

IN THE SUPREME COURT OF THE STATE OF NEVADA

BILLY EDWARD CARR,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 57553

FILED

JUL 27 2012

TRACIE K. LINDEMAN
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BY *A. Anderson*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of burglary and grand larceny. Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge.

FACTUAL BACKGROUND

Robert Morton was playing roulette at the Luxor casino in Las Vegas when a person moved next to him, grabbed between \$2,500 and \$3,000 of his chips, and ran away. Morton chased after the person, but was unable to catch up to him. Morton briefly saw the thief's face when he turned around at the top of the escalators leading to the Mandalay Bay casino. After Morton reported the incident to the police, Luxor surveillance supervisor Robert Zeihen and a responding policeman reviewed the surveillance video. They immediately recognized appellant Billy Carr as the person in the footage from a previous incident at the Excalibur casino involving a chip theft. Two police detectives went to Carr's home, arrested him, and questioned him regarding the Luxor incident. During the questioning, the detectives incorrectly referenced Mandalay Bay as the scene of the crime, rather than the Luxor. Even though the detectives referenced the wrong casino, Carr answered the questions without expressing confusion. Eventually, Carr admitted to stealing chips from a person at Mandalay Bay and running up the

escalators. Carr also admitted that he had previously stolen casino chips in a similar manner.

The State charged Carr with one count of burglary and one count of grand larceny. Before trial began, the State filed a motion to admit evidence of Carr's prior bad acts. At a Petrocelli¹ hearing, the district court heard testimony from Kent Wolf and an Excalibur security officer regarding the previous chip theft at the Excalibur. Kent Wolf testified that he was gambling at a roulette table with his brother, Kurt Wolf, when a man stepped near the table, stole his brother's casino chips, and ran away. Kent Wolf identified Carr as the man that he saw steal his brother's casino chips. The Excalibur security officer also identified Carr as the man he apprehended for stealing Kurt Wolf's casino chips. Following this testimony, the district court allowed the admission of evidence relating to the previous chip theft at the Excalibur. The district court then held a three-day trial. The jury found Carr guilty of both burglary and grand larceny. The district court sentenced Carr as a habitual criminal to life in prison with eligibility for parole after ten years.

Carr now appeals, arguing that (1) the information failed to state a crime for burglary, (2) the district court abused its discretion by admitting evidence of Carr's prior bad acts, (3) the district court erred by failing to provide the jury with a limiting instruction when admitting evidence of the Excalibur incident, (4) the district court erred by admitting

¹Petrocelli v. State, 101 Nev. 46, 692 P.2d 503 (1985), modified in part on other grounds by Sonner v. State, 112 Nev. 1328, 1333-34, 930 P.2d 707, 711-12 (1996), and superseded by statute on other grounds as stated in Thomas v. State, 120 Nev. 37, 44-45, 83 P.3d 818, 823-24 (2004).

Zeihen's testimony regarding the surveillance video, (5) the State's failure to disclose Kurt Wolf's inability to identify Carr as the perpetrator of the Excalibur incident was a Brady² violation, (6) the district court's admission of Kent Wolf's testimony from the Petrocelli hearing violated Carr's Confrontation Clause rights, (7) there was insufficient evidence to convict Carr, and (8) cumulative error warrants reversal of Carr's convictions.³

The parties are familiar with the facts and procedural history of this case; therefore, we do not recount them further except as is necessary for our disposition.

DISCUSSION

The information sufficiently states the crime of burglary

Carr argues that that the information fails to state the crime of burglary because the State did not name the Luxor as the alleged victim. We disagree.

When a defendant challenges the sufficiency of an information for the first time on appeal, this court must construe the information in favor of the State, unless the charging document prejudices the defendant. See Larsen v. State, 86 Nev. 451, 455, 470 P.2d 417, 420 (1970). Thus,

²Brady v. State of Maryland, 373 U.S. 83 (1963).

³Carr also argues that the district court committed plain error by allowing the admission of his jacket and his statements to the police, because this evidence stemmed from an illegal search and arrest and an involuntary confession. Carr failed to object on these grounds at trial. Because the record is insufficient to provide an adequate basis for plain error review, we conclude that Carr waived his Fourth and Fifth Amendment claims. See Wilkins v. State, 96 Nev. 367, 372, 609 P.2d 309, 312 (1980).

this court will hold a charging document sufficient “unless it is so defective that it does not, by any reasonable construction, charge an offense for which the defendant is convicted.” Id. at 456, 470 P.2d at 420 (internal quotation marks omitted).

An information must contain “a plain, concise and definite written statement of the essential facts constituting the offense charged.” State v. Hancock, 114 Nev. 161, 164, 955 P.2d 183, 185 (1998) (quoting NRS 173.075(1)). In order to determine whether a charging document fails to sufficiently state a crime, this court has compared the elements within the statute with those contained in the charging document. See Slobodian v. State, 107 Nev. 145, 146, 808 P.2d 2, 3 (1991).

NRS 205.060(1) provides that “[a] person who, by day or night, enters any . . . building . . . with the intent to commit grand or petit larceny . . . is guilty of burglary.” For the burglary count against Carr, the information states that Carr “did then and there willfully, unlawfully, and feloniously enter, with intent to commit larceny, that certain building occupied by ROBERT MORTON, located at 3900 South Las Vegas Boulevard, Las Vegas, Clark County, Nevada.”

We conclude that the information sufficiently sets forth the necessary allegations for the crime of burglary. NRS 205.060(1) does not require the identification of a specific victim. See Servin v. State, 117 Nev. 775, 789, 32 P.3d 1277, 1287 (2001) (stating that the offense of burglary requires proof that a defendant entered a building with the intent to commit grand or petit larceny); Thorne v. State, 81 Nev. 112, 113, 399 P.2d 201, 201 (1965) (concluding that ownership does not need to be alleged in the information for burglary). Instead, burglary only requires a showing that a defendant entered a building with the intent to commit a

crime. NRS 206.060(1). Furthermore, the address included within the information sufficiently informs Carr of the necessary facts that constitute the offense of burglary. Thus, Carr does not demonstrate how the information's failure to actually identify the Luxor as the building prejudiced his defense. See Larsen, 86 Nev. at 455, 470 P.2d at 420.⁴

The district court did not abuse its discretion by admitting evidence of Carr's prior chip theft at the Excalibur

Carr asserts that the district court erred by admitting evidence of the Excalibur incident to establish identity because the State failed to show a substantial need for this evidence and the probative value of the evidence was substantially outweighed by the prejudicial effect of this previous bad act.⁵ We disagree.

⁴Carr also mentions that jury instruction three regarding burglary was ambiguous and conflicted with the information. Because Carr failed to object to jury instruction three at trial, we review the matter for plain error. See NRS 178.602; Mclellan v. State, 124 Nev. 263, 269, 182 P.3d 106, 110 (2008). Jury instruction three contains all the necessary elements for burglary and jury instruction five names the Luxor as the building that Carr allegedly entered. Therefore, we conclude that the district court's issuance of jury instruction three does not constitute plain error. See Rossana v. State, 113 Nev. 375, 382, 934 P.2d 1045, 1049 (1997) (a jury instruction must be accurate and contain the basic elements of the charged offense (citing Dougherty v. State, 86 Nev. 507, 509, 471 P.2d 212, 213 (1970))); Tanksley v. State, 113 Nev. 844, 849, 944 P.2d 240, 243 (1997) (“[J]ury instructions taken as a whole may be sufficient to cure an ambiguity in a challenged instruction.”).

⁵Carr also contends that the district court abused its discretion by allowing one of the police detectives to testify that Carr confessed to committing similar crimes in the past. Carr asserts that any other prior bad acts besides the Excalibur incident did not meet the Petrocelli standard. We conclude that the district court erred by allowing the police detective to state that Carr admitted to committing similar crimes in the

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We review a district court's decision to admit evidence of prior bad acts for an abuse of discretion and will not reverse that decision absent manifest error. Chavez v. State, 125 Nev. 328, 345, 213 P.3d 476, 488 (2009). Generally, evidence of prior bad acts is inadmissible for the purpose of showing that a person acted in conformity with the previous bad act on a certain occasion. NRS 48.045(1). However, evidence of prior bad acts may be admitted for other purposes, such as to establish identity. NRS 48.045(2). Before admitting evidence of prior bad acts, a district court must conduct a hearing outside the presence of the jury. Petrocelli, 101 Nev. at 51-52, 692 P.2d at 507-08. At this hearing, a district court must determine "that: (1) the prior bad act is relevant to the crime charged and for a purpose other than proving the defendant's propensity, (2) the act is proven by clear and convincing evidence, and (3) the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice." Bigpond v. State, 128 Nev. ___, ___, 270 P.3d 1244, 1250 (2012). With regard to the Excalibur incident, Carr only challenges whether this evidence is relevant and whether its probative value is substantially outweighed by the danger of unfair prejudice. We

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past. However, we also conclude that the admission of these statements was harmless because the reference to Carr committing previous, similar crimes was a general comment regarding his confession and the jury was already aware of the prior Excalibur incident. See NRS 178.598 (stating that any error which does not affect substantial rights shall be disregarded); Fields v. State, 125 Nev. 776, 784-85, 220 P.3d 724, 729-30 (2009) (reviewing admission of prior bad act evidence for harmless error).

conclude that the district court did not abuse its discretion in admitting evidence of the Excalibur incident.

Evidence of the Excalibur incident is relevant to Carr's burglary and grand larceny charges

Carr argues that the evidence of his prior bad act is not relevant to the current charges against him because Morton had already identified him at the preliminary hearing and the State therefore had no need for this additional evidence relating to the Excalibur incident. We disagree.

In order to admit evidence of a defendant's prior bad acts, a district court must find that the evidence is relevant to the crime charged and for a purpose other than proving the defendant's propensity. Bigpond, 128 Nev. at ___, 270 P.3d at 1250. Relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence." NRS 48.015. Generally, all relevant evidence is admissible. NRS 48.025.

The prior Excalibur incident is relevant to the charges against Carr and for the purpose of establishing Carr's identity. Carr's defense at trial was mistaken identity. Both the Excalibur and Luxor incidents occurred in Las Vegas casinos relatively close in time and involved an African-American male approaching a roulette table, waiting for a victim to place a bet, grabbing the victim's casino chips from the table, and running away. Witnesses to each incident individually identified Carr as the perpetrator of the crime. Therefore, the district court did not abuse its discretion by finding that Carr's prior Excalibur incident was relevant. See Frisaura v. State, 96 Nev. 13, 15, 604 P.2d 350, 351-52 (1980) (upholding the admission of a defendant's prior bad acts to prove identity

where the defense at trial was mistaken identity, the previous wrongs involved similar crimes, and the past victims individually identified the defendant as the perpetrator of the crime).

The Excalibur incident's probative value is not substantially outweighed by unfair prejudice to Carr

Carr argues that the probative value of the prior Excalibur theft was substantially outweighed by the prejudicial effects of the State presenting seven witnesses who testified to the other bad act, mentioning the prior bad act during voir dire, and discussing the prior bad act in both its opening statement and closing argument. We disagree.

Before admitting evidence of prior bad acts, a district court must determine that the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice. Bigpond, 128 Nev. at ___, 270 P.3d at 1250. The probative value of the Excalibur incident is not substantially outweighed by unfair prejudice. Carr's defense at trial was mistaken identity and Carr presented expert testimony regarding the accuracy of Morton's identification of Carr. Because the defense was questioning the credibility of the State's other witnesses' identifications of Carr, the State had a greater need to admit evidence relating to the Excalibur incident.

The State's evidence regarding the Excalibur incident also was limited. Kent Wolf, Kurt Wolf, and the Excalibur security officer were the only witnesses to testify solely on the Excalibur theft. While Zeihen and the responding police officer referenced the Excalibur incident, these witnesses only briefly mentioned the prior bad act in order to demonstrate how they recognized Carr in the surveillance video from the incident in the instant case. One of the detectives explained the misstatement during Carr's interrogation regarding Mandalay Bay to avoid confusing the jury.

Furthermore, any reference to the Excalibur incident during voir dire, opening statements, and closing arguments was brief and only reiterated the testimony already presented. As a result, the Excalibur incident's probative value was not substantially outweighed by unfair prejudice and the district court did not abuse its discretion by admitting this evidence.

The district court's failure to provide a limiting instruction regarding the prior bad act evidence was harmless error

Carr claims that the district court's failure to provide a limiting instruction when introducing the prior bad act evidence prohibited him from receiving a fair trial. We disagree.

When the district court admits evidence of prior bad acts, the prosecutor has a duty to request that the district court give the jury a limiting instruction regarding the use of that evidence. Mclellan, 124 Nev. at 269, 182 P.3d at 110-11. If the prosecutor fails to request the limiting instruction, the district court should raise the issue sua sponte. Id. at 269, 182 P.3d at 111. When the district court fails to issue a limiting instruction, this court reviews this failure for harmless error. Id. at 269-70, 182 P.3d at 111 (referencing NRS 178.598). Thus, this court must determine whether the error "had [a] substantial and injurious effect or influence in determining the jury's verdict." Id. (quoting Kotteakos v. United States, 328 U.S. 750, 776 (1946)).

We conclude that the district court's failure to provide a limiting instruction when introducing evidence of the prior bad act was harmless error. At trial, Morton identified Carr as the person who stole his chips. Zeihen and the responding police officer also testified that they recognized Carr from the surveillance video and only briefly referenced the Excalibur incident to explain how they recognized him. Furthermore, Carr confessed to committing the crime and was wearing the same jacket

on the day that he was arrested as the person in the surveillance footage. The jury also received a limiting instruction regarding the prior bad act evidence before determining whether to convict Carr of the charges against him. Since the limiting instruction was given with the final jury instructions, prior to the commencement of jury deliberations, the district court's failure to initially provide a limiting instruction was harmless error.

The district court did not commit plain error by admitting Zeihen's testimony identifying Carr on the surveillance video

Carr claims that Zeihen's identification and narration of the surveillance video from the Luxor amounted to improper opinion testimony because Zeihen was not an eyewitness to the event and is not an expert, and therefore, the district court erred by allowing this testimony.⁶ We disagree.

⁶Carr also notes that he objected to Zeihen's testimony at trial as hearsay and a violation of the best evidence rule. Because Carr failed to present any argument relating to such claims, we decline to address these issues. See NRAP 28(a)(9) (requiring an appellant's opening brief to contain an argument section with the appellant's contentions and support for those contentions); Browning v. State, 120 Nev. 347, 361, 91 P.3d 39, 50 (2004) (declining to consider claim by defendant where defendant failed to provide "any cogent argument, legal analysis, or supporting factual allegations").

Carr also argues that the district court erred by admitting the surveillance video into evidence because the State failed to properly authenticate the video. Because Carr failed to object on this ground at trial, we review the issue for plain error. See McLellan, 124 Nev. at 269, 182 P.3d at 110. We conclude that the admission of the surveillance video does not amount to plain error because Zeihen's testimony sufficiently demonstrated that the admitted DVD contained the same footage as the surveillance video of Carr. See NRS 52.025; Archanian v. State, 122 Nev.

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This court reviews a district court's decision to admit evidence for an abuse of discretion and will not overturn such a decision unless manifest error exists. Thomas v. State, 122 Nev. 1361, 1370, 148 P.3d 727, 734 (2006). The failure to object below generally precludes appellate review. McClellan, 124 Nev. at 269, 182 P.3d at 110. However, this court may choose to review the matter for plain error. Id. In conducting a plain error review, we examine whether the error was clear and affected the defendant's substantial rights. Id. Because Carr failed to specifically object to Zeihen's testimony on these grounds at trial, we review the issue for plain error. See id.

In order to testify, a witness must have personal knowledge of the matter at hand. NRS 50.025. A lay witness's testimony may only provide opinions that are rationally based on his or her perceptions and helpful to a clear understanding of the witness's testimony or the determination of a fact at issue. NRS 50.265. Generally, a lay witness may provide opinion testimony regarding the identity of a person depicted in a surveillance video "if there is some basis for concluding that the witness is more likely to correctly identify the defendant from the photograph than is the jury." Rossana, 113 Nev. at 380, 934 P.2d at 1048 (citing U.S. v. Towns, 913 F.2d 434, 445 (7th Cir. 1990)).

Zeihen testified that prior to viewing the Luxor surveillance video, he was aware of the Excalibur incident allegedly involving Carr.

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1019, 1030, 145 P.3d 1008, 1016-17 (2006) (upholding admission of surveillance video when defendant failed to establish any prejudice or demonstrate any evidence bringing the video's authenticity into question).

Since Zeihen was involved with the Excalibur incident investigation, he was more likely than the jury to correctly identify Carr in the footage. See id. The State also made it clear that Zeihen's testimony was only describing his review of the surveillance video and that Zeihen was not an eyewitness to the theft. Therefore, we conclude that Zeihen's testimony constitutes proper opinion testimony by a lay witness and does not amount to plain error.⁷

The State's failure to disclose evidence relating to several witnesses and Kurt Wolf's inability to identify Carr did not amount to plain error

Carr argues that the State failed to provide him with all the required Brady evidence because the State did not give Carr any information relating to Kent Wolf, Kurt Wolf, or the Excalibur security officer as witnesses and the State hid the fact that Kurt Wolf was unable to identify Carr as the person who stole his chips.⁸ We disagree.

⁷Carr also claims that Zeihen's statements describing how Carr allegedly committed the crime and fled amounted to expert testimony regarding casino crimes. While Zeihen's general statements about casino chip thefts may have amounted to expert testimony, we conclude that the district court's error in admitting the testimony was harmless given Morton's and the roulette dealer's testimony regarding how the chips were stolen. See NRS 178.598 (stating that any error which does not affect substantial rights shall be disregarded). Because we conclude that the admission of Zeihen's statements concerning chip thefts was harmless error, we do not address Carr's claim that the State failed to provide him with proper notice of Zeihen's expert testimony.

⁸Carr also asserts that the State failed to endorse Kurt Wolf and Kent Wolf as witnesses. Because Carr did not object below to the State's failure to endorse these witnesses, we must review Carr's claim for plain error. See Mclellan, 124 Nev. at 269, 182 P.3d at 110. We conclude that Carr has failed to demonstrate how the State's failure to endorse these witnesses affected his substantial rights. Furthermore, the jury was made
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A prosecutor must disclose all evidence favorable to the defense that is material to guilt or punishment. Brady, 373 U.S. 83, 86-88 (1963); Mazzan v. Warden, 116 Nev. 48, 66, 993 P.2d 25, 36 (2000). Favorable evidence includes evidence that the defense may use for impeachment purposes in attacking the credibility of a state's witness or to strengthen its own theory of the case. Mazzan, 116 Nev. at 67, 993 P.2d at 37. Evidence is material to a defendant's guilt or punishment when there is a reasonable possibility that the omitted evidence would have affected the outcome. Id. at 66, 993 P.2d at 36.

Carr did not raise his Brady argument in district court. Therefore, we review this issue for plain error. See Mclellan, 124 Nev. at 269, 182 P.3d at 110. Kurt Wolf's inability to identify Carr would not have affected the outcome of Carr's trial because other witnesses identified Carr as the perpetrator of both the Excalibur and Luxor thefts. Furthermore, Carr was wearing the same jacket as the person in the surveillance footage when he was arrested. Given this other evidence, the State's failure to disclose all information regarding these witnesses did not affect Carr's substantial rights, and thus, did not amount to plain error.

The district court's admission of Kent Wolf's testimony from the Petrocelli hearing did not violate Carr's Confrontation Clause rights

Carr argues that the district court violated his Confrontation Clause rights by admitting the transcript of Kent Wolf's testimony from

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aware that Kurt Wolf was unable to identify Carr as the perpetrator at the Excalibur incident. Thus, the State's failure to endorse these witnesses does not amount to plain error.

the Petrocelli hearing because that hearing did not provide an adequate opportunity to cross-examine Kent Wolf. We disagree.

While this court generally reviews a district court's evidentiary rulings for an abuse of discretion, whether a defendant's Confrontation Clause rights were violated is a question of law that this court reviews de novo. Chavez v. State, 125 Nev. 328, 339, 213 P.3d 476, 484 (2009). The Sixth Amendment of the United States Constitution provides, "In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him." U.S. Const. amend. VI. Thus, the Confrontation Clause prohibits the admission of testimonial statements by a witness who did not appear at trial unless the witness was unavailable and the defendant had a prior opportunity to cross-examine the witness concerning the testimony. Crawford v. Washington, 541 U.S. 36, 53-54 (2004); Chavez, 125 Nev. at 338, 213 P.3d at 483.

We conclude that the Petrocelli hearing gave Carr an adequate opportunity to cross-examine Kent Wolf. The State's motion to admit Carr's prior bad acts provided the defense with the information necessary to prepare to cross-examine Kent Wolf at the Petrocelli hearing. The district court did not limit the defense's ability to cross-examine Kent Wolf at the hearing. Because the purpose of a Petrocelli hearing is to establish the relevance and probative value of prior bad act evidence, the defense had a motive when cross-examining Kent Wolf to bring his identification of Carr into question. See Chavez, 125 Nev. at 345, 213 P.3d at 488. Furthermore, the defense questioned Kent Wolf about his ability to see the alleged thief's face. Thus, the district court did not violate Carr's Confrontation Clause rights by admitting Kent Wolf's testimony

from the Petrocelli hearing. See Chavez, 125 Nev. at 338-39, 213 P.3d at 483-84 (determining adequacy of cross examination based on the extent of discovery available to the defendant at the time of cross-examination and whether the judge limited cross-examination opportunity).

There was sufficient evidence to convict Carr of burglary and grand larceny

Carr contends that no rational jury would have convicted him of burglary and grand larceny if the district court had not erroneously admitted prior bad act evidence and Zeihen's opinion testimony, and that there is no direct evidence of Carr's entry into the Luxor. We disagree.

When reviewing a sufficiency-of-evidence claim on appeal, we must determine whether a rational juror could have been convinced of the defendant's guilt beyond a reasonable doubt. Middleton v. State, 114 Nev. 1089, 1102, 968 P.2d 296, 306 (1998). In making such a determination, this court must view all the evidence in the light most favorable to the prosecution. Higgs v. State, 126 Nev. ___, ___, 222 P.3d 648, 654 (2010).

Burglary occurs when "[a] person who, by day or night, enters any . . . building . . . with the intent to commit grand or petit larceny." NRS 205.060(1). At the time of Carr's offense, NRS 205.220(1)(a) provided that a person committed grand larceny by intentionally stealing, taking, and carrying away personal goods or property owned by another person with a value of \$250 or more.⁹

⁹In 2011, the Legislature amended NRS 205.220(1)(a) by increasing the monetary threshold for grand larceny to \$650. 2011 Nev. Stat., ch. 41, § 13, at 163. Because Carr's offense occurred before this amendment, we apply the former version of NRS 205.220(1)(a) that was in effect at the time of the offense.

We conclude that sufficient evidence exists to convict Carr of burglary and grand larceny. The State presented no direct evidence of Carr's entry into the Luxor, but the testimony of Morton and others demonstrated Carr's entry by his presence at the Luxor. Morton identified Carr as the person who stole his chips, which amounted to between \$2,500 and \$3,000. The responding police officer and Zeihen both testified to recognizing Carr on the surveillance video based on the Excalibur incident. While the defense presented expert testimony demonstrating the inaccuracies of eyewitness identifications, the reliability of the identifications was for the jury to determine. The testimony of the police detectives established that Carr was wearing the same jacket the day that he was arrested as the person in the surveillance video. The police detectives' testimony also explained the misstatement regarding Mandalay Bay in Carr's confession. Finally, Kent Wolf's testimony from the Petrocelli hearing and the Excalibur security officer's testimony during trial also demonstrated Carr's identity because they recognized Carr as the person who had previously committed a very similar crime at the Excalibur.

Cumulative error does not warrant the reversal of Carr's convictions


Carr contends that even if this court does not agree that any individual error is sufficient to reverse his convictions, the cumulative effect of these errors requires the reversal of his convictions. We disagree.


Cumulative errors may violate a defendant's constitutional right to a fair trial even when the errors individually are harmless. Valdez v. State, 124 Nev. 1172, 1195, 196 P.3d 465, 481 (2008). When evaluating a claim of cumulative error, this court considers "(1) whether the issue of guilt is close, (2) the quantity and character of the error, and

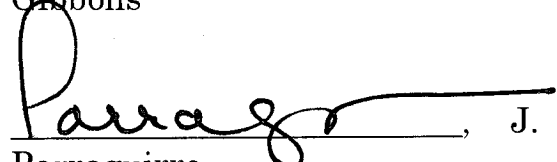
(3) the gravity of the crime charged.” Id. (quoting Mulder v. State, 116 Nev. 1, 17, 992 P.2d 845, 854-55 (2000)).

Here, the issue of Carr’s guilt is not close given Morton’s identification of Carr, the surveillance video and other witnesses’ identifications of Carr, Carr’s confession, and Carr’s jacket. The district court may have erred in allowing testimony regarding Carr’s prior bad acts and Zeihen’s expert testimony, but the inadmissible statements were brief and did not affect Carr’s substantial rights considering the other evidence against Carr. While the gravity of Carr’s crime is serious as his sentence only allows for parole after ten years, there was substantial evidence demonstrating Carr’s guilt beyond any erroneously admitted evidence. Thus, cumulative error does not require the reversal of Carr’s convictions. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

cc: Hon. Elissa F. Cadish, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk