

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHANCE BRIAN CARDEN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 63671

FILED

OCT 16 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Malone
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction entered pursuant to a jury verdict of felony driving under the influence of alcohol. Fifth Judicial District Court, Nye County; Kimberly A. Wanker, Judge. Appellant Chance Brian Carden presents three issues for our review.

First, Carden claims that the district court erred by failing to adjudicate him guilty of felony driving under the influence of alcohol (DUI) before adjudicating him a habitual criminal. Carden did not preserve this claim of error for appellate review and he has not demonstrated plain error because there was no error: the sentencing transcript clearly reveals that the district court first found that Carden's two prior DUI convictions rendered his instant DUI offense a felony and then found that Carden's extensive criminal record warranted adjudicating him habitual criminal. *See Grey v. State*, 124 Nev. 110, 123, 178 P.3d 154, 163 (2008); *Green v. State*, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003).

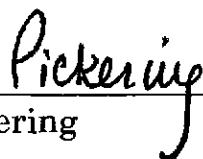
Second, Carden claims that the district court committed plain error by failing to notify him that the State was seeking a habitual

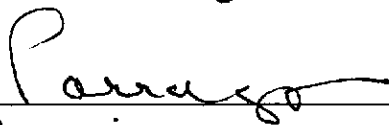
criminal adjudication. However, this claim of error does appear plainly on the record. *See Nelson v. State*, 123 Nev. 534, 543, 170 P.3d 517, 524 (2007) (“To be plain, an error must be so unmistakable that it is apparent from a causal inspection of the record.” (internal quotation marks omitted)). Instead, the record shows that the State filed a motion to amend the information by adding a count of habitual criminality on May 30, 2012; the State filed a notice of intent to seek habitual criminal adjudication on September 7, 2012; Carden knew that the State was seeking habitual criminal adjudication on February 13, 2013; and the district court adjudicated Carden a habitual criminal on June 21, 2013. Accordingly, the record suggests that Carden had reasonable notice and an opportunity to be heard on the habitual criminal count. *See NRS 207.016(2); Oyler v. Boles*, 368 U.S. 448, 452 (1962) (“[A] defendant must receive reasonable notice and an opportunity to be heard relative to the recidivist charge even if due process does not require that notice be given prior to the trial on the substantive offense.”); *LaChance v. State*, 130 Nev. ___, ___, 321 P.3d 919, 928-29 (2014) (discussing notice of intent to seek habitual criminal adjudication).


Third, Carden claims that the district court erred by using his prior conviction for possession of stolen property to adjudicate him a habitual criminal because the certified copy of this conviction does not demonstrate that he was convicted of a felony. Carden did not object to the use of this prior conviction on this ground, and he has not demonstrated plain error because, even without the possession-of-stolen-property conviction, the record demonstrates that he had three separate

and distinct prior felony convictions for purposes of the habitual criminal statute. See NRS 207.010(1)(b); *LaChance*, ___ Nev. at ___, 321 P.3d at 930; *Green*, 119 Nev. 545, 80 P.3d at 95 (“[T]he burden is on the defendant to show actual prejudice or a miscarriage of justice.”).

Having concluded that Carden is not entitled to relief, we
ORDER the judgment of conviction AFFIRMED.¹


_____, J.
Pickering


_____, J.
Parraguirre


_____, J.
Saitta

cc: Hon. Kimberly A. Wanker, District Judge
David H. Neely, III
Nye County District Attorney
Attorney General/Carson City
Nye County Clerk

¹The opening brief does not comply with the formatting requirements of NRAP 32(a)(4) because it is not double-spaced and does not have one-inch margins on all four sides. We caution appellant’s counsel that future failure to comply with the applicable rules when filing briefs in this court may result in the imposition of sanctions. See NRAP 28(j).