

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RICKEY LEE GORMAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 85429-COA

FILED

DEC 28 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Rickey Lee Gorman appeals from a judgment of conviction, entered pursuant to a jury verdict, of battery constituting domestic violence-strangulation. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Gorman argues the district court erred by denying his request for a mistrial after H. Miller (the victim's roommate) and the victim testified about alleged prior bad acts. "The trial court has discretion to determine whether a mistrial is warranted, and its judgment will not be overturned absent an abuse of discretion." *Rudin v. State*, 120 Nev. 121, 142, 86 P.3d 572, 586 (2004). Generally, a reference to criminal history violates a defendant's right to due process because it affects the presumption of innocence. *Rice v. State*, 108 Nev. 43, 44, 824 P.2d 281, 282 (1992). "The test for determining whether a statement is a reference to criminal history is whether the jury could reasonably infer from the facts presented that the accused had engaged in prior criminal activity." *Id.* at 44, 824 P.2d at 281.

Ms. Miller testified on direct examination that she opened her door after hearing "screaming" and stated, "This is not going to happen again." And she testified on cross-examination that she opened her door

and said, "We're not doing this again." Ms. Miller explained in her testimony that she had only observed the victim and Gorman yelling and nothing more. She further explained that the victim had been asking Gorman to return her passport. Thereafter, the victim testified that Gorman was notorious for taking her phone. After each of these witnesses' testimony, jurors posed questions about "previous instances." Gorman requested a mistrial after the second juror question in regard to previous instances, arguing that the proposed questions from jurors evidenced the prejudicial nature of the statements. The court stated it would consider a curative instruction, but Gorman declined.

In its context, Ms. Miller's testimony regarding her "again" statement did not reasonably infer that Gorman had engaged in prior criminal activity. Further, her first statement was spontaneous and was not solicited by the State; Gorman immediately objected to it; the district court sustained the objection; and after a discussion outside the presence of the jury, the State moved on to another question. In addition, Gorman did not object to Ms. Miller's second statement and declined a curative instruction. Finally, we note that Gorman did not object to the victim's testimony as a prior bad act, nor did he argue this testimony was grounds for a mistrial. *See Grey v. State*, 124 Nev. 110, 120, 178 P.3d 154, 161 (2008) (recognizing that to properly preserve an objection, a defendant must object below on the same ground they assert on appeal).

Based on these circumstances, we cannot conclude the district court abused its discretion by denying Gorman's request for a mistrial. *See Rice*, 108 Nev. at 44, 824 P.2d at 282 (affirming district court's decision to deny mistrial where statements were unsolicited, inadvertent, and defense

counsel declined the court's offer to give the jury a limiting instruction).
Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Michelle Leavitt, District Judge
Hill Firm
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk