William Bacharach first argues the district court erred in instructing the jury regarding flight. Bacharach asserts there was no evidence to support a finding that he fled with a consciousness of guilt. "The district court has broad discretion to settle jury instructions, and this court reviews the district court's decision for an abuse of that discretion or judicial error." *Crawford v. State*, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005). The evidence produced at trial demonstrated Bacharach shot out of his vehicle's window when an officer initiated a traffic stop and Bacharach then drove his vehicle away from the officer until it crashed. Bacharach then exited his vehicle, fired shots

at the officer, and then absconded on foot. Bacharach then placed his bullet-proof vest and firearm under a vehicle and hid in a resident's backyard until a police dog bit him, permitting officers to arrest him. Because the evidence demonstrated Bacharach fled with the consciousness of guilt and to avoid arrest, we conclude the district court did not abuse its discretion in instructing the jury on flight. *See Rosky v. State*, 121 Nev. 184, 199, 111 P.3d 690, 699-700 (2005); *see also McGuire v. State*, 86 Nev. 262, 266, 468 P.2d 12, 15 (1970) ("Where there is evidence . . . of flight as a deliberate attempt to avoid apprehension, a flight instruction is proper.").

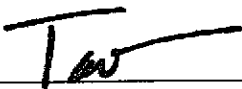
Second, Bacharach argues the district court erred in denying his motion for mistrial following a witness' statement that she spoke with police officers in the gang unit. The denial of a motion for mistrial will not be disturbed on appeal absent a clear showing of an abuse of discretion. *Parker v. State*, 109 Nev. 383, 388-89, 849 P.2d 1062, 1066 (1993). During questioning of the mother of Bacharach's children, the State asked her if she had previously engaged in a discussion with police officers regarding Bacharach's firearms. She responded that she had looked at firearms on Bacharach's Facebook page with the "gang unit." Bacharach moved for a mistrial following this statement. The district court denied the motion, and explained during a discussion outside of the presence of the jury that it denied the motion because the statement was quick, the parties did not highlight it, and the parties did not talk about it further. Given these circumstances, Bacharach does not demonstrate the denial of his motion for mistrial amounted to an abuse of discretion.

Moreover, even assuming the district court committed error, the error was harmless beyond a reasonable doubt because there was strong evidence of his guilt presented at trial. The officer observed

Bacharach shooting and driving in a dangerous manner, multiple residents of the neighborhood observed a person matching Bacharach's physical characteristics shooting at the officer and hiding the vest and firearm, Bacharach was discovered hiding in a backyard and refused to follow verbal commands to surrender until bitten by a police dog, Bacharach's DNA could not be excluded from DNA discovered in the vehicle, and Bacharach's thumbprint was discovered on the firearm's magazine. Given the substantial amount of evidence demonstrating Bacharach's guilt and the brief nature of the improper statement regarding viewing Facebook with the gang unit, Bacharach fails to demonstrate he is entitled to relief. *See id.* at 389, 849 P.2d at 1066 (stating "denial of defendant's motion for a mistrial will be deemed harmless error where the prejudicial effect of the statement is not strong and where there is otherwise strong evidence of defendant's guilt.").

Having concluded Bacharach is not entitled to relief, we  
ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Silver

cc: Hon. Douglas Smith, District Judge  
Nguyen & Lay  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk