IN THE SUPREME COURT OF THE STATE OF NEVADA

DEXTER ALAN MARSHALL A/K/A DEXTER ALLEN MARSHALL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 57177

FILED

JUL 14 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of conspiracy to commit a crime and burglary. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.[1]

First, appellant Dexter Alan Marshall contends that the district court erred by denying his request to instruct the jury on petit larceny in support of his theory of the case. We disagree. "[T]he defense has the right to have the jury instructed on its theory of the case as disclosed by the evidence, no matter how weak or incredible that evidence may be." Vallery v. State, 118 Nev. 357, 372, 46 P.3d 66, 76-77 (2002) (internal quotation marks omitted). A defendant, however, is not entitled to an instruction on a lesser-related, uncharged offense. See Peck v. State, 116 Nev. 840, 845, 7 P.3d 470, 473 (2000), overruled on other grounds by Rosas v. State, 122 Nev. 1258, 1269, 147 P.3d 1101, 1109 (2006). Here, the jury was provided with proper instructions regarding burglary, intent and larceny and we conclude that Marshall failed to demonstrate that the

[1]The Hon. Michael Villani, District Judge, presided over the trial and disqualified himself prior to sentencing.

district court abused its discretion or committed judicial error. See Crawford v. State, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005).

Second, Marshall contends that the district court erred by failing to provide the jury with a negatively phrased instruction regarding intent. See generally id. at 753, 121 P.3d at 588 ("[I]nstructions that remind jurors that they may not convict the defendant if proof of a particular element is lacking should be given upon request."). Marshall did not request a negatively phrased jury instruction and it is not clear from the record that the district court intended to provide such an instruction. Additionally, Marshall did not object to the instruction on intent provided to the jury and we conclude that he failed to demonstrate plain error entitling him to relief. See Berry v. State, 125 Nev. ___, ___, 212 P.3d 1085, 1097 (2009) (this court reviews challenges to unobjected-to jury instructions for plain error), abrogated on other grounds by State v. Castaneda, 126 Nev. ___, 245 P.3d 550 (2010); Green v. State, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003) (reviewing for plain error, "the burden is on the defendant to show actual prejudice or a miscarriage of justice"); see also NRS 178.602 ("Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court."). Accordingly, we

ORDER the judgment of conviction AFFIRMED.

_____, J.
Saitta

_____, J.
Hardesty

_____, J.
Parraguirre

cc: Hon. Donald M. Mosley, District Judge
Benjamin C. Durham
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk