

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANTONIO MODALE CASTILLO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 68490

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 entered pursuant to a jury verdict of one count of battery with the use of a deadly weapon with substantial bodily harm and with the intent to promote, further, or assist a criminal gang; one count of battery with the use of a deadly weapon with the intent to promote, further, or assist a criminal gang; and two counts of discharging a firearm at or into a structure, vehicle, aircraft, or watercraft with the intent to promote, further, or assist a criminal gang. Eighth Judicial District Court, Clark County; Richard Scotti, Judge.

Appellant Antonio Castillo claims the district court erred by denying his motion for a mistrial, which he made after a witness referred to his custodial status. We review a district court's ruling on a motion for a mistrial for an abuse of discretion. *Ledbetter v. State*, 122 Nev. 252, 264, 129 P.3d 671, 680 (2006).

The record reveals the district court asked a witness why she was "no longer afraid" and the witness answered, "[because] most of them are in prison, and I don't have to worry about the three that are not." Two

jurors stated they could not hear the witness, the prosecutor asked to approach, and the district court conducted a brief bench conference. Thereafter, the district court struck the question and answer and admonished the jury “to completely disregard anything you heard, strike from your mind, whatever you heard her say or believe you [heard] her say. Do not allow whatever you think you heard her say affect your deliberations or thought process or decision-making in this case whatsoever in any manner.”

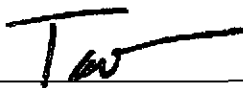
Castillo moved for mistrial “based on the idea that the . . . juror or jurors who heard [the witness’s answer] might have come under the assumption or heard that [he] is currently in custody.” The district court denied the motion after making the following observations: The witness was asked a question raised by one of the jurors and agreed to by both of the parties, and neither party anticipated the witness’s answer. The witness was barely audible and probably six jurors raised their hands to indicate they could not hear her. The witness’s answer did not mention any names or specifically refer to anyone. Even if the witness’s answer was heard, it was not prejudicial given the context in which it was made.


Based on this record, and particularly the district court’s admonishment to the jury, we conclude the district court did not abuse its discretion by denying Castillo’s motion. *See Leonard v. State*, 117 Nev. 53, 66, 17 P.3d 397, 405 (2001) (“A jury is presumed to follow its instructions.” (internal quotation marks omitted)); *Allen v. State*, 99 Nev. 485, 490, 655 P.2d 238, 241 (1983) (An appellant who challenges a district court’s denial of a motion for a mistrial based on a witness’s inadvertent remark has the burden to “prove that the inadvertent statement was so prejudicial as to

be unsusceptible to neutralizing by an admonition to the jury.”).
Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Richard Scotti, District Judge
Matsuda & Associates, Ltd.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk