IN THE SUPREME COURT OF THE STATE OF NEVADA

ANDREW FRANKLIN WOODBURN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53042

FILED

APR 08 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of discharging a firearm within or from a structure within a populated area. First Judicial District Court, Carson City; James Todd Russell, Judge.

Appellant Andrew Franklin Woodburn claims that the district court erred by admitting a 911 call he made one year prior to the charged offense without first conducting a hearing pursuant to Petrocelli v. State, 101 Nev. 46, 51-52, 692 P.2d 503, 507-08 (1985), modified on other grounds by Sonner v. State, 114 Nev. 321, 326-27, 955 P.2d 673, 677 (1998), and by failing to issue limiting instructions to the jury regarding the use of the evidence. Because Woodburn did not object to the admission of this evidence on this basis below, we review this claim for plain error. See NRS 178.602; Green v. State, 119 Nev. 542, 545, 80 P.3d 93, 94-95 (2003). We conclude that the district court did not err by failing to conduct a Petrocelli hearing and give limiting instructions because the 911 call was not evidence of other crimes, wrongs or prior bad acts, see, e.g., Somee v. State, 124 Nev. ___, ___, 187 P.3d 152, 160-61 (2008) (holding that a Petrocelli hearing was not required because comparable evidence was not

character evidence and was relevant to the charged offense), and therefore conclude Woodburn has failed to demonstrate plain error warranting relief.

Woodburn next claims that the district court erred by excluding testimony from two defense witnesses about threats they heard nontestifying third parties level at Woodburn five months prior to the charged offense, because this testimony was critical to his defense. See, e.g., Runion v. State, 116 Nev. 1041, 1048-49, 13 P.3d 52, 57-58 (2000) (discussing elements of apparent danger self-defense). We conclude that this claim lacks merit. Woodburn offered this testimony under NRS 51.105. The district court permitted the witnesses to testify about all the details of the incident, including that the third parties leveled threats at Woodburn, but precluded the witnesses from repeating the specific threats they heard after finding that such testimony was hearsay that did not fit within any exception to the hearsay rule. "We review a district court's determination of whether proffered evidence fits an exception to the hearsay rule for abuse of discretion." Fields v. State, 125 Nev. ___, ___, 220 P.3d 709, 716 (2009). We will not disturb a district court's determination regarding the admissibility of evidence "absent a clear abuse of that discretion." Crowley v. State, 120 Nev. 30, 34, 83 P.3d 282, 286 (2004) (internal quotation marks omitted). Woodburn has failed to demonstrate that the district court erred by excluding this testimony as hearsay. Even assuming error, we conclude that exclusion of this testimony was harmless. See Tabish v. State, 119 Nev. 293, 311, 72 P.3d 584, 595 (2003) (holding that hearsay errors are subject to harmless error analysis).

Having considered Woodburn's claims and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

cc: Hon. James Todd Russell, District Judge
State Public Defender/Carson City
Attorney General/Carson City
Carson City District Attorney
Carson City Clerk