

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ALDO MARONES A/K/A ALDO  
JOVANNY MORONES,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 67312

**FILED**

SEP 15 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, pursuant to a jury verdict, of burglary while in possession of a firearm, carrying a concealed firearm or other deadly weapon, and robbery with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

First, appellant Aldo Marones argues the district court erred by admitting two witnesses' testimonies identifying him as the person depicted on the surveillance video committing the crimes. Marones asserts this testimony was improper lay opinion testimony because it was the jury's role to determine whether he was the person depicted in the video. Marones did not object to this testimony and therefore, we review for plain error. "When an error has not been preserved, this court employs plain-error review." *Valdez v. State*, 124 Nev. 1172, 1190, 196 P.3d 465, 477 (2008). Under this standard, the defendant must demonstrate the error affected his substantial rights by causing "actual prejudice or a miscarriage of justice." *Id.* (quoting *Green v. State*, 119 Nev. 542, 545, 80

P.3d 93, 95 (2003)). We conclude Marones fails to demonstrate plain error for this claim.

Here, the store clerk testified that he was working during the robbery and testified regarding Marones' actions during the commission of the crimes. The State then played the surveillance video recording of the incident and the clerk identified Marones as the person depicted in that video. Next, the store's owner testified he was at his home watching the surveillance feed through his phone when the incident occurred and he watched the crimes occur as they happened. The owner testified that a few days later a fight occurred in the parking lot of his store, he observed Marones involved in the fight, and he remembered him from the recent robbery. The store owner also identified Marones as the person depicted in the surveillance video committing the crimes. Under these circumstances, we conclude this was proper testimony because it was rationally based on the perception of both witnesses and was helpful to understand their testimony and for determining a fact in issue. *See* NRS 50.265.


Further, these witnesses' testimonies demonstrated they had "sufficient contact with the defendant to achieve a level of familiarity that renders" their testimony in this regard helpful. *United States v. Beck*, 418 F.3d 1008, 1015 (9th Cir. 2005) (quoting *United States v. Henderson*, 241 F.3d 638, 650 (9th Cir. 2000)). In addition, two other witnesses, including one whom had known Marones for more than one year, identified Marones as the person depicted in the surveillance video committing the charged crimes. Therefore, Marones did not demonstrate he was entitled to relief for this claim.


Second, Marones argues the district court erred by denying his motion for a mistrial after a state witness testified he performed a “re-booking” of Marones at the jail for the instant charges. We review a district court’s ruling on a motion for mistrial for an abuse of discretion. *Ledbetter v. State*, 122 Nev. 252, 264, 129 P.3d 671, 680 (2006). “[T]he trial court is justified in denying a motion for a mistrial when a witness inadvertently makes reference to other unrelated criminal activity as long as the testimony is not clearly and enduringly prejudicial and has not been solicited by the prosecution.” *Allen v. State*, 99 Nev. 485, 490-91, 665 P.2d 238, 242 (1983).


Here, an officer testified regarding his investigation in this matter and stated the conclusion of his investigation resulted in a “re-booking” of Marones for the crimes at issue. The defense objected and moved for a mistrial, arguing the jury may have believed that Marones was in custody for an unrelated bad act. The defense acknowledged the prosecution had not elicited the statement and the district court concluded that the statement was improper, but that it did not rise to the level of a mistrial. The district court asked the defense if they would like the court to instruct the jury to disregard the statement, but the defense did not want such an instruction because of the potential to highlight the improper reference. The court then instructed the State to admonish the officer not to use that term again. Under these circumstances, Marones does not demonstrate prejudice that prevented him from receiving a fair trial, particularly in light of the strong evidence of his guilt presented at trial. *See id.* Accordingly, Marones is not entitled to relief for this claim.

Having considered Marones' contentions and concluding they are without merit, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Silver

cc: Hon. Michelle Leavitt, District Judge  
Law Offices of John P. Parris  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk