

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSHUA MANOR,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 65313

FILED

NOV 04 2015

TRACIE K. LINDEMAN
CLERK OF APPEALS COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of battery with a deadly weapon constituting domestic violence, assault with a deadly weapon, and attempt burglary. Eighth Judicial District Court, Clark County; Jessie Elizabeth Walsh, Judge.

Appellant Joshua Manor punched Emily Lewis and stabbed her with a knife during a dispute. The incident took place in Emily's vehicle in front of the couple's young child and Emily's ten-year-old daughter from a different relationship. As the parties are familiar with the facts, we do not recount them further except as necessary to our disposition.

On appeal, Manor argues: 1) the district court abused its discretion in excluding from evidence the temporary protective order (TPO) Emily obtained against Manor a month prior to the incident; 2) the prosecution engaged in misconduct by objecting too frequently; 3) the district court erred by improperly using the State's jury instruction on

witness credibility rather than Manor's proposed instruction; and 4) cumulative error warrants reversal of the verdict. For the following reasons, we affirm the district court's judgment of conviction.

Manor first argues the district court abused its discretion when it excluded Emily's TPO against Manor. We disagree. A district court's decision to admit or exclude evidence is reviewed for an abuse of discretion. *Rimer v. State*, 131 Nev. ___, ___, 351 P.3d 697, 712 (2015).

Here, the State did not have knowledge of the TPO until the second day of trial when Manor attempted to introduce it. Although Manor argues his defense hinged on the admission of the TPO, the district court's admission of the TPO would have resulted in unfair surprise to the State. *See Sampson v. State*, 121 Nev. 820, 828, 122 P.3d 1255, 1260 (2005) (holding allowing a defendant to introduce a witness on the eighth day of trial would unfairly surprise the State, particularly where the defendant could have discovered the witness earlier).

More importantly, we conclude the TPO was properly excluded as irrelevant. Manor failed to demonstrate that the TPO, obtained a month prior to the incident, was relevant to the charges of battery with use of a deadly weapon constituting domestic violence, assault with a deadly weapon, or attempt burglary. *See* NRS 48.015 (defining "relevant evidence"). Manor's cursory argument—that the TPO could have been used to demonstrate Emily's bias or expose inconsistencies in her testimony—without more fails to analyze how this evidence was relevant

to the crimes at issue. Thus, we conclude the district court properly exercised its discretion in excluding the TPO.¹

Manor next argues the State violated his right to a fair trial by engaging in prosecutorial misconduct through repeated objections during cross-examination at trial. We disagree. When considering claims of prosecutorial misconduct, we first determine whether the prosecutor's conduct was improper and next whether the improper conduct warrants reversal. *Valdez v. State*, 124 Nev. 1172, 1188, 196 P.3d 465, 476 (2008). "Generally, the failure to object to prosecutorial misconduct precludes appellate review." *Rose v. State*, 123 Nev. 194, 208, 163 P.3d 408, 418 (2007). But, despite the party's failure to object at trial, we will still consider prosecutorial misconduct under plain-error review "if the error either: (1) had a prejudicial impact on the verdict when viewed in context of the trial as a whole, or (2) seriously affects the integrity or public reputation of the judicial proceedings." *Id.* at 208-09, 163 P.3d at 418 (internal quotations omitted).

Because Manor failed to object to prosecutorial misconduct for the State's objections, we apply plain-error review. Manor asserts the State lodged frequent procedural objections during his cross examination

¹Importantly, we further note that as Manor failed to include the TPO in the appellate record, we may presume this missing portion of the record supports the district court's decision, as our inability to review the TPO makes it difficult for this court to conclude that the district court erred in ruling the TPO inadmissible. See *Cuzze v. Univ. & Comm. Coll. Sys. of Nevada*, 123 Nev. 598; 603, 172 P.3d 131, 135 (2007).

of witnesses, which the district court sustained. Despite conceding he failed to object below, Manor contends the district court's rulings were "simply incorrect." But, Manor does not explain why the objections and rulings were improper or incorrect. Nor does Manor address specific objections in his argument.² Accordingly, we conclude Manor failed to demonstrate plain error and reversal is not warranted.

Next, Manor argues the district court erred when it used the State's jury instruction instead of Manor's proposed instruction regarding witness credibility. We disagree. We review a district court's decision regarding jury instructions for abuse of discretion. *Crawford v. State*, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005). A district court does not err by refusing to give an instruction if another instruction adequately covers that same information. *Rose*, 123 Nev. at 205, P.3d at 415. Further, the court need not give instructions that are "misleading, inaccurate, or duplicitous." *Guitron v. State*, 131 Nev. ___, ___, 350 P.3d 93, 103 (Ct. App. 2014) (citing *Carter v. State*, 121 Nev. at 759, 765, 121 P.3d at 592, 596 (2005)).

Here, the district court determined the State's instruction was a correct statement of law on witness credibility, and Manor conceded his proposed instruction was contained within the State's instruction. Thus,

²Further, as Manor failed to support his conclusions with either analysis or relevant legal authority, we need not consider them. *Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) ("It is appellant's responsibility to present relevant authority and cogent argument; issues not so presented need not be addressed by this court.")

Manor essentially argues his instruction should have been given because he preferred it over the instruction provided by the State. These facts provide insufficient grounds to conclude the district court abused its discretion. Accordingly, we conclude the district court did not err in using the State's instruction regarding witness credibility instead of Manor's.

We further note Manor failed to include his proposed instruction in the appellate record. This failure "hamstrings our review" and requires us to "necessarily presume that the missing portion supports the district court's decision." *Thomas v. Hardwick*, 126 Nev. 142, 147, 231 P.3d 1111, 1115 (2010); *Cuzze v. Univ. & Comm. Coll. Sys. of Nevada*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007).


Lastly, Manor argues the cumulative effect of alleged errors denied him a fair trial. We disagree. This court will not reverse a district court based on cumulative error unless there is a showing the cumulative effect of errors violated the defendant's constitutional right to a fair trial. *See Rose*, 123 Nev. at 211, 163 P.3d at 419. When evaluating whether a claim of cumulative error warrants reversal, we consider the following factors: "(1) whether the issue of guilt is close, (2) the quantity and character of the error, and (3) the gravity of the crime charged." *Valdez*, 124 Nev. at 1195, 196 P.3d at 481 (quoting *Mulder v. State*, 116 Nev. 1, 17, 992 P.2d 845, 854-55 (2000)).


Here, the issue of guilt was not close. There was no question about the identity of the suspect who stabbed Emily, and extensive testimony and evidence supported the charges. Although the charges against Manor are serious, Manor has failed to show any error. Therefore,

the doctrine of cumulative error is inapplicable to this case and does not warrant our reversal. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Jessie Elizabeth Walsh, District Judge
Travis E. Shetler
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk