

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DEON DONTAE SMALLEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 71701

FILED

JUN 13 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Deon Dontae Smalley appeals from a judgment of conviction entered pursuant to a jury verdict of attempted murder with the use of a deadly weapon, attempted invasion of a home with the use of a deadly weapon, attempted burglary while in possession of a firearm, battery with the use of a deadly weapon resulting in substantial bodily harm, discharging a firearm at or into a structure, and ownership or possession of a firearm by a prohibited person. Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

First, Smalley claims the State committed prosecutorial misconduct by improperly vouching for the credibility of its witnesses during the closing and rebuttal arguments. Smalley did not object to the prosecutor's comments, and we conclude he has not demonstrated plain error because the comments do not amount to improper vouching. *See Valdez v. State*, 124 Nev. 1172, 1190, 196 P.3d 465, 477 (2008) (reviewing unpreserved claims of prosecutorial misconduct for plain error); *Browning v. State*, 120 Nev. 347, 359, 91 P.3d 39, 48 (2004) (A prosecutor improperly


vouches for a witness when he “places the prestige of the government behind the witness by providing personal assurances of the witness’s veracity.” (internal quotation marks and alteration omitted)).


Second, Smalley claims the district court erred by instructing the jury on self-defense, the defense of others, and the defense of an occupied habitation because these instructions were irrelevant to the issues presented during the trial. Smalley did not object to the jury instructions, and we conclude he has not demonstrated plain error affecting his substantial rights because he has not shown the trial result would have been different if these jury instructions had not been given. *See Ramirez v. State*, 126 Nev. 203, 208, 235 P.3d 619, 622-23 (2010) (reviewing unpreserved jury instruction challenges for plain error); *Green v. State*, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003) (“[T]he burden is on the defendant to show actual prejudice or a miscarriage of justice.”); *see generally Gonzales v. State*, 131 Nev. ___, ___, 366 P.3d 680, 684 (2015) (“The trial court has the duty to instruct on general principles of law relevant to the issues raised by the evidence and has the correlative duty to refrain from instructing on principles of law which not only are irrelevant to the issues raised by the evidence but also have the effect of confusing the jury or relieving it from making findings on relevant issues.”).


Third, Smalley claims the district court erred by intertwining the defenses of self-defense and defense-of-another in a single instruction. Smalley did not object to the jury instruction, and we conclude he has not demonstrated plain error because the instruction is not unduly confusing

and does not appear to be an incorrect statement of Nevada law. See *Gonzales*, 131 Nev. at ___, 366 P.3d at 385-86.

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


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Valerie Adair, District Judge
McLetchie Shell LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk