

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BERNARD YOUNG,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 66351

FILED

SEP 15 2015

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction entered pursuant to a jury verdict of three counts of robbery with the use of a deadly weapon on a victim 60 years of age or older, three counts of robbery with the use of a deadly weapon, attempted robbery with the use of a deadly weapon, and battery with the intent to commit a crime. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

Appellant Bernard Young claims the district court erred by excluding his testimony as to what Detective Miller told him during a police interview before the recorder was turned on. Young argues the detective's out-of-court statements were not being offered for the truth of the matter asserted and therefore they were not hearsay. The State responds that these statements were admitted into evidence.

"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). "A statement merely offered to show that the statement was made and the listener was affected by the statement, and which is not offered to show the truth of the matter asserted, is admissible as non-hearsay." *Wallach v. State*, 106 Nev. 470, 473, 796 P.2d 224, 227 (1990). "[H]earsay errors are evaluated for harmless error." *Coleman*, 130 Nev. at ___, 321 P.3d at 911.


The record reveals the State objected to Young's testimony about statements Detective Miller made before the police interview was recorded. Young argued the statements were not offered for the truth of the matter asserted but rather to show how he acquired the information about the robberies he was alleged to have committed. The court asked Young if it was his testimony that Detective Miller told him "all the facts of these robberies . . . before the record[er] was turned on," and Young acknowledged that it was. The court still did not allow Young to testify that Detective Miller *told* him about the robberies, but it did allow Young to testify as to which robberies he knew nothing about before talking to Detective Miller. We conclude the district court erred by sustaining the hearsay objection, but the error was harmless because Young was able to get the inference he sought admitted into evidence based on the testimony that was permitted.

Young also claims the prosecutor committed misconduct by failing to research his criminal history before cross-examining him about a prior prison sentence. Young appears to argue the prosecutor committed misconduct by asking him about a prison sentence imposed by a prior judgment of conviction because he had never "actually served a prison

sentence.”¹ Young did not object to the prosecutor’s cross-examination questions and he has not demonstrated plain error because there was no error: the prosecutor merely tested the accuracy or credibility of the witness’s direct-examination testimony. *See Valdez v. State*, 124 Nev. 1172, 1190, 196 P.3d 465, 477 (2008) (reviewing unpreserved claims of prosecutorial misconduct for plain error).

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


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Michael Villani, District Judge
Thomas Michaelides
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

¹To the extent Young argues the prosecutor was referring to someone else’s prison sentence, this argument is plainly belied by the record.