

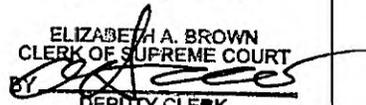
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

EVA MARIE GRADIAS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 85798-COA

FILED

OCT 19 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Eva Marie Gradias appeals from a judgment of conviction, pursuant to a jury verdict, of high-level possession of controlled substance, two counts of trafficking in controlled substance, and ownership or possession of firearm by prohibited person. Eighth Judicial District Court, Clark County; Joseph Hardy, Jr., Judge.

In May 2022, Las Vegas Metropolitan Police Department officers were conducting surveillance on an apartment unit because they received a tip about possible narcotics activity.¹ The officers obtained a search warrant for the unit and entered. Three women, including Gradias, were asked to leave the unit while the officers conducted the search.

During the search of the apartment, the officers found a hamper with several bags containing methamphetamine (229.6 grams), combined heroin and fentanyl (54.904 grams), and crack cocaine (193 grams). One bag also contained two firearms. The officers discovered that one of the firearms was a stolen weapon. The officers also learned that Gradias' name was on the lease to the apartment. After the officers read Gradias her *Miranda*² rights and took her into custody, she told the officers that she

¹We recount the facts only as necessary for our disposition.

²*Miranda v. Arizona*, 384 U.S. 436 (1966).

lived in the unit and mainly stayed in the bedroom where the hamper containing the narcotics and firearms was found. Gradias was charged with high-level possession of a controlled substance, two counts of trafficking in a controlled substance, and ownership or possession of a firearm by a prohibited person.

A bifurcated three-day trial was held in September 2022. The three drug related counts were tried first, and the firearm charge was tried separately.³ During the trial, several police officers testified. Despite being cautioned by the district attorney not to do so, one of the officers testified that he believed one of the firearms was reported stolen. Gradias immediately requested a bench conference. The jury was removed, and the district court admonished the officer. Gradias orally moved for a mistrial on the basis that inadmissible bad act evidence had been presented to the jury, and that the evidence was prejudicial, especially because a juror had asked if the firearms found in the apartment were stolen.⁴ After both sides presented their arguments to the district court, the court denied the motion for a mistrial because the testimony was not sufficiently prejudicial. The jury was then brought in, the officer's statement about the reportedly stolen firearm was stricken from the record, and the jury was instructed to disregard the testimony.

³This was done to prevent the jury from hearing that Gradias was a convicted felon until absolutely necessary.

⁴The district court disallowed this proposed question, so the jury did not hear that one of the firearms may have been reported stolen until the officer volunteered that information.

At the conclusion of the bifurcated trial, the jury returned a guilty verdict on all three drug related counts, and subsequently a guilty verdict on the firearm charge. Gradias now appeals.

Gradias argues that the district court abused its discretion by denying her motion for a mistrial based upon the officer's testimony. The State responds that the district court properly followed Nevada law by striking the testimony and instructing the jury to disregard the testimony.

We review a district court's decision to deny a motion for a mistrial for an abuse of discretion. *See Randolph v. State*, 117 Nev. 970, 981, 36 P.3d 424, 431 (2001). A district court abuses its discretion when it makes an "arbitrary or capricious" decision or "exceeds the bounds of law or reason." *Jackson v. State*, 117 Nev. 116, 120, 17 P.3d 998, 1000 (2001). A witness' spontaneous reference to inadmissible material, which was not solicited by the State, "can be cured by an immediate admonishment directing the jury to disregard the statement." *Ledbetter v. State*, 122 Nev. 252, 264-65, 129 P.3d 671, 680 (2006) (quoting *Carter v. State*, 121 Nev. 759, 770, 121 P.3d 592, 599 (2005)) (concluding that any prejudice flowing from a reference to inadmissible material was adequately cured by the district court's prompt admonishment of the jury to disregard the statement). We presume that the jury follows the court's instruction. *See Summers v. State*, 122 Nev. 1326, 1333, 148 P.3d 778, 783 (2006).

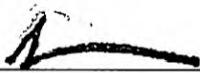
Once the police officer made the unsolicited statement, Gradias requested a bench conference, and the jury was removed. The officer was admonished outside of the jury's presence. And the district court found that the testimony was not sufficiently prejudicial to warrant a mistrial. Additionally, once the jury was brought back into the courtroom, the district court immediately instructed the jury to disregard the officer's testimony

and struck the testimony from the record. The officer did not make any other improper statements. We presume that the jury followed the instruction that it was given, which creates a presumption that no prejudice occurred since the jury was directed to disregard the potentially prejudicial testimony. *See id.* Therefore, we conclude that the district court did not abuse its discretion by denying the motion for a mistrial.

Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Joseph Hardy, Jr., District Judge
Matsuda & Associates, Ltd.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk