

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

EVANS CARTER TUTT, III,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 69178

FILED

SEP 20 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of first-degree kidnapping with the use of a deadly weapon resulting in substantial bodily harm, coercion, battery with the use of a deadly weapon resulting in substantial bodily harm constituting domestic violence, and child abuse, neglect, or endangerment. Eighth Judicial District Court, Clark County; Douglas Smith, Judge.

Appellant Evans Carter Tutt, III first argues the district court erred in concluding testimony related to his receipt of settlement money was inadmissible because it was irrelevant. During trial, Tutt attempted to question the victim regarding her knowledge of money Tutt received as a settlement for an unrelated matter. Following the State's objection, Tutt explained that he wished to elicit this information to explain to the jury how Tutt was able to afford an expensive car and to dissuade the jury from possibly believing Tutt was engaged in gang-related activities. The district court concluded information related to the settlement was irrelevant to this matter.

"It is within the district court's sound discretion to admit or exclude evidence, and this court reviews that decision for an abuse of

discretion or manifest error.” *Thomas v. State*, 122 Nev. 1361, 1370, 148 P.3d 727, 734 (2006) (internal quotation marks and footnote omitted). A review of the record before this court reveals that the allegations in this matter did not involve gang-related activities and the district court properly exercised its discretion to limit cross-examination of the victim to questions pertaining to the incidents at issue in this matter. *See Robins v. State*, 106 Nev. 611, 624, 798 P.2d 558, 566 (1990) (explaining the district court appropriately limited a defendant’s questioning of a witness because the “cross-examination was founded on speculation and sought merely to elicit testimony that was unrelated, irrelevant and inadmissible”); *see also* NRS 48.015 (defining relevant evidence as “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence”). Therefore, Tutt is not entitled to relief for this claim.

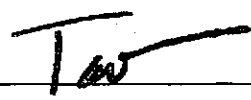
Second, Tutt argues the district court erred in denying his motion for mistrial and for failing to give a curative instruction following the victim stating she did not permit Tutt to see their children after their relationship ended because he is “a very violent person.” Tutt acknowledges that the challenged statement was not elicited by the State, but asserts it was overly prejudicial. Tutt did not make a contemporaneous objection regarding this issue or request a curative instruction. *See Riddle v. State*, 96 Nev. 589, 591, 613 P.2d 1031, 1033 (1980) (providing that one must make a “contemporaneous objection” in order to preserve an issue for appeal). Thus, no relief is warranted absent a demonstration of plain error. *See Valdez v. State*, 124 Nev. 1172, 1190, 196 P.3d 465, 477 (2008). Under the plain error standard, we determine “whether there was error, whether the error was plain or clear, and

whether the error affected the defendant's substantial rights." *Anderson v. State*, 121 Nev. 511, 516, 118 P.3d 184, 187 (2005) (internal quotation marks omitted).

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). Here, Tutt moved for a mistrial after the conclusion of the victim's testimony. The district court denied the motion, concluding that the statement provided no specific comments regarding Tutt's inappropriate behavior and occurred in such a quick manner that the jury's attention was not drawn to the statement. Under these circumstances, Tutt does not demonstrate the denial of his motion for mistrial amounted to an abuse of discretion. Tutt also does not demonstrate the district court had a duty to sua sponte issue a curative instruction in this circumstance. Therefore, Tutt fails to demonstrate error affecting his substantial rights.

Having concluded Tutt 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
Law Offices of John P. Parris
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk