

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES JOSEPH BLAND,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 58293

FILED

JUN 13 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *R. Malone*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction entered pursuant to a jury verdict of attempted murder, robbery, and two counts each of sexual assault and battery by strangulation. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Motion for judgment of acquittal or new trial

Appellant James Joseph Bland contends that the district court erred in denying his motion for a judgment of acquittal or a new trial because the State failed to prove that he had the requisite intent to commit attempted murder, the attempted murder and battery by strangulation convictions are redundant, and all of his convictions arise from and punish the same incident in violation of the Double Jeopardy Clause.¹

A district court may enter a judgment of acquittal only when there is insufficient evidence. Evans v. State, 112 Nev. 1172, 1193, 926

¹Senior Judge Lee Gates heard and ruled on Bland's motion for a judgment of acquittal or new trial.

P.2d 265, 279 (1996) (discussing NRS 175.381(2)). Evidence is insufficient when the State has failed to produce “a minimum threshold of evidence upon which a conviction may be based, even if such evidence were believed by the jury.” Id. (internal quotation marks and emphasis omitted). A district court may grant a new trial if it “finds that the evidence of guilt is conflicting, and after an independent evaluation of the evidence, disagrees with the jury’s verdict of guilty.” Id. (discussing NRS 176.515(4)).

The State presented evidence that Bland approached the victim from behind, grabbed her neck with both hands, and forcibly twisted it in a manner that could cause it to break. Bland forcefully took the victim’s purse. And Bland twice put his hand inside the victim’s pants making contact with her vaginal area, and then removed his hand, grabbed the victim’s neck, and strangled her. We conclude the following: First, there was sufficient evidence to support Bland’s convictions. See NRS 193.200 (intent); NRS 193.330(1) (defining attempt); NRS 200.010 (defining murder); NRS 200.020(1) (defining express malice); NRS 200.366(1) (defining sexual assault); NRS 200.380(1) (defining robbery); NRS 200.400(1)(a) (defining battery); NRS 200.481(1)(h) (defining strangulation); Sharma v. State, 118 Nev. 648, 659, 56 P.3d 868, 874-75 (2002) (discussing intent to kill). Second, each of Bland’s convictions punishes a separate criminal act and none of his convictions implicate double jeopardy or redundancy principles. See generally Salazar v. State, 119 Nev. 224, 227-28, 70 P.3d 749, 751 (2003) (discussing double jeopardy and redundancy). Finally, Bland has failed to demonstrate that the district court abused its discretion in denying his motion for a new trial. See Domingues v. State, 112 Nev. 683, 695, 917 P.2d 1364, 1373 (1996) (reviewing rulings on motions for new trial for abuse of discretion).

Double jeopardy

Bland contends that the district court violated his double jeopardy rights by subjecting him to a second trial after jeopardy attached in the first trial and a mistrial was declared.² He argues that the State was responsible for the mistrial, he did not consent to the mistrial, and the mistrial could have been avoided if the State had agreed to dismiss the charges that carried potential life sentences. The constitutional guarantee against double jeopardy bars retrial after jeopardy has attached and before a verdict has been reached unless (1) the defendant consents to a mistrial or (2) the district court determines that a mistrial is required by “manifest necessity.” Glover v. Dist. Ct., 125 Nev. 691, 709, 220 P.3d 684, 696 (2009). “[W]e review a district court’s ‘manifest necessity’ mistrial determination for an ‘abuse of discretion.’” Id.

The record reveals that the district court, the State, and the defense proceeded to trial under the mistaken belief that none of the offenses were punishable by a life sentence and therefore each party was entitled to four peremptory challenges under NRS 175.051(2). On the third day of trial, defense counsel discovered that battery with intent to commit sexual assault carried a potential life sentence, see NRS 200.400(4), and therefore each party was entitled to eight peremptory challenges under NRS 175.051(1). The district court conducted a hearing on the peremptory-challenge defect and declared a mistrial based on manifest necessity.

²District Judge Jackie Glass presided over Bland’s first trial.

During the hearing, the district court determined that no one was to blame for the peremptory-challenge defect, Bland did not waive his peremptory challenges, the State declined to dismiss the charges that carried potential life sentences, and Bland remained silent when the district court informed the parties that it had “no choice but to declare a mistrial.” Bland’s silence signaled tacit approval of the mistrial, see Gaitor v. State, 106 Nev. 785, 788, 801 P.2d 1372, 1374 (1990), overruled on other grounds by Barone v. State, 109 Nev. 1168, 1171, 866 P.2d 291, 292 (1993), and the circumstances of this case support the district court’s “manifest necessity” mistrial determination, see Glover, 125 Nev. at 709-10, 220 P.3d at 697 (describing “manifest necessity”); see also Morales v. State, 116 Nev. 19, 21, 992 P.2d 252, 253 (2000) (“The improper limitation of peremptory challenges is not subject to harmless error.”). Accordingly, we conclude that the district court did not abuse its discretion by declaring a mistrial and did not violate Bland’s double jeopardy rights.

Motion for a mistrial

Bland contends that the district court abused its discretion by denying his motion for a mistrial because he was deprived of a fair trial by the manner in which the State examined its first witness. Bland argues that the State repeatedly asked leading questions and paraphrased the witness’s response so as to set up the next response and, in essence, vouch for the witness’s testimony. The district court noted that it had sustained nearly all of Bland’s objections, admonished the State not to paraphrase the witness’s testimony, and found that the State’s leading questions and paraphrasing were not so pervasive as to violate Bland’s right to a fair trial. We conclude that the district court did not abuse its discretion by denying Bland’s motion for a mistrial, see Ledbetter v. State, 122 Nev.

252, 264, 129 P.3d 671, 680 (2006), and decline to consider Bland's witness vouching argument because it was not presented in the court below, see McKenna v. State, 114 Nev. 1044, 1054, 968 P.2d 739, 746 (1998).

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

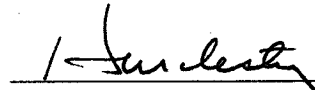
ORDER the judgment of conviction AFFIRMED.



_____, J.
Saitta



_____, J.
Pickering



_____, J.
Hardesty

cc: Chief Judge, Eighth Judicial District Court
Hon. Michelle Leavitt, District Judge
Hon. Lee Gates, Senior Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk