IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES THOMAS SILVA, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 37013 FILED APR 10 2001 JANETTE M. BLOOM CLERK OF SUPREME COURT BY [signature] CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of manufacturing a controlled substance in violation of NRS 453.322. The district court sentenced appellant to serve 36 to 120 months in the Nevada State Prison.

Appellant first contends that his statutory[1] and constitutional[2] rights to a speedy trial were violated by the 125-day delay between the filing of the information in district court and the beginning of trial. We disagree.

NRS 178.556(1) provides that the district court has discretion to dismiss an information if the defendant has not been brought to trial within 60 days after the arraignment on the information.[3] Generally, a defendant must object to the trial date before a violation of the 60-day rule can be raised on appeal.[4] Appellant failed to object. Moreover, the district court properly considered the condition of its calendar and other pending cases in setting appellant's trial

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[1]See NRS 178.556(1).

[2]U.S. Const. amend. VI.

[3]See also Meegan v. State, 114 Nev. 1150, 1153, 968 P.2d 292, 294 (1998).

[4]Anderson v. State, 86 Nev. 829, 834, 477 P.2d 595, 598 (1970).

date.[5] Under the circumstances, we conclude that the district court did not err in failing to sua sponte dismiss the information based on the 113-day delay between the arraignment and the trial.

The Sixth Amendment also protects a defendant's right to a speedy trial.[6] But in this case, a speedy trial analysis is not triggered because the post-accusation delay alleged by appellant was not presumptively prejudicial.[7] Accordingly, we conclude that the district court did not err by failing to sua sponte dismiss the information based on a violation of appellant's constitutional right to a speedy trial.

Appellant next contends that the district court erred by admitting testimony about an outstanding warrant for appellant's arrest without conducting a Petrocelli[8] hearing or giving a limiting instruction. We conclude that appellant's claim lacks merit.

Appellant failed to object to the testimony about the outstanding warrant. Generally, the failure to object waives appellate review.[9] There is a narrow exception to the contemporaneous objection rule: an appellate court may review plain errors that affect the defendant's substantial rights.[10] In most cases, to establish that the error affected the

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[5]Oberle v. Fogliani, 82 Nev. 428, 430, 420 P.2d 251, 252 (1966), superseded on other grounds, Clow v. Sheriff, 96 Nev. 605, 614 P.2d 535 (1980).

[6]U.S. Const. amend. VI.

[7]See Doggett v. United State, 505 U.S. 647, 651-52 (1992) (stating that post-accusation delay must cross threshold dividing ordinary from presumptively prejudicial delay to trigger speedy trial analysis); Meegan, 114 Nev. at 1153, 968 P.2d at 294 (explaining that post-accusation delay becomes "presumptively prejudicial" as it approaches one year).

[8]Petrocelli v. State, 101 Nev. 46, 692 P.2d 503 (1985).

[9]Garner v. State, 78 Nev. 366, 373, 374 P.2d 525, 529 (1962); see also NRS 47.040(1).

[10]NRS 178.602; NRS 47.040(2).

(O)-4892

defendant's substantial rights, the defendant must demonstrate prejudice: that the error "affected the outcome of the district court proceedings."[11]

Based on our review of the record, however, we conclude that appellant cannot demonstrate plain error. First, it is not clear that the district court erred. The testimony was offered with respect to the officer's attempts to confirm appellant's identity, not as character evidence in violation of NRS 48.045(1). Second, even assuming that the district court erred, appellant cannot demonstrate prejudice. Accordingly, we conclude that appellant's contention lacks merit.

Finally, appellant contends that the prosecutor committed misconduct that warrants reversal of appellant's conviction by: (1) asking appellant on cross-examination whether other witnesses had lied; (2) injecting his personal beliefs into closing argument; and (3) expressing his personal opinion as to appellant's veracity. We conclude that these contentions lack merit.

Appellant failed to object to any of the alleged instances of prosecutorial misconduct. As a general rule, the failure to object, assign misconduct, or request an instruction will preclude this court's review of allegations of prosecutorial misconduct.[12] Nonetheless, as previously explained, this court may review plain errors that affect the defendant's substantial rights.[13] However, "'a criminal

[11]United States v. Olano, 507 U.S. 725, 734 (1993); see also Libby v. State, 109 Nev. 905, 911, 859 P.2d 1050, 1054 (1993), vacated on other grounds, 516 U.S. 1037 (1996).

[12]Garner, 78 Nev. at 372-73, 374 P.2d at 529.

[13]See NRS 178.602.

(O)-4892

conviction is not to be lightly overturned on the basis of a prosecutor's comments standing alone.'"[14]

Based on our review of the record, we conclude that appellant cannot demonstrate plain error. First, we conclude that, even assuming that it was improper for the prosecutor to ask appellant whether other witnesses had lied, the error did not affect the outcome of the trial. Second, we conclude that, taken in context, the prosecutor's comments that he believed the State had proved its case beyond a reasonable doubt were permissible deductions or conclusions from the evidence introduced at trial.[15] Third, we conclude that the prosecutor did not improperly express his personal opinion regarding appellant's veracity when he commented on evidence presented at trial that appellant lied about his identity and made reasonable inferences based on that evidence.

Having considered appellant's contentions and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.

_______________, J.
Young

_______________, J.
Leavitt

_______________, J.
Becker

cc: Hon. Richard A. Wagner, District Judge
Attorney General
Pershing County District Attorney
State Public Defender
Pershing County Clerk

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[14]Greene v. State, 113 Nev. 157, 169, 931 P.2d 54, 62 (1997) (quoting United States v. Young, 470 U.S. 1, 11 (1985)).

[15]See Parker v. State, 109 Nev. 383, 392, 849 P.2d 1062, 1068 (1993) (noting that prosecutor's statement, in closing argument, indicating his opinion or belief as to defendant's guilt is permissible and unobjectionable when made as deduction or conclusion from evidence admitted at trial).

(O)-4892