

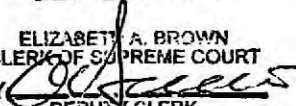
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GLEN ALAN WALKER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 82140-COA

FILED

SEP 22 2021

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Glen Alan Walker appeals from a judgment of conviction, pursuant to a jury verdict, of assault on a protected person with a dangerous weapon, resisting a public officer with use of a firearm, discharging a weapon where person might be endangered, and discharging a firearm within or from a structure. Third Judicial District Court, Lyon County; John Schlegelmilch, Judge.

Lyon County Sherriff Deputy Timothy Shaffer and Sergeant Jeff Miller responded to a 9-1-1 call alleging domestic battery by strangulation.<sup>1</sup> The deputies arrived at the residence of the alleged victim, Shawna Page, and after interviewing her, suspected Page's boyfriend, Glen Walker, of the domestic battery. Thereafter, the two deputies conducted a sweep of the residence, but did not find Walker. Page informed the deputies that Walker had grabbed his rifle and left the residence by foot. Sergeant Miller began searching for Walker in the immediate area surrounding the residence while Deputy Shaffer stayed behind at the residence.

Eventually, Sergeant Miller discovered footprints on the ground, followed them, and then heard a loud gunshot from a high-powered rifle, causing him to retreat behind a nearby structure. Sergeant Miller radioed

<sup>1</sup>We do not recount the facts except as necessary for our disposition.

to dispatch and requested backup. After hearing the alert, Deputy Matthew Galvin and Sergeant Daniel Lynch arrived and began assisting with the search. Soon after, Walker emerged from an abandoned garage in possession of a rifle and was taken into custody.

Walker was charged with several felonies related to the shooting of his gun in close proximity to the deputies. However, the charge related to the alleged domestic battery by strangulation against Page was apparently dismissed at the preliminary hearing for lack of probable cause. Walker pleaded not guilty.

Prior to trial, Walker moved in limine to exclude any reference of the uncharged domestic battery by strangulation. The district court held a pretrial motion hearing and partly granted Walker's motion, excluding any testimony related to the domestic battery by strangulation, but permitting law enforcement witnesses to reference the domestic incident when asked why they were dispatched to Page's residence.

At trial, Sergeant Lynch's testimony specifically referenced the uncharged "domestic battery," but Walker did not contemporaneously object, waiting until the following recess outside the presence of the jury to state his objection on the record. After considering Walker's objection, the court concluded that Walker was not prejudiced by Sergeant Lynch's testimony. However, the court agreed, at Walker's request, to instruct the jury via a limiting jury instruction not to consider any offenses other than those currently charged. At the conclusion of trial, the jury found Walker guilty on all charges.

On appeal, Walker argues that Sergeant Lynch's testimony was improper evidence of a prior bad act, which violated the district court's order in limine, resulting in prejudicial error. Conversely, the State contends that Sergeant Lynch's testimony did not violate the district court's order in limine;

however, even if Sergeant Lynch's testimony did violate the district court's order in limine, any resulting error was harmless.

"A district court's decision to admit or exclude evidence under NRS 48.045(2) rests within its sound discretion and will not be reversed on appeal absent manifest error." *Ledbetter v. State*, 122 Nev. 252, 259, 129 P.3d 671, 676 (2006). "NRS 48.045(2) forbids the admission of prior bad acts to show that a person acted in conformity with charged conduct." *Carter v. State*, 121 Nev. 759, 769, 121 P.3d 592, 598 (2005). There is a "general presumption that uncharged bad acts are inadmissible." *Tavares v. State*, 117 Nev. 725, 731, 30 P.3d 1128, 1131 (2001), *holding modified by Mclellan v. State*, 124 Nev. 263, 182 P.3d 106 (2008). However, when a witness makes a spontaneous or inadvertent reference to an otherwise inadmissible prior bad act, not solicited by the prosecution, the error can be cured by an immediate admonishment directing the jury to disregard the statement. *Carter*, 121 Nev. at 770, 121 P.3d at 599.

Further, "[e]rrors in the admission of evidence under NRS 48.045(2) are subject to a harmless error review." *Rosky v. State*, 121 Nev. 184, 198, 111 P.3d 690, 699 (2005). "An error is harmless and not reversible if it did not have a substantial and injurious effect or influence in determining the jury's verdict." *Hubbard v. State*, 134 Nev. 450, 459, 422 P.3d 1260, 1267 (2018). Admission of prior bad act evidence in violation of an order in limine is harmless error when overwhelming evidence supports the conviction. *See Sherman v. State*, 114 Nev. 998, 1010, 965 P.2d 903, 911 (1998) (concluding that the State's reference to a defendant's uncharged acts of domestic abuse, in violation of the district court's order in limine, was error, but harmless because the evidence of defendant's guilt as to the charged crimes was overwhelming and the single reference to the uncharged acts did not unduly influence the jury's verdict).

Here, at trial, the State questioned Sergeant Lynch as to the reason he “called out for Glen Walker” and Sergeant Lynch testified:

Well, I had been advised that he was a suspect. That there was probable cause to arrest him for domestic battery when we first arrived on scene, and I determined that based on that that he was probably the one that fired the weapon. So I was calling him out specifically based on that.

We conclude Sergeant Lynch’s testimony improperly referenced uncharged bad act evidence in violation of the district court’s order in limine. *See Carter*, 121 Nev. at 769, 121 P.3d at 598-99. Sergeant Lynch’s testimony exceeded the bounds of the district court’s evidentiary order and resulted in legal error, as it went beyond explaining why law enforcement was present at Page’s residence and was unnecessary in explaining why Sergeant Lynch was calling out Walker’s name over the public address system. Further, Lynch’s testimony tied the uncharged domestic battery to the charged crimes.

However, Sergeant Lynch’s testimony was clearly a spontaneous reference to the domestic battery, which was not solicited by the State. The prosecution merely asked Sergeant Lynch why he was calling out to Walker. After Sergeant Lynch referenced the uncharged bad act, the State did not discuss, follow-up, or elicit additional facts related to the domestic battery.

Although Walker did not contemporaneously object to Sergeant Lynch’s testimony, during the first recess outside the presence of the jury, he stated his objection to Sergeant Lynch’s testimony. Walker objected to the inadmissible portion of the testimony, and the district court proposed several remedies, including a limiting instruction.<sup>2</sup> Walker declined a

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<sup>2</sup>In response to Walker’s objection, the district court stated as follows:

contemporaneous limiting instruction, but agreed that the appropriate remedy was for the court to include a “general instruction at the end that [the jurors] are not to consider any other offenses than the ones that are being charged.” The court obliged and provided this instruction.<sup>3</sup>

Here, Walker failed to contemporaneously object to Sergeant Lynch’s testimony and failed to immediately move the court for a limiting instruction, to strike Sergeant Lynch’s testimony, or for a mistrial. Instead,

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I can instruct the jury to say that, you know, to tell them that they are not to consider that in determining the guilt or innocence in relation to the matter that’s before them which has nothing to do with any domestic. I can instruct the jury in relation to that.

... I suppose you can move for a mistrial if that’s what you’re seeking.

I’m not sure what you’re seeking because you haven’t asked me for any—any specific remedy at this point or if it’s your choice not to put any further emphasis on it one way or another then the Court can certainly not do anything at this point and just put the general instruction at the end in the—in the jury instructions.... I just haven’t heard a requested remedy.

<sup>3</sup>The general jury instruction reads:

During the course of this trial you heard evidence of other alleged misconduct not charged in this case, but closely related to the charged offenses. Although you may consider the evidence in conjugation with all the other evidence presented during the course of the trial in determining the guilt or innocence of the Defendant, this evidence shall not be considered by you to show that the Defendant has a bad character or to show that he acted in conformity with this type of character in relation to the crimes charged.

Walker agreed that a general jury instruction would remedy the error, and we presume the jury followed the curative instruction. *See Allred v. State*, 120 Nev. 410, 415, 92 P.3d 1246, 1250 (2004). Therefore, any resulting error from Sergeant Lynch's testimony was cured. *Sterling v. State*, 108 Nev. 391, 394, 834 P.2d 400, 402 (1992) (holding that any error caused by an inadvertent or spontaneous reference to other criminal activity was cured by the court's admonishment to the jury.).

We also note that Walker elected not to file a reply brief and thus does not address the State's harmless error contentions. *See Colton v. Murphy*, 71 Nev. 71, 72, 279 P.2d 1036, 1036 (1955) (concluding that when respondents' argument was not addressed in appellants' opening brief, and appellants declined to address the argument in a reply brief, "such lack of challenge . . . constitutes a clear concession by appellants that there is merit in respondents' position"). Thus, Walker has conceded that the error was harmless. But even if we addressed this issue on the merits, Walker's arguments would be unpersuasive.


In this case, the evidence regarding Walker's charged crimes was strong and the error did not have a substantial and injurious effect or influence in determining the jury's verdict. Furthermore, there is sufficient evidence in the record to support the jury's verdict. Page informed deputies that Walker had left the residence with his rifle. Sergeant Miller testified that he found an empty rifle case inside the Walker residence. Deputy Shaffer testified that while he was speaking with Page on the front lawn of the Walker residence, he heard a loud gunshot ring out from the north, which, based on his experience, sounded "very close." Robert Pyzel, a land planner for Lyon County, testified that the area where the shot was fired is located in what is considered a populated area where discharging of a firearm is prohibited. Sergeant Lynch testified that he used a loud public address


system for about 30 minutes to instruct Walker to exit the abandoned structures.


Moreover, Walker *admitted* to discharging the rifle and was found by the deputies in possession of a rifle. Walker stated several times on jail audio that he shot his rifle from the nearby garage. Deputy Galvin testified that he observed some movement in the garage and watched Walker emerge from it. Deputy Galvin also testified that when he was transporting Walker to jail, Walker said he “could have made that a whole lot worse on all of us.” A spent shell casing was found near where Walker was apparently positioned in the garage.

We conclude that this evidence supports Walker’s conviction. Based on the foregoing, Sergeant Lynch’s spontaneous but fleeting reference to the uncharged domestic battery was harmless, as there was sufficient evidence to support Walker’s conviction and Walker has failed to demonstrate how Sergeant Lynch’s testimony caused a “substantial and injurious effect or influence in determining the jury’s verdict.” *Hubbard*, 134 Nev. at 459, 422 P. 3d at 1267. Therefore, we

ORDER the judgment of conviction AFFIRMED.

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

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

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. John Schlegelmilch, District Judge  
Wayne A. Pederson, P.C.  
Attorney General/Carson City  
Lyon County District Attorney  
Third District Court Clerk