

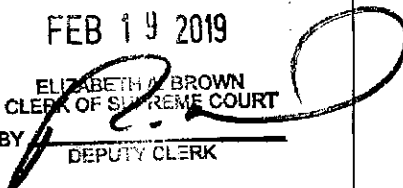
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MATTHEW RYAN GORE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 75332-COA

FILED

FEB 19 2019

ELIZABETH BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Matthew Ryan Gore appeals from a judgment of conviction, pursuant to a jury verdict, of driving under the influence, a violation of NRS 484C.110 and 484C.410, a category B felony. Second Judicial District Court, Washoe County; Barry L. Breslow, Judge.

Officer Kevin Hendrix stopped Gore's vehicle after Hendrix saw Gore swerve between lanes several times and nearly strike another car.¹ After Gore failed a horizontal gaze nystagmus test and preliminary breath test, Hendrix arrested Gore. Hendrix then obtained a search and seizure warrant to obtain a blood sample and Gore submitted to a legal blood draw.

At trial, the State sought to use a generic blood kit box as a demonstrative exhibit during Hendrix's testimony. Gore objected to the State's exhibit, claiming the generic blood kit box was not substantially similar to the one used in Gore's case. The district court overruled Gore's objection, finding the generic blood kit box would "help the jury understand issues relevant to this case [and was] not unduly prejudicial to the defense."

On appeal, Gore argues for the first time that the district court abused its discretion by allowing the demonstrative exhibit because it was

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

not necessary to supplement Hendrix's testimony and because it was merely a dramatic prop.² The State counters that the district court did not abuse its discretion by allowing the demonstrative exhibit, but that even if the district court abused its discretion, the error was harmless given the other evidence supporting the jury's verdict.

This court reviews a district court's decision regarding use of demonstrative exhibits for an abuse of discretion. *Isbell v. State*, 97 Nev. 222, 227, 626 P.2d 1274, 1277-78 (1981) ("The decision whether to allow a demonstration rests largely in the discretion of the trial judge, and his decision will not be overturned on appeal absent a clear showing of an abuse of discretion."). However, because Gore presents this new argument on appeal, this court need not consider it. *See McKenna v. State*, 114 Nev. 1044, 1054, 968 P.2d 739, 746 (1998) ("Where a defendant fails to present an argument below and the district court has not considered its merit, we will not consider it on appeal."). Nevertheless, even if we were to consider Gore's argument, we would affirm the district court's decision.


Where an objection is not raised below, we review the district court's decision to allow the presentation of demonstrative evidence for plain error. *See Jeffries v. State*, 133 Nev. 331, 333-34, 397 P.3d 21, 25 (2017) (recognizing that where the plaintiff objected and moved for mistrial below for lack of evidence but not for improper vouching, the failure to

²Gore also argues here, as below, that he first learned of the State's intention to use the generic blood kit box just a few days before trial, which disadvantaged and prejudiced his case. However, Gore has not made a cogent argument nor has he cited any authority to support his argument; thus, this court need not address it. *See Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (noting that this court need not consider claims that are not cogently argued or supported by relevant authority).

preserve the improper vouching error required the appellate court to apply plain-error review). “Under plain-error review, reversal is not required unless the defendant shows that the plain error caused ‘actual prejudice or a miscarriage of justice.’” *Id.* at 334, 397 P.3d at 25 (quoting *Valdez v. State*, 124 Nev. 1172, 1190, 196 P.3d 465, 477 (2008)). Here, the claimed error did not cause actual prejudice or a miscarriage of justice because the State presented sufficient evidence beyond the generic blood kit box demonstration to support the jury’s verdict. For the foregoing reasons, we

ORDER the judgment of conviction AFFIRMED.


_____, A.C.J.
Douglas


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Barry L. Breslow, District Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk