

IN THE SUPREME COURT OF THE STATE OF NEVADA

DONTE WOODS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 73985

FILED

SEP 21 2018

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

ORDER OF AFFIRMANCE

Donte Woods appeals from a judgment of conviction, pursuant to a jury verdict, of attempt murder with use of a deadly weapon; battery with use of a deadly weapon resulting in substantial bodily harm; discharging a firearm at or into an occupied structure, vehicle, aircraft, or watercraft; attempt invasion of the home with use of a deadly weapon; and attempt burglary while in possession of a firearm. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

Tyrone Golden was shot several times.¹ The State's primary evidence was Golden's identification of Woods as one of the assailants in a pretrial photographic lineup and at trial. During deliberations, a juror asked the court, "Can the defendant in any way prove he was not there on the night of April 19, 2016 when the incident took place? Are their [sic] any records to prove his whereabouts to justify not guilty?" The court responded, after discussing the questions with both parties and without objection, by referring the juror to the first paragraph of instruction No. 6 (defendant is presumed innocent), instruction No. 42 (defendant is not

¹ We do not recount the facts except as necessary to our disposition.

compelled to testify), and the last sentence of instruction No. 47 (court cannot supplement evidence).

On appeal, Woods argues: (1) there was insufficient evidence to support the judgment of conviction; and (2) juror misconduct violated his Sixth Amendment right to a fair trial by an impartial jury. We disagree.

In reviewing a challenge to the sufficiency of the evidence supporting a criminal conviction, we consider “whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *McNair v. State*, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). A conviction may be upheld even though the State’s primary evidence is the testimony of the victim because it is the jury’s province to determine what weight and credibility to give to the evidence. *See Hutchins v. State*, 110 Nev. 103, 107, 867 P.3d 1136, 1139 (1994).

Here, a rational jury could convict Woods based upon Golden’s testimony and other evidence the State presented at trial. Thus, we conclude the evidence was sufficient to support the judgment of conviction.

Now we turn to Woods’ contention that juror misconduct violated his constitutional rights. Because Woods raises this issue for the first time on appeal, we review for plain error. *Valdez v. State*, 124 Nev. 1172, 1190, 196 P.3d 465, 477 (2008). “To be plain, an error must be so unmistakable that it is apparent from a casual inspection of the record.” *Garner v. State*, 116 Nev. 770, 783, 6 P.3d 1013, 1022 (2000) *overruled on other grounds by Sharma v. State*, 118 Nev. 648, 56 P.3d 868 (2002). “Under that standard, an error that is plain from a review of the record does not require reversal unless the defendant demonstrates that the error affected

his or her substantial rights, by causing ‘actual prejudice or a miscarriage of justice.’” *Valdez* at 1190, 196 P.3d at 477 (quoting *Green v. State*, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003)). “Additionally, the burden is on the defendant to show actual prejudice or a miscarriage of justice.” *Green*, 119 Nev. at 545, 80 P.3d at 95 (citing *Phenix v. State*, 114 Nev. 116, 119, 954 P.2d 739, 740 (1998)).


Juror misconduct may occur intrinsically such as when, for example, jurors engage in “conduct . . . contrary to their instructions or oaths.” *Meyer v. State*, 119 Nev. 554, 561, 80 P.3d 447, 453 (2003). Before a defendant’s conviction may be overturned for jury misconduct, the defendant must establish that the misconduct occurred and that the misconduct was prejudicial. *Meyer*, at 563-64, 80 P.3d at 455. “[P]roof of misconduct must be based on objective facts and not the state of mind or deliberative process of the jury.” *Id.* at 563, 80 P.3d at 454 (citing *Gov’t of V.I. v. Gereau*, 523 F.2d 140, 148-49 (3d Cir. 1975)). “Prejudice is shown whenever there is a reasonable probability or likelihood that the juror misconduct affected the verdict.” *Id.* at 564, 80 P.3d at 455.


Woods argues that the juror’s question and the subsequent guilty verdict evidences that the juror did not follow the district court’s instruction regarding the presumption of innocence. However, the question and verdict alone do not present objective facts demonstrating that the juror failed to follow the district court’s instruction. To reach that conclusion, this court would have to delve into the state of mind or deliberative process of the juror, which would be contrary to *Meyer*. *Id.* at 563, 80 P.3d at 454. Further, the district court’s response to the juror’s question was approved by both parties, was appropriate and “this court generally presumes that juries follow district court orders and instructions.” *Summers v. State*, 122

Nev. 1326, 1333, 148 P.3d 778, 783 (2006). Thus, we conclude that Woods has not proven that misconduct occurred.² Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Douglas W. Herndon, District Judge
Nguyen & Lay
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

²Because Woods does not prove juror misconduct occurred, we need not address whether any alleged juror misconduct was prejudicial. Nevertheless, we note the record suggests there was no prejudice.