

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ASCENSION EDDIE NELSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 67324

FILED

JUL 14 2015

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction entered pursuant to a jury verdict of conspiracy to violate the Uniform Controlled Substances Act. Eighth Judicial District Court, Clark County; Carolyn Ellsworth, Judge.

Appellant Ascension Eddie Nelson claims the district court violated his due process right to a fair trial by excluding a police report from evidence on hearsay grounds. Nelson asserts the admission of this evidence was necessary to demonstrate that Police Officer Wiggins wrote two inconsistent reports and the discrepancies in those reports showed the police made a number of mistakes during their investigation and ultimately accused the wrong person. Nelson argues the police report was not hearsay and it fell under the public records and business records exceptions to the hearsay rule.

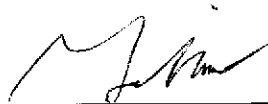
“We review a district court’s decision to admit or exclude evidence for an abuse of discretion.” *McLellan v. State*, 124 Nev. 263, 267, 182 P.3d 106, 109 (2008). “Hearsay is an out-of-court statement offered in evidence to prove the truth of the matter asserted and is inadmissible unless [it falls] within an exemption or exception.” *Coleman v. State*, 130 Nev. ___, ___, 321 P.3d 901, 905 (2014) (internal quotation marks and


citation omitted). “[H]earsay errors are evaluated for harmless error.” *Id.* at ___, 321 P.3d at 911.

The record reveals Nelson cross-examined Officer Wiggins about the discrepancies between the two police reports he authored. When Nelson sought to admit the first report into evidence, the State objected and argued, “The Officer’s report is not evidence. The Officer is here. He can ask him any questions he wants to ask him.” The district court ruled the police report was hearsay and later ruled the public records exception did not apply because the police report contained opinions and not factual findings.

We conclude the police report did not constitute hearsay because it was not offered to prove the truth of the matters it asserted but rather to show the inconsistencies and differences in Officer Wiggins’ police reports. *See* NRS 51.035. Nonetheless, we further conclude the erroneous hearsay ruling was harmless because Nelson was able to present evidence of the police reports’ inconsistencies and differences to the jury through his cross-examination of Officer Wiggins. *See Coleman*, 130 Nev. at ___, 321 P.3d at 911. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Carolyn Ellsworth, District Judge
The Law Office of David R. Fischer
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk