

IN THE SUPREME COURT OF THE STATE OF NEVADA

TIMOTHY GLADE HOLDAWAY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 48492

FILED

JUN 08 2007

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. R. [Signature]*  
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of third-offense driving under the influence. Fourth Judicial District Court, Elko County; J. Michael Memeo, Judge. The district court sentenced appellant Timothy Holdaway to a prison term of 15 to 38 months.

Holdaway contends that the prosecutor's statement during opening argument constitutes prosecutorial misconduct that warrants reversal. Holdaway did not object to the prosecutor's comments, and the failure to object to alleged prosecutorial misconduct precludes appellate consideration absent plain error.<sup>1</sup> We conclude that Holdaway has failed to demonstrate that the prosecutor's comments affected his substantial

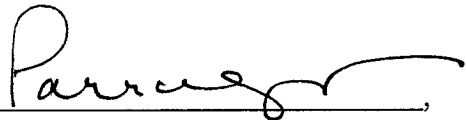
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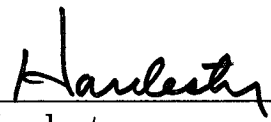
<sup>1</sup>See NRS 178.602 ("Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court."); Parker v. State, 109 Nev. 383, 391, 849 P.2d 1062, 1067 (1993).

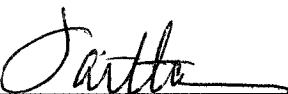
rights or prejudiced him in any way amounting to reversible plain error, particularly in light of the overwhelming evidence of Holdaway's guilt.<sup>2</sup>

Having considered Holdaway's contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Saitta

cc: Hon. J. Michael Memeo, District Judge  
Elko County Public Defender  
Attorney General Catherine Cortez Masto/Carson City  
Elko County District Attorney  
Elko County Clerk

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<sup>2</sup>See King v. State, 116 Nev. 349, 356, 998 P.2d 1172, 1176 (2000) (holding that “where evidence of guilt is overwhelming, even aggravated prosecutorial misconduct may constitute harmless error”).