

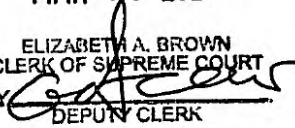
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ELOY GARCIA DIAZ, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 86840-COA

FILED

MAR 18 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE


Eloy Garcia Diaz, Jr., appeals from a judgment of conviction, entered pursuant to a jury verdict, of unlawful killing or maiming of a cat or dog or other pet. Fourth Judicial District Court, Elko County; Alvin R. Kacin, Judge.

Diaz argues the district court abused its discretion by denying his request for a mistrial after a State's witness referred to Diaz's criminal history. The State asked N. Noriega where her and Diaz's children had stayed since they were born, and she testified that the children had stayed with her because Diaz "was in and out of their lives while he was in prison." "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). However, "inadvertent references to other criminal activity not solicited by the prosecution, which are blurted out by a witness, can be cured by the trial court's immediate admonishment

to the jury to disregard the statement.” *Sterling v. State*, 108 Nev. 391, 394, 834 P.2d 400, 402 (1992).

Ms. Noriega’s testimony about Diaz’s criminal history was in response to the State’s asking her where her children had lived. Thus, her testimony was inadvertent and unsolicited. Further, Diaz objected to the testimony, the district court immediately sustained the objection, and it instructed the jury to disregard the testimony and to not consider the testimony in its deliberations. Thus, the district court sufficiently admonished the jury to disregard the statement. Therefore, we conclude that any error resulting from this testimony was cured and the district court did not abuse its discretion by denying Diaz’s request for a mistrial. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Alvin R. Kacin, District Judge
Elko County Public Defender
Attorney General/Carson City
Elko County District Attorney
Elko County Clerk