IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOESPH ALGER, A/K/A JOSEPH ALGER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 83922-COA



*ORDER OF AFFIRMANCE AND REMANDING TO CORRECT THE JUDGMENT OF CONVICTION*

Joesph Alger appeals from a judgment of conviction, entered pursuant to a jury verdict, of two counts of residential burglary, grand larceny, grand larceny auto, possession of stolen property, and stop required on signal of officer. Eighth Judicial District Court, Clark County; Ronald J. Israel, Judge.

First, Alger argues the district court abused its discretion by denying his motion for a mistrial. At trial, one of the victims testified she found her wallet inside the car next to a big knife. Alger argues the reference to the knife was irrelevant and prejudicial because he was not charged with a crime involving a knife and it implied violence or bad act evidence.

A district court may grant a defendant's request for mistrial when some prejudice occurs that prevents a fair trial. *Jeffries v. State*, 133 Nev. 331, 333, 397 P.3d 21, 25 (2017). This court reviews a district court's decision to deny a motion for a mistrial for an abuse of discretion. *Id.* "[A] witness's spontaneous or inadvertent reference[ ] to inadmissible material, not solicited by the prosecution, can be cured by an immediate

admonishment directing the jury to disregard the statement." *See Rose v. State*, 123 Nev. 194, 207, 163 P.3d 408, 417 (2007) (quotation marks omitted). Further, the error is harmless when a witness's statement about a defendant's prior bad act was "unsolicited and inadvertent, the reference to criminal activity was brief and indirect, and [the defendant] declined the district court's offer to give a curative instruction." *Byford v. State*, 116 Nev. 215, 226, 994 P.2d 700, 708 (2000).

Here, the witness's mention of the knife was spontaneous and not solicited by the prosecution. To the extent the witness's statement could be considered a reference to criminal activity, the reference was brief and indirect. Finally, after hearing argument from the parties, the district court declined to declare a mistrial but did offer to provide an admonishment to the jury. Alger declined the admonishment. In light of these circumstances, Alger cannot demonstrate he was prejudiced by the reference. Therefore, we conclude the district court did not abuse its discretion by denying the motion for mistrial.

Second, Alger claims there was insufficient evidence produced at trial that he was the person who burglarized the second victim's garage. He claims there was no evidence he entered the garage and the officer who saw someone walking around the car outside the home only saw a silhouette and could not identify the person.

When reviewing a challenge to the sufficiency of the evidence, we review the evidence in the light most favorable to the prosecution and determine whether "*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *accord Mitchell v. State*, 124 Nev. 807, 816, 192 P.3d 721, 727 (2008). "[I]t is the function of the jury, not the appellate court, to

weigh the evidence and pass upon the credibility of the witness." *Walker v. State*, 91 Nev. 724, 726, 542 P.2d 438, 439 (1975).

At trial, evidence was presented that Alger burglarized the home of a woman while she was present in the home. He also took her car. The victim had a program on her phone that could track the car's location. Using that program, and later a helicopter, the police were able to follow the car's whereabouts. The police followed the car to outside the second burglary location. A police officer observed the car, saw someone walk around the car, and get in. A stop was attempted but the car did not stop. The officer did not engage in a chase because of the danger involved and the fact that the suspect had only committed property crimes. The police helicopter continued to follow the car. Ultimately, officers were able to stop the car. Alger ran from the car and was caught after a short chase. Stolen property from both burglaries were found in the vehicle. Further, Alger was wearing similar clothing to the clothing worn by the person who burglarized the first home.

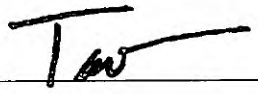
Based on this evidence, the jury could have reasonably inferred that Alger was the person who committed the second burglary. And circumstantial evidence is enough to support a conviction. *Washington v. State*, 132 Nev. 655, 661, 376 P.3d 802, 807 (2016). Therefore, we conclude that Alger is not entitled to relief on this claim.

Finally, we note the judgment of conviction appears to contain a clerical error. The aggregate total is listed as 108 to 312 months in prison. However, the actual pronouncement of the sentences for each count amounts to an aggregate of 72 to 180 months in prison. Therefore, upon remand, the district court shall enter a new judgment of conviction

correcting the aggregate total to reflect the sentences imposed. Accordingly, we

ORDER the judgment of conviction AFFIRMED and REMAND this matter to the district court to correct the judgment of conviction.

_____, C.J.
Gibbons



_____, J.
Tao

_____, J.
Bulla

cc: Hon. Ronald J. Israel, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk