

NO. 69416-2-1

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

CURTIS LADON WALKER,

Appellant.

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STATE OF WASHINGTON
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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE SUSAN CRAIGHEAD

BRIEF OF RESPONDENT

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A. ISSUES

1. To establish that a trial court abused its discretion in denying a motion for a mistrial, a defendant must show that the court's decision was manifestly unreasonable or based on untenable grounds or untenable reasons. During an officer's testimony, the officer referenced the existence of a computer system containing booking photos and defense counsel objected. The court sustained the objection, instructed the jury to disregard the statement, and denied a subsequent motion for a mistrial by the defense. Did the trial court abuse its discretion in ruling that the officer's remark was not so prejudicial that Walker was denied his right to a fair trial when no evidence of Walker's past convictions was admitted, the portions of jail calls questioned on appeal were properly admitted, and there was overwhelming evidence of the defendant's guilt?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

The State charged Curtis Ladon Walker with the following crimes: felony violation of a court order-domestic violence (DV), assault in the second degree-DV, tampering with a witness-DV, and

5 counts of misdemeanor violation of a court order-DV.¹ CP 10-15, 91-95; 1RP 13-15.

The Honorable Susan Craighead received the case for trial on June 25, 2012. 1RP 5. On July 12, 2012, the jury convicted Walker of all charges except for assault in the second degree; however, they convicted him of the lesser degree offense of assault in the fourth degree. CP 27-35; 9RP 123-24. The jury also found that the domestic violence designation applied to all of the charges Walker was convicted of. CP 36-38; 9RP 124-25.

At sentencing on September 7, 2012, Judge Craighead imposed a total of 60 months incarceration. CP 101-11; 9RP 153. Walker timely appealed. CP 113-14.

2. SUBSTANTIVE FACTS

a. Facts Of The Case

Walker and his girlfriend Rayna Mae Chesterfield began dating in April 2011 and were still in a relationship when this case went to trial. 6RP 23. On September 6, 2011, a Seattle Municipal Court judge issued a no-contact order prohibiting Walker from

¹ A violation of the uniform controlled substances act charge was severed at trial. 3RP 17.

having contact with Chesterfield for two years, which Walker signed. Ex. 1 (Seattle Municipal Court No Contact Order); 5RP 62. Despite the order, Walker and Chesterfield lived together in a Seattle apartment from September until December 2011. 6RP 27.

On December 8, 2011, Walker, Chesterfield, and Chesterfield's five-year-old daughter picked up the three children of Chesterfield's friend, Satina Jackson,² and drove to Jackson's apartment. 6RP 18-19, 36-37. Walker and Chesterfield planned to eat a meal together with the children and then go to the movies. 6RP 42-44.

However, shortly before dinner was ready, Walker told Chesterfield that he wanted to go to the University District. 6RP 58. Chesterfield did not want Walker to leave because she "didn't want him to get in trouble, get a DUI,³ and also dinner was about to be ready." 6RP 59. Chesterfield also believed that Walker might be going to meet another woman. 6RP 60. Walker asked for the keys and Chesterfield said he couldn't have them. 6RP 60-61. Walker then grabbed the keys and walked out of the apartment with Chesterfield following behind him. 6RP 61.

² Jackson is the sister of Derrick Caldwell, the father of Chesterfield's five-year-old; she is occasionally referred to as a "sister" by Chesterfield. 6RP 18-19.

³ Chesterfield testified that, at that time, Walker had just consumed two double-shots of vodka and she had consumed one. 6RP 58.

Chesterfield testified at trial that, as she followed behind Walker outside of the apartment building, she grabbed his jacket and used an open hand to hit him in the back of the head. 6RP 68-69. She said that Walker then turned around and pushed her down hard to the ground, adding that, in doing so, he was acting in self-defense.⁴ 6RP 70-72. The children came outside while Chesterfield was on the ground and Walker walked off. 6RP 74. Chesterfield took her daughter's hand, went back to Jackson's apartment, and cried on the couch. Id.

Later that evening, Jackson drove Chesterfield to the police precinct because Chesterfield wanted to get a police escort home. 6RP 96-97, 114, 118. When Seattle Police Officer Brian Whicker contacted Chesterfield, he noted that her lip was split, her hair was tangled as if she had been in an altercation, and she was crouched forward looking at her knees as if she was frightened. 5RP 112-13. Chesterfield testified that she was infuriated,⁵ drunk, crying, and hysterical when meeting with Officer Whicker at the precinct. 6RP 118, 120, 129-30, 137-38. However, Whicker testified that

⁴ No self-defense instruction was requested or provided to the jury in this case. CP 24-26, 39-90.

⁵ Chesterfield testified that, just before she and Jackson arrived at the police precinct, Jackson told her that someone had seen Walker with two other females and that she therefore "lost it." 6RP 118.

Chesterfield was calm, soft-spoken, and that there was nothing about her demeanor or behavior that led him to believe that she was under the influence of drugs or alcohol. 5RP 113, 132.

Chesterfield told Officer Whicker that Walker had choked her for about thirty seconds and had banged her head on a door three or four times. 6RP 115, 121-22; 8RP 94. Officer Whicker took photos of Chesterfield's injuries, including scratch marks on her arms, the front of her neck, and the back of her neck just below the hairline. 5RP 122, 126, 128-30. Whicker observed that the scratch mark on the back of Chesterfield's neck was red, puffy, and bleeding slightly. 5RP 124-25, 130. Whicker also observed some bruising around Chesterfield's wrists. 5RP 129. However, Chesterfield testified at trial that she had lied to the officer about being assaulted. 8RP 94.

Officer Whicker confirmed the existence of the no-contact order prohibiting Walker from having any contact with Chesterfield. 5RP 133-34. Whicker communicated with officers in the University area, two of whom subsequently contacted and arrested Walker. 5RP 135; 7RP 53-55, 63-64. When Whicker later spoke to Walker, he denied living with or having assaulted Chesterfield that evening, but admitted to having been with her. 5RP 138-39.

Officer Whicker then drove Jackson and Chesterfield back to their respective apartments.⁶ 5RP 140. Chesterfield allowed Whicker to enter her apartment, where he found evidence that Walker lived there, including court documents belonging to Walker and a great deal of large male clothing.⁷ 5RP 141. After returning to the precinct, Whicker confronted Walker about the items he had found at Chesterfield's house and, at that point, Walker admitted that he did, in fact, live with Chesterfield at that time. 5RP 143-44.

b. Walker's Jail Calls To Chesterfield

Chesterfield admitted during her testimony that she talked to Walker on the phone once he got to the jail on the night of the incident and periodically throughout the month of December. 6RP 76-77; 8RP 87. When a portion of one of the jail calls was played for Chesterfield, she acknowledged that the voices were hers and Walker's. 6RP 112. A jail sergeant also established that

⁶ Officer Whicker did not permit Jackson to drive away from the precinct herself because it was determined she had a suspended license. 7RP 87.

⁷ Walker is 6'3" and 273 lbs. Chesterfield is 5'7" and 148 lbs. 5RP 56.

all of the admitted jail calls⁸ were placed by Walker on the specific dates charged by the State. 7RP 24, 33-36.

During these calls, Walker repeatedly attempted to persuade Chesterfield to change her story to try to help get him out of jail. (Walker: "Don't be saying nothing to them, baby." CP 131; "You should try to help me get out of this." CP 138; "I'm going to be fucked, baby, if you're not going to try to help me get out of here. If you're not going to try to help me get out of here or do something or say something." CP 139; "Just say that—just tell her that I didn't do it to your head or something. Just tell her that you did it, but that you tried to blame it on me so that I could come to jail or something. I don't know. Make something up baby. Help me out or something, please." CP 141.)

Eventually, Walker's efforts had Chesterfield wondering what she could say to get Walker out of jail. (Chesterfield: "I don't know how we're going to play it, though. I don't know. You know what I'm saying?"; Walker: "Come visit me tomorrow. We're going to talk about it, but you have to listen to me. If you fuck up one time, it's

⁸ The record reflects that there were at least 95 calls placed by Walker to Chesterfield from the jail between December 9, 2011 and December 29, 2011. 3RP 45. The State admitted only 11 of these calls at trial. 2RP 6; 7RP 42-44.

not going to work... You have to listen to me because I'm going to tell you what to do." CP 146.)

At times, Walker was defiant about the actions he took on the night of December 8, 2011. (Walker: "If I was leaving, you should have just let me left (sic)." CP 133.) However, when this angered Chesterfield, Walker quickly switched to a more conciliatory approach. (Walker: "It's not [fair] and I'm sorry, okay?" Id.) When Walker realized the effectiveness of the apologetic approach, he continued in that vein until Chesterfield was the one apologizing to him. (Walker: "I guess I deserve it because I fucked up." CP 136; "I hope you ride with me, baby." CP 137; "I hate this shit, I know I fucked up." CP 148; "My dumb ass chose to be in this situation, not you." Id.; Chesterfield: "I'm sorry you're in there sweetie, I'm sorry." CP 149; Walker: "Don't worry about it... I'm just happy that you still got my back." Id.)

Walker made promises to Chesterfield to keep her on board with him while he was in custody, including that they would marry when he got out of jail. CP 159-60. (Chesterfield: "If you're gonna wait and play games about this marriage shit, then I'm not gonna marry you." CP 159; Walker: "The day I get out, we can go get married." CP 160.) He also indicated that, if he was able to get out

of jail, he would get a job, have children with Chesterfield, and make money to buy her a ring. CP 155, 156, 162.

c. Officer San Miguel's Testimony And Motion For Mistrial

Seattle Police Officer Shelley San Miguel testified that, after coming on shift on December 8, 2011, she was advised that there was probable cause to arrest someone by the name of Curtis Walker and she was given a physical description of this individual. 7RP 61. The prosecutor then asked, "Was there any other resource that you had to be able to look up this individual?" Id. Officer San Miguel responded, "Part of our computer system, we have what's called an RMS system, which has booking photos from previous contacts, so I was able to put his name into the..." Id. At that point, defense counsel interrupted, indicating she had an objection and a motion. Id. The judge responded, "I think that objection sustained. Do you move to strike that part of the testimony?" Id. The defense counsel responded that she did and also had a motion outside of that. Id. The judge indicated that the parties would take up the motion on a break, again sustained the

objection, and instructed the jury to “disregard the partial answer you just heard.” 7RP 62.

The prosecutor next asked Officer San Miguel what she and her partner did after receiving information about Curtis Walker. Id. The officer testified to driving around the area, seeing someone matching his description on the corner, contacting that individual, and confirming the individual was Curtis Walker through his identification card. 7RP 62-63.

Outside the presence of the jury, Walker’s defense counsel moved for a mistrial, indicating that Officer San Miguel had testified “with regard to prior convictions.” 7RP 68. Defense counsel claimed that the officer’s testimony suggested that Walker had been in custody before and that the officer “said the information was in the computer from previous bookings.” 7RP 68-69. The court denied the motion for mistrial:

“I think [the officer’s testimony] was adequately corrected by sustaining the objection and instructing the jury to disregard the answer. And since the jury is presumed to follow my instructions and I don’t think that anything they did hear was so prejudicial that it would outweigh my instructions, and so I will deny the motion for mistrial at this time.”

7RP 70.

C. ARGUMENT

1. THE TRIAL COURT EXERCISED SOUND DISCRETION IN DENYING WALKER'S MOTION FOR A MISTRIAL

Walker claims the trial court abused its discretion in denying his motion for a mistrial based on Officer San Miguel's testimony about a law enforcement database containing booking photos. He argues that the officer's statement, when viewed in conjunction with four portions of Walker's jail phone calls, "present[ed] a clear picture of jail time arising from previous domestic violence" and denied him a fair trial. Appellant's Brief at 15. This argument should be rejected.

Neither the testimony of the officer nor the questioned portions of Walker's jail phone calls, even when viewed in conjunction with each other, created an inference of criminal propensity. The trial court exercised sound discretion in ruling that a mistrial was not necessary and properly admitted the statements made by Walker during the phone calls. Moreover, Walker has failed to meet his burden of demonstrating a prejudicial effect on the jury's verdict. The overwhelming evidence of guilt led to Walker's conviction, not the officer's isolated remark. This Court should affirm.

A trial court's decision to deny a motion for a mistrial is reviewed for manifest abuse of discretion. State v. Lewis, 130 Wn.2d 700, 707, 927 P.2d 235 (1996). A reviewing court will find an abuse of discretion only if no reasonable trial judge could have decided that a mistrial was not necessary. State v. Johnson, 124 Wn.2d 57, 76, 873 P.2d 514 (1994). A mistrial should be granted "only when the defendant has been so prejudiced that nothing short of a new trial can ensure that the defendant will be tried fairly." State v. Mak, 105 Wn.2d 692, 701, 718 P.2d 407 (1986). Accordingly, the reviewing court gives deference to the trial court's judgment, as the trial judge is clearly in the best position to determine whether irreparable prejudice has occurred. See Lewis, 130 Wn.2d at 707.

When reviewing a trial court's decision to deny a motion for mistrial based on a witness's objectionable remarks, appellate courts generally examine three factors: 1) the seriousness of the irregularity; 2) whether the error involved cumulative evidence; and 3) whether the trial court properly instructed the jury to disregard the remarks. State v. Hopson, 113 Wn.2d 273, 284, 778 P.2d 1014 (1989). Jurors are presumed to follow the trial court's instructions to disregard inadmissible testimony. Johnson, 124 Wn.2d at 77.

Moreover, the testimony in question must be examined “against the backdrop of all the evidence” and in light of the record as a whole. State v. Escalona, 49 Wn. App. 251, 254, 742 P.2d 190 (1987). A trial court’s decision to deny a motion for mistrial should not be overturned on appeal unless the record demonstrates that the irregularity prejudiced the defendant such that it affected the outcome of the trial. See Mak, 105 Wn.2d at 701.

A witness’s inadmissible testimony referencing the defendant’s criminal history does not warrant a new trial if the remarks are relatively insignificant in the context of the entire trial. See Hopson, 113 Wn.2d at 284-86 (holding that a witness’s remark that the victim met the defendant before “he went to the penitentiary the last time” was not prejudicial in light of the whole record and substantial evidence of guilt). On the other hand, a new trial may be necessary if the impermissible remark references specific, prejudicial prior misconduct, particularly if the State’s admissible evidence is weak. See Escalona, 49 Wn. App. at 254-56 (holding that the victim’s testimony that the defendant “already has a record and had stabbed someone” warranted granting a mistrial where the other evidence was weak and the charge was assault with a knife). In short, each case must be decided on its own facts, giving

appropriate deference to the judgment of the trial court. Id. at 256.

Based on these standards, Walker's claim is without merit.

In this case, the motion for a mistrial was based on Officer San Miguel testifying about the existence of a computer system containing booking photos. 7RP 61. The seriousness of this irregularity was minor. While the officer's remark was objectionable, the remark was made in passing, the officer did not testify that Walker's picture was located in the database, nor did the officer state that Walker had previously been convicted of a crime. Though Walker argues that the officer's partial statement was a serious trial irregularity, even he acknowledges that it was a "potentially ambiguous reference to booking photos." See Appellant's Brief at 13. This does not rise to the level of seriousness that would lead the jurors to infer that Walker was more likely to be guilty of the charged crimes.

Furthermore, after sustaining defense counsel's objection, the trial court instructed the jury to disregard the officer's partial statement. 7RP 61-62. The jury was also instructed by the judge that, "If I have ruled that any evidence is inadmissible, or if I have asked you to disregard any evidence, then you must not discuss that evidence during your deliberations or consider it in reaching

your verdict. Do not speculate whether the evidence would have favored one party or the other.” CP 41; 9RP 14. The jury is presumed to follow the trial court’s instructions unless there is evidence in the record to the contrary. State v. Kirkman, 159 Wn.2d 918, 928, 155 P.3d 125 (2007). No such evidence exists.

A trial judge is best suited to judge the prejudice of a trial irregularity. State v. Weber, 99 Wn.2d 158, 166, 659 P.2d 1102 (1983). In denying the motion for a mistrial, the trial court noted that nothing the jury heard was so prejudicial that it outweighed its instructions to disregard the partial statement. In light of the entire record, the trial court’s reasoning is sound, and Walker has not presented any legal argument overcoming that reasoning.

Moreover, Walker has not shown material prejudice because the evidence of his guilt is substantial. Given the overwhelming evidence in this case, coupled with the curative instructions and jury instructions, Walker cannot show that the outcome of the trial would have been different absent the officer’s passing remark.

The fact that a no-contact order prohibiting Walker from being in contact with Chesterfield was in existence at the time of these events was undisputed. Walker’s counsel all but conceded that the misdemeanor violations of this order occurred. 9RP 94, 96.

An assault was proven beyond a reasonable doubt through Chesterfield's physical injuries, her efforts to report the incident, her demeanor observed by Officer Whicker, as well as Walker's own admissions and apologies on the jail phone calls. Indeed, even if the jurors believed the version of events that Chesterfield gave at trial, Walker pushing Chesterfield to the ground also would have constituted an assault. Proof of the tampering charge was overwhelmingly established by the jail calls and the logical inconsistencies in Chesterfield's testimony. Because of the overwhelming evidence of Walker's guilt, the trial court exercised sound discretion in ruling that the extraordinary remedy of a mistrial was not warranted, and this court should affirm.

Nonetheless, Walker argues that Officer San Miguel's remark coupled with four segments of Walker's jail phone calls resulted in prejudice. But the four jail phone call segments questioned on appeal were properly admitted and, even when considered in conjunction with the officer's partial statement, there is no basis to believe that they created an inference of Walker's criminal propensity in the minds of the jurors.

Walker argues that the following statements during two of his initial jail phone calls to Chesterfield showed a propensity to commit crimes:

"You're probably gonna tell them more shit to fuck me over even more. You keep saying you care for me, you're helping me, but you, you fuck me every time."
CP 131; Call placed 12-9-11, 1:09 a.m.

"I can't believe I am going through this shit again."
CP 135; Call placed 12-9-11, 1:26 a.m.

"You keep saying stuff to them. It just don't make no sense and then you come and tell me you want to get me out. But you keep saying shit to keep me in this motherfucker longer, every time."
CP 137; Call placed 12-9-11, 1:26 a.m.

"You always try to get me booked in here longer."
CP 139; Call placed 12-9-11, 1:26 a.m.

(Emphasis for each as provided in Appellant's Brief.)

These segments of jail calls were properly admitted⁹ because they were relevant to the tampering charge. Walker used different methods to try to manipulate Chesterfield to help him get out of custody and legal trouble. Walker's first tactic, anger, was unsuccessful, as evidenced by Chesterfield hanging up on him.

⁹ When discussing each jail call during pretrial motions (see 2RP 14-82, 3RP 131-46), defense counsel did not object to the segments of the jail calls now being questioned. 2RP 33-34, 39, 44. Defense counsel reserved the right to revisit whether certain lines would be allowed after the redacted version of the jail calls transcript was made. 2RP 34. However, defense counsel did not request any further redactions when she was later asked whether she had more redaction suggestions. Instead, counsel stated, "Just the continuing objection," without referencing the basis of the objection. 7RP 9.

(Walker: "I'm hella mad right now because I'm in jail." Chesterfield: "Bye, I don't have time for this." CP 128.) In his next two phone calls to Chesterfield, which contain the highlighted segments, Walker changed to a more conciliatory approach and tried to make Chesterfield feel guilty for not caring that he was in jail, suggesting that it was her actions that landed him in custody. CP 129-40.

In making its various rulings on the admissibility of this initial set of calls, the trial court explained its understanding of the tampering process being employed by Walker:

"I am thinking about a dynamic between two people. You know, when you're trying to convince your partner to do something, you try different tacks to see what might work. And so maybe the angry tack isn't working, maybe the conciliatory tack will work. That doesn't say it's domestic violence. That's just the nature of relationships."

2RP 32. The segments of jail calls highlighted by Walker on appeal were properly admitted because they were part and parcel of the guilt and manipulation he used to tamper with Chesterfield.

Additionally, these jail call segments relay no information concerning the nature or number of Walker's prior convictions. In fact, they are ambiguous as to whether he has previously committed any criminal misconduct whatsoever against

Chesterfield. Indeed, Walker's statements are more reasonably interpreted as the kind of hyperbole couples may engage in when arguing. For example, stating, "I can't believe I am going through this... again," could easily be interpreted as involved in another disagreement with Chesterfield. Therefore, there is no basis to believe that these segments created an inference of Walker's criminal propensity in the minds of the jurors, even when considered in conjunction with Officer San Miguel's testimony.

The cases relied upon by Walker in arguing that the trial court abused its discretion are distinguishable from this case. For example, in State v. Henderson, the primary case relied upon in the appellant's brief, the prosecutor asked an officer the following question: "The photo montage you have identified, No. 3 and No. 4, those were put together with photographs that were already on hand; is that correct?" and the officer responded, "That's correct." 100 Wn. App. 794, 803, 998 P.2d 907 (2000). The defense counsel did not object, thus the jury did not receive a curative instruction, and the prosecutor in closing made clear that, "the sheriff's department had a photograph of him on hand." Id. Ultimately, Henderson's conviction was reversed, not just because of this reference, but because of the cumulative error that resulted

from at least four distinct instances of prosecutorial misconduct¹⁰ in a case where the evidence was far from overwhelming that Henderson participated in the robbery. Henderson, 100 Wn. App. at 805.

Walker's case is unlike Henderson for numerous reasons:

1) Officer San Miguel's partial statement was isolated and ambiguous; 2) the officer never testified that Walker's picture was looked for or found in the computer system containing booking photos; 3) the judge sustained an objection from defense and instructed the jury to disregard the officer's statement; 4) there are no repeated instances of prejudicial violations or misconduct; and 5) there is overwhelming evidence to convict Walker on all eight counts.

Furthermore, while Walker argues that evidence of prior similar crimes is "extremely difficult, if not impossible," for a jury to ignore, that legal concept is inapplicable in this case. Appellant's Brief at pg. 15. In State v. Escalona, as previously noted, Escalona was charged with second degree assault with a knife and his assault victim testified that Escalona had a record and had stabbed

¹⁰ The prosecutor also commented on Henderson's right to silence, repeatedly referred to a fight between Henderson and a woman that resulted in injuries to the woman, and challenged defense counsel's use of "altercation," rather than "robbery," when referring to the incident. Henderson, 100 Wn. App. at 805.

someone previously. Id. at 252-53. This Court held that the trial court abused its discretion in denying the defendant's motion for a mistrial because of the inherently prejudicial nature of such evidence and because the evidence of guilt was not overwhelming. Id. at 256.

However, in Walker's case, no such serious irregularity occurred because 1) the officer did not state that Walker was in the computer system containing booking photos, and 2) even if the officer's testimony could be construed to suggest that Walker's booking photo was in the system, there was no reference to what type of crime he may have previously been in custody for or whether he was actually convicted of the crime. Moreover, as previously discussed, the evidence of Walker's guilt was overwhelming.

In summary, the officer's ambiguous reference to a computer system containing booking photos, when viewed in conjunction with the four portions of jail calls highlighted upon appeal, did not prejudice the jury by introducing propensity evidence. No evidence of Walker's past convictions was admitted, the judge instructed the court to disregard the officer's partial statement, Walker's jail calls

were properly admitted, and the jury had overwhelming evidence of Walker's guilt.

D. CONCLUSION

For the reasons stated above, the Court should find that the trial court did not abuse its discretion in denying the motion for a mistrial and thus affirm all of Walker's convictions.

DATED this 9th day of October, 2013.

Respectfully submitted,

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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Jennifer J. Sweigert, the attorney for the appellant, at Nielsen, Broman & Koch, PLLC, 1908 East Madison Street, Seattle, WA 98122, containing a copy of the Brief of Respondent, in STATE V. CURTIS LADON WALKER, Cause No. 69416-2-I, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Dated this 9th day of October, 2013



Wynne Brame
Done in Seattle, Washington