

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JAC MICHAEL OWEN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 71666

FILED

JUL 17 2018

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

ORDER OF AFFIRMANCE

Jac Michael Owen appeals from a judgment of conviction entered pursuant to a jury verdict of robbery with the use of a deadly weapon against a person over the age of 60 and conspiracy to commit robbery with the use of a deadly weapon against a person over the age of 60. First Judicial District Court, Carson City; James E. Wilson, Judge.

First, Owen argues the district court erred when it granted his severance motion. The district court granted Owen's severance motion during the trial and after the presentation of much of the evidence, which Owen asserts caused him to be prejudiced.

During the trial, the district court concluded that DNA evidence was inadmissible against Owen's codefendant because the State failed to establish the chain of custody regarding evidence used in the DNA testing. However, Owen wished to utilize the DNA expert's report and testimony in an effort to establish that the State did not conduct a thorough investigation and a third person could have committed the crimes. Owen then moved to sever his trial from his codefendant so that he could utilize the DNA expert's

testimony. The district court granted Owen's motion to sever and removed the codefendant from this proceeding, and Owen then called the DNA expert to testify on behalf of his defense.

"The decision to sever a joint trial is vested in the sound discretion of the district court and will not be reversed on appeal unless the appellant carries the heavy burden of showing that the trial judge abused his discretion." *Buff v. State*, 114 Nev. 1237, 1245, 970 P.2d 564, 569 (1998) (internal quotation marks omitted). The parties did not advise the district court of any disagreements regarding the utilization of the DNA expert's testimony prior to trial and the district court found that there was "a serious risk that a joint trial would compromise a specific trial right of" Owen and his codefendant. See *Chartier v. State*, 124 Nev. 760, 765, 191 P.3d 1182, 1185 (2008). In light of the district court's "continuing duty at all stages of the trial to grant a severance if prejudice does appear," *id.* at 765, 191 P.3d at 1186, we conclude the district court appropriately granted Owen's motion to sever.¹

¹Owen filed a pretrial motion to sever, but he has not provided this court with a copy of that motion. At the hearing regarding the pretrial motion to sever, Owen requested severance because he wished to introduce evidence of statements his codefendant made to his investigator. Owen also argued he and his codefendant had opposing defense theories because he intended to present an alibi defense but his codefendant was utilizing a misidentification defense. The district court concluded Owen failed to demonstrate either defendant would be prejudiced by a joint trial and denied the motion. To the extent Owen argues the district court erred by denying his pretrial motion to sever, we conclude the record before this court supports the district court's decision and Owen fails to demonstrate the

Moreover, Owen acknowledged he possessed the DNA expert's report ahead of trial, he failed to seek a pretrial severance based upon the DNA expert's report, he moved for a mid-trial severance, and he requested to proceed with the trial after the district court granted severance. Under these circumstances, any error stemming from the timing of the severance was invited by Owen. *See Pearson v. Pearson*, 110 Nev. 293, 297, 871 P.2d 343, 345 (1994) ("The doctrine of 'invited error' embodies the principle that a party will not be heard to complain on appeal of errors which he himself induced or provoked the court or the opposite party to commit." (quoting 5 Am.Jur2d *Appeal and Error* § 713 (1962), p. 159-60)). Accordingly, we conclude Owen is not entitled to relief.

Second, Owen argues the district court abused its discretion by permitting a State's witness to testify as a fingerprint expert. Owen asserts the witness was not qualified to testify regarding fingerprint comparisons because he had only started fingerprint examination training one year prior to this case, he had not yet completed advanced fingerprint examination training, and this was the first case in which he testified as a fingerprint expert. Owen also argues the witness' opinions amounted to guesswork because he did not solely utilize an independent computer program to compare fingerprints.

Owen raised an initial objection regarding the witness' qualification to testify as an expert witness. After the State posed further questions to the witness regarding his qualifications, Owen did not renew

district court abused its discretion in this regard. *See Buff*, 114 Nev. at 1245, 970 P.2d at 569.

his objection and Owen did not object to the admission of the witness' opinions regarding the fingerprint evidence. Thus, Owen 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). "Whether expert testimony will be admitted, as well as whether a witness is qualified to be an expert, is within the district court's discretion, and this court will not disturb that decision absent a clear abuse of discretion." *Mulder v. State*, 116 Nev. 1, 12-13, 992 P.2d 845, 852 (2000). "The district court is better suited to rule on the qualifications of persons presented as expert witnesses and we will not substitute our evaluation of a witness's credentials for that of the district court absent a showing of clear error." *Id.* at 13, 992 P.2d at 852 (internal quotation marks omitted).

Following our review of the record, we conclude Owen fails to demonstrate plain error. The witness here testified concerning his education and training, his collection of the fingerprint evidence, and his comparison of the latent fingerprint evidence with Owen's known exemplars in a manner consistent with his training. The witness further offered his opinion that the latent print recovered from the victim's vehicle matched Owen's known exemplar.

Moreover, even excluding the fingerprint comparison evidence, the record reveals significant evidence of Owen's guilt was presented at trial. The State presented surveillance video from the Casino Fandango depicting a person with Owen's characteristics watching the victim as she

won a substantial amount of money; and surveillance video depicting a vehicle belonging to Owen's father, which Owen had the authority to drive, following the victim's vehicle after the victim left the casino. In addition, Owen informed officers that he had been at his home the entire night that the robbery occurred, but a search of his residence revealed his wallet contained a slot machine payment voucher from the Casino Fandango and the voucher contained a time stamp from shortly before the robbery occurred. Given the circumstances in this manner, we conclude Owen fails to demonstrate error affecting his substantial rights.

Third, Owen argues the district court abused its discretion by permitting the fingerprint expert to testify that the orientation of the fingerprint discovered on the car door was consistent with someone closing the door because such an opinion amounts to speculation. As previously explained, we review a district court's decision to admit expert testimony for an abuse of discretion. *Mulder*, 116 Nev. at 12-13, 992 P.2d at 852. An expert's "testimony must be limited to matters within the scope of [his or her specialized] knowledge." *Brant v. State*, 130 Nev. 980, 984, 340 P.3d 576, 579 (2014) (quotation marks omitted, alteration in original).

Our review of the record reveals that the witness did not provide a basis for reaching this conclusion. Nevertheless, as previously explained, the record reveals there was significant evidence of Owen's guilt presented at trial, and therefore, we conclude any error in admitting this testimony was harmless. *See generally Haywood v. State*, 107 Nev. 285, 288, 809 P.2d 1272, 1273 (1991) (stating "[w]hen the evidence of guilt is overwhelming, even a constitutional error can be comparatively

insignificant.”). Therefore, we conclude Owen fails to demonstrate he is entitled to relief.

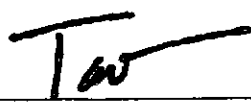
Fourth, Owen argues the district court abused its discretion by allowing the State to ask Owen if he had previously been convicted of burglary. Owen asserts the prejudice stemming from introduction of Owen’s prior burglary conviction substantially outweighed its probative value. “It is within the district 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). The district court concluded the State appropriately impeached Owen’s testimony with his burglary conviction and the probative value of this information did not substantially outweigh its prejudicial nature. See NRS 48.035(1); NRS 50.095(1); see also *Yates v. State*, 95 Nev. 446, 449, 596 P.2d 239, 241 (1979) (“Our statutes and case authority permit impeachment by proof of prior felony convictions which are not too remote.”). The record supports the district court’s decision and Owen fails to demonstrate the district court abused its discretion in this regard. Therefore, Owen is not entitled to relief for this claim.


Fifth, Owen argues the district court erred by failing to give a cautionary instruction concerning his prior burglary offense. We review a district court’s decisions regarding jury instructions for an abuse of discretion. *Crawford v. State*, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005). During the parties’ discussion regarding the admissibility of Owen’s prior burglary conviction, Owen requested a limiting instruction concerning the appropriate use of such information but the district court failed to so

instruct the jury. The district court's failure to instruct the jury that evidence of Owen's burglary conviction could only be considered for Owen's credibility as a witness and not as substantive proof of his guilt was error. *See Harris v. State*, 106 Nev. 667, 670, 799 P.2d 1104, 1106 (1990) (concluding the district court erred by refusing to instruct the jury pursuant to NRS 50.095 regarding the appropriate use of a prior felony conviction for impeachment purposes). However, as previously explained, our review of the record reveals this error was harmless because there was significant evidence of Owen's guilt produced at trial. Therefore, we conclude Owen is not entitled to relief. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. James E. Wilson, District Judge
Ristenpart Law
Attorney General/Carson City
Carson City District Attorney
Carson City Clerk