IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TRELLIS ANDRE QUINN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 70779

MAR 14 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY DEPUTY CLERK

ORDER OF AFFIRMANCE

Trellis Andre Quinn appeals from a judgment of conviction entered pursuant to a jury verdict of burglary while in possession of a firearm, battery with the use of a deadly weapon resulting in substantial bodily harm, discharge of a firearm from or within a structure or vehicle, and felon in possession of a firearm. Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

First, Quinn argues the district court erred in permitting the State to amend the information to allege aiding and abetting or conspiracy as alternate theories of liability. When the State moved to amend the information, Quinn informed the district court he was aware of the proposed amendment and had no objection. The district court then permitted the amendment.

As Quinn did not object to amending the information, he is not entitled to relief absent a demonstration of plain error. *See Valdez v. State*, 124 Nev. 1172, 1190, 196 P.3d 465, 477 (2008). "In conducting plain error review, we must examine whether there was error, whether the error was plain or clear, and whether the error affected the defendant's substantial

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rights." *Green v. State*, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003) (internal quotation marks omitted).

"The court may permit an indictment or information to be amended at any time before verdict or finding if no additional or different offense is charged and if substantial rights of the defendant are not prejudiced." NRS 173.095(1). "An inaccurate information does not prejudice a defendant's substantial rights if the defendant had notice of the State's theory of prosecution." *Viray v. State*, 121 Nev. 159, 162–63, 111 P.3d 1079, 1082 (2005). Here, the amendment did not include additional or different offenses and Quinn advised the court the State had provided him notice regarding the additional theories of liability. As Quinn had sufficient notice of the theory of prosecution, he does not demonstrate the amendment prejudiced his substantial rights. Therefore, we conclude Quinn fails to demonstrate the district court committed plain error by permitting the State to amend the information.

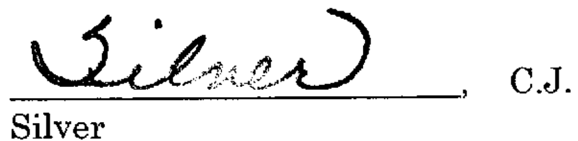
Second, Quinn argues the State committed prosecutorial misconduct when it posed a question referring to Quinn's custodial status. We review claims of prosecutorial misconduct for improper conduct and then determine whether reversal is warranted. *Valdez*, 124 Nev. at 1188, 196 P.3d at 476. Quinn preserved this claim for appellate review; therefore, we review improper conduct, if any, for harmless error. *See id.* at 1188, 196 P.3d at 476; *see also Haywood v. State*, 107 Nev. 285, 288, 809 P.2d 1272, 1273 (1991) (concluding reference to a defendant's in-custody status was improper and reviewing for harmless error).

Here, a State's witness testified regarding differences between a statement she gave to a police officer and a later statement she gave to her probation officer. The witness testified she fabricated portions of her

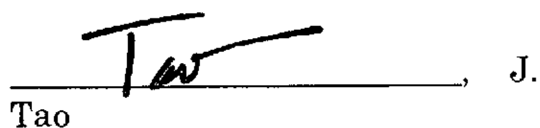
initial statement because she was afraid Quinn would harm her. The State then asked the witness if Quinn could harm her if he was in custody. Quinn objected and the district court sustained the objection. The record further reveals the district court had previously instructed the jury to ignore a question when it sustained an objection to that question.

We conclude the improper reference to Quinn's custodial status was harmless because the district court sustained Quinn's objection and we presume the jury followed the district court's instruction to ignore a question when it sustained an objection to that question. *See Lisle v. State*, 113 Nev. 540, 558, 937 P.2d 473, 484 (1997); *see also Valdez*, 124 Nev. at 1188, 196 P.3d at 476 ("[T]his court will not reverse a conviction based on prosecutorial misconduct if it was harmless error."). Accordingly, we

ORDER the judgment of conviction AFFIRMED.



____________________, C.J.
Silver



____________________, J.
Tao

____________________, J.
Gibbons

cc: Hon. Valerie Adair, District Judge
Law Office of Benjamin Nadig, Chtd.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk