IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JEREMY CHATMAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 71788

ORDER OF AFFIRMANCE

Jeremy Chatman appeals from a judgment of conviction, pursuant to a jury verdict, of domestic battery. Second Judicial District Court, Washoe County; Patrick Flanagan, Judge.

Chatman was arrested following an altercation wherein he allegedly grabbed the victim, his girlfriend, by the neck. He pleaded not guilty, and a jury thereafter convicted him of domestic battery.[1] On appeal, Chatman argues the district court abused its discretion by denying his motion for a mistrial after the district court read to the jury an instruction listing his prior two convictions for domestic battery. He further argues reversal is required due to the district court's failure to instruct the jury on the "willful" element of battery. We disagree.

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). When prejudicial evidence is improperly admitted, "a new trial must be granted unless it appears, beyond a reasonable doubt, that no prejudice has resulted." *Winiarz v. State*, 107 Nev. 812, 814, 820 P.2d 1317, 1318 (1991) (internal quotations omitted). In determining whether the district court abused its discretion by denying a motion for a

[1]We do not recount the facts except as necessary to our disposition.

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mistrial, we consider (1) "whether the issue of innocence or guilt is close," (2) "the quantity and character of the error," and (3) "the gravity of the crime charged." *Id.* (internal quotations omitted). If an error is ultimately harmless, it will not be reversible. *See* NRS 178.598; *see also Koenig v. State*, 99 Nev. 780, 784, 672 P.2d 37, 40 (1983) (holding the district court's error in admitting reference to the defendant's prior convictions was harmless where the evidence of guilt was overwhelming).

The district court clearly erred, as NRS 200.485(4) plainly prohibits the reading of prior offenses to the jury. *See State v. Catanio*, 120 Nev. 1030, 1033, 102 P.3d 588, 590 (2004) ("We must attribute the plain meaning to a statute that is not ambiguous."). However, we conclude the error was harmless. The evidence of guilt was substantial, as several witnesses, including the victim, testified to Chatman's use of physical violence against the victim. *Cf. Koenig*, 99 Nev. at 7840, 652 P.2d at 4037 (concluding it was error for the court to allow an instruction to mention the defendant's prior conviction, but holding the error was harmless and did not merit reversal where the evidence of guilt was overwhelming).

Further, the district court removed the information regarding Chatman's prior convictions from the jury's packet of instructions. The court also instructed the jury that the criminal information was not evidence and creates no presumption of guilt, and to disregard all information that was not evidence in the case. We presume the jury followed those instructions. *See Summers v. State*, 122 Nev. 1326, 1333, 148 P.3d 778, 783 (2006). In light of these facts, we conclude it appears beyond a reasonable doubt no prejudice resulted from the error, and the

district court therefore did not abuse its discretion by denying Chatman's motion for a mistrial.

Chatman further argues reversal is required due to the district court's failure to instruct the jury on the "willful" element of battery. This argument is belied by the record, as the district court instructed the jury that the battery must be intentional, and Nevada law has held that "willful" is synonymous with "intentional." *See, e.g., Byars v. State*, 130 Nev. ___, ___, 336 P.3d 939, 949 (2014). Even assuming, arguendo, Chatman's argument has merit, Chatman did not object to the battery instructions below, and we conclude he fails to demonstrate plain error affecting his substantial rights. *See Grey v. State*, 124 Nev. 110, 120, 178 P.3d 154, 161 (2008) (stating that we review unobjected-to error for plain error). Accordingly, we

ORDER the judgment of conviction AFFIRMED.

Silver, C.J.
Silver

Tao, J.
Tao

Gibbons, J.
Gibbons

cc: Hon. Patrick Flanagan, District Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk