

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID DOGAN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 41857

FILED

APR 08 2004

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of invasion of the home. The district court sentenced appellant to a prison term of 48 to 120 months.

Appellant contends that the district court erred by admitting evidence of other bad acts. Specifically, appellant argues that the district court should not have admitted evidence that appellant made comments of a sexual nature to the 13-year-old daughter of the victim, and the district court should also not have admitted evidence that appellant battered a friend of the victim after appellant was discovered in the victim's apartment.

The district court ruled that the evidence was admissible under the res gestae doctrine, codified at NRS 48.035. "The decision to admit or exclude evidence of separate and independent offenses rests within the sound discretion of the trial court and will not be disturbed unless it is manifestly wrong."<sup>1</sup> We conclude that appellant has failed to demonstrate that the district court's decision was manifestly wrong.

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<sup>1</sup>Domingues v. State, 112 Nev. 683, 694, 917 P.2d 1364, 1372 (1996).

Moreover, even if admission of the evidence were error, we conclude that any error was harmless beyond a reasonable doubt.<sup>2</sup> In this case, the daughter of the victim testified that she observed appellant kick in her mother's apartment door. Appellant was subsequently discovered asleep inside the apartment, and police officers who responded observed that the door appeared to have been kicked in and the door jamb was broken. In light of the overwhelming evidence of appellant's guilt, any error was harmless.

Appellant also contends that the district court should have granted a mistrial when one of the testifying police officers stated that he discovered appellant's address by running a check in SCOPE, which is a law enforcement database. Appellant argues that the comment "branded appellant a de facto felon or criminal."

The decision to grant or deny a motion for a mistrial is within the district court's sound discretion and will not be disturbed on appeal absent a clear showing of an abuse of discretion.<sup>3</sup> Four factors must be considered in determining whether an inadvertent reference to a prior criminal activity is so prejudicial that it cannot be cured by an admonition to the jury: "(1) whether the remark was solicited by the prosecution; (2) whether the district court immediately admonished the jury; (3) whether the statement was clearly and enduringly prejudicial; and (4) whether the

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<sup>2</sup>See Qualls v. State, 114 Nev. 900, 903, 961 P.2d 765, 767 (1998) ("We have routinely treated the erroneous admission of evidence of other bad acts as subject to review for harmless or prejudicial error.").


<sup>3</sup>Geiger v. State, 112 Nev. 938, 942, 920 P.2d 993, 995 (1996).

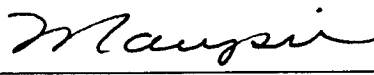
evidence of guilt was convincing."<sup>4</sup> In this case, the comment was not solicited by the State, the district court immediately admonished the jury to disregard any reference to SCOPE, and the comment was not clearly and enduringly prejudicial. Moreover, as previously discussed, the evidence against appellant was overwhelming. We therefore conclude that the district court did not err by denying the motion for a mistrial.

Having considered appellant's contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.

 \_\_\_\_\_, C.J.  
Shearing

 \_\_\_\_\_, J.  
Rose

 \_\_\_\_\_, J.  
Maupin

cc: Hon. Michael A. Cherry, District Judge  
Clark County Public Defender  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

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<sup>4</sup>Id. at 942, 920 P.2d at 995-96 (citing Allen v. State, 99 Nev. 485, 490-91, 665 P.2d 238, 241-42 (1983)).