

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ILYAS MUMIN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 72258

FILED

MAY 15 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Ilyas Mumin appeals from a judgment of conviction entered pursuant to a jury verdict of battery by strangulation constituting domestic violence. Eighth Judicial District Court, Clark County; Kerry Louise Earley, Judge.

First, Mumin argues the district court erred by instructing the jury regarding flight. Mumin asserts there was no evidence to show that he fled. Mumin did not object to the flight instruction. Thus, Mumin 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 rights." *Green v. State*, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003) (internal quotation marks omitted).

The evidence produced at trial demonstrated Mumin was near the victim's residence following the incident as police officers drove near. As the officers' vehicle approached, Mumin walked in-between two homes and attempted to hide behind a large bush. The officers approached on foot and called for Mumin to come out from behind the bush, but he did not

initially comply with their commands. After the officers repeated their direction for him to come out from the bush, Mumin complied and approached the officers.

Based on this evidence, we conclude the district court appropriately instructed the jury on flight. *See Rosky v. State*, 121 Nev. 184, 199, 111 P.3d 690, 699-700 (2005); *see also McGuire v. State*, 86 Nev. 262, 266, 468 P.2d 12, 15 (1970) (“Where there is evidence . . . of flight as a deliberate attempt to avoid apprehension, a flight instruction is proper.”). Therefore, we conclude Mumin fails to demonstrate error affecting his substantial rights.

Second, Mumin argues the district court erred by excluding testimony regarding the victim’s past sexual abuse and exploitation as an exotic dancer and prostitute. “It is within the district court’s sound discretion to admit or exclude evidence, and this court reviews that decision for an abuse of discretion or manifest error.” *Thomas v. State*, 122 Nev. 1361, 1370, 148 P.3d 727, 734 (2006) (internal quotation marks and footnote omitted). Mumin sought to testify to statements the victim allegedly made regarding being sexually abused when she was a child and being forced to act as a sex worker by her mother. The district court concluded these issues were not relevant to whether Mumin committed a battery and were also unfairly prejudicial. *See* NRS 48.015; NRS 48.025(2); NRS 48.035(1). The district court further concluded the statements amounted to inadmissible hearsay. *See* NRS 51.035. The record supports the district court’s conclusions and Mumin fails to demonstrate the district court abused its discretion in this regard. Therefore, Mumin is not entitled to relief for this claim.

Third, Mumin argues the district court improperly warned him he could be held in contempt or face additional punishment if he attempted to testify regarding the victim's sexual abuse and exploitation in violation of the district court's ruling that those issues were inadmissible. Mumin argues the court's warning had a chilling effect on his testimony. Mumin did not object to the district court's warning, and thus, Mumin is not entitled to relief absent a demonstration of plain error. *See Valdez*, 124 Nev. at 1190, 196 P.3d at 477.

The record reveals Mumin's counsel explained Mumin felt strongly about the underlying information, and asked the district court to explain to Mumin what would happen if Mumin violated the district court's ruling and testified regarding the victim's abuse and exploitation. In response, the district court warned Mumin it would not permit him to create a mistrial by violating its order, stated it would admonish the jury to disregard that information if he attempted to introduce it, and warned he could be held in contempt if he blatantly disregarded the district court's ruling. Mumin then personally stated he understood the district court.

The district court had the authority to hold Mumin in contempt if he refused to obey the district court's order regarding the admissibility of the victim's alleged statements concerning abuse and exploitation. *See Warner v. Second Judicial Dist. Court*, 111 Nev. 1379, 1383, 906 P.2d 707, 709 (1995) (explaining criminal contempt may be an appropriate sanction for disobeying a court order). Given the district court's authority to hold Mumin in contempt for violating its ruling and his counsel's request for the district court to explain the possible sanctions, Mumin fails to demonstrate the district court's explanation of its authority to hold him in contempt amounted to error affecting his substantial rights.

Fourth, Mumin argues the district court erred by excluding a photograph that depicted him at work in the company of uniformed police officers. Mumin asserts this photograph would have bolstered his credibility regarding his work history. As stated previously, we review a district court's decision to exclude evidence for an abuse of discretion. *Thomas*, 122 Nev. at 1370, 148 P.3d at 734.


Prior to testifying, Mumin advised the district court that he wished to utilize five or six photographs depicting him and others while he performed work-related duties for a television station. The district court reviewed the photographs and concluded Mumin could not use photographs depicting police officers or celebrities. The district court then directed Mumin to choose one of the other remaining photographs to utilize during his testimony. Mumin later testified and the district court admitted into evidence one photograph depicting Mumin with his coworkers. We conclude Mumin does not demonstrate the district court abused its discretion by excluding the photograph depicting Mumin with police officers, and Mumin's utilization of a different photograph depicting him working was sufficient to corroborate his testimony regarding his work history. *See* NRS 48.035(1), (2) (stating relevant evidence may be excluded if its probative value is outweighed by the danger of unfair prejudice or "needless presentation of cumulative evidence"). Therefore, Mumin is not entitled to relief for this claim.

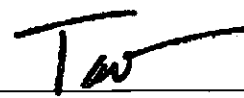
Fifth, Mumin argues the State committed prosecutorial misconduct by referring to him as "smooth" during its closing arguments. Mumin asserts this improperly implied he manipulated others. Mumin did not object to this argument, and thus, Mumin is not entitled to relief absent


a demonstration of plain error. *See Valdez*, 124 Nev. at 1190, 196 P.3d at 477.

The record reveals the victim testified she and Mumin became romantically involved after Mumin cared for her during an illness, but Mumin later controlled her ability to contact others, hit and choked her, and told her to blame her injuries on her mother. During its closing argument, the State asserted Mumin acted in a charming manner in order to win the victim's affections, but later used his charm to limit her access to other people. The State argued Mumin also acted in a "smooth" manner to gain the victim's agreement to initially tell the police officers that her mother caused her injuries. The State finally asserted that Mumin may have been able to charm the victim, but that the evidence should convince the jury Mumin injured the victim. Because the record demonstrates the State's statements during closing arguments were based upon the evidence presented at trial and the State offered conclusions regarding disputed issues, Mumin does not demonstrate the challenged statements amounted to error affecting his substantial rights. *See Truesdell v. State*, 129 Nev. 194, 203, 304 P.3d 396, 402 (2013). Therefore, we conclude Mumin is not entitled to relief for this claim. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Kerry Louise Earley, District Judge
Travis E. Shetler
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk