

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CARLOS MANUEL ELEISA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 67858

**FILED**

**APR 20 2016**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of burglary, first-degree kidnapping, assault, battery constituting domestic violence, and robbery. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Appellant Carlos Manuel Eleisa first argues the district court erred by admitting a recording of a 9-1-1 call when the caller was not available to testify. Eleisa argues admission of a 9-1-1 call in this situation violated his right to confrontation. Eleisa fails to demonstrate this claim has merit. "The threshold question in evaluating a confrontation right . . . is whether the statement was testimonial in nature." *Vega v. State*, 126 Nev. 332, 339, 236 P.3d 632, 637 (2010). A statement is testimonial if the totality of the circumstances of its making would "lead an objective witness reasonably to believe that the statement would be available for use at a later trial." *Harkins v. State*, 122 Nev. 974, 986, 143 P.3d 706, 714 (2006) (quotation marks omitted). "A trial court's evaluation of admissibility of evidence will not be reversed on appeal unless it is manifestly erroneous." *Medina v. State*, 122 Nev. 346, 353, 143 P.3d 471, 476 (2006).

In this case, the 9-1-1 caller was not available and the State asserted the recording was admissible because the caller merely described the defendant's ongoing use of violence against the victim. *See Harkins*, 122 Nev. at 98, 143 P.3d at 716 (explaining a statement made during the course of an ongoing emergency is a factor showing a statement was not testimonial). The district court listened to the recording of the 9-1-1 call, concluded it was not a testimonial statement, and admitted the recording into evidence. We note Eleisa did not provide a recording of the 9-1-1 call or a transcript of the call in his appendices before this court. As the appellant, it is Eleisa's burden to provide this court with an adequate record for review. *See McConnell v. State*, 125 Nev. 243, 256 n. 13, 212 P.3d 307, 316 n.13 (2009). Accordingly, Eleisa did not demonstrate the district court's decision to admit the recording of the 9-1-1 call amounted to manifest error. Therefore, Eleisa is not entitled to relief for this claim.

Second, Eleisa argues the State shifted the burden of proof during closing and rebuttal arguments by stating the evidence did not demonstrate Eleisa had a right to access the victim's room. Eleisa asserts the State has the burden to produce evidence showing Eleisa did not have a right to access the victim's room. Eleisa did not object to these statements, and thus, no relief would be warranted absent a demonstration of plain error. *See Dieudonne v. State*, 127 Nev. 1, 4, 245 P.3d 1202, 1204-05 (2011). Under the plain error standard, we determine "whether there was an error, whether the error was plain or clear, and whether the error affected the defendant's substantial rights." *Anderson v. State*, 121 Nev. 511, 516, 118 P.3d 184, 187 (2005) (internal quotation marks omitted).

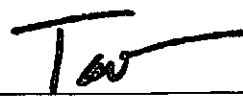
Eleisa does not demonstrate plain error in this regard. During trial, testimony was presented that Eleisa and the victim each rented separate rooms in a home and the tenants of the home were not permitted access to the separate bedrooms when the renter of that room was away. Testimony was also presented that Eleisa and the victim had been in a romantic relationship and Eleisa had given the victim money to help her pay her rent, but they had ended the relationship prior to the incident at issue in this case. A review of the closing and rebuttal arguments made by the State reveals the State properly argued the evidence showed Eleisa had committed burglary by entering the victim's room while intending to harm her because the evidence established he did not have an absolute right to enter her room. *See State v. White*, 130 Nev. \_\_\_, \_\_\_, 330 P.3d 482, 486 (2014) (stating "the appropriate question is whether the alleged burglar has an absolute, unconditional right to enter the home."); *see also Truesdell v. State*, 129 Nev. \_\_\_, \_\_\_, 304 P.3d 396, 402 (2013) (during closing arguments "the prosecutor may . . . assert inferences from the evidence and argue conclusions on disputed issues"). Therefore, Eleisa does not demonstrate error affecting his substantial rights.

Third, Eleisa argues there was insufficient evidence produced at trial to demonstrate he committed burglary because he had access to the victim's room due to his relationship with her and because he gave her money for her rent. Our review of the record on appeal, however, reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact. *See Origel-Candido v. State*, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998); *see also Jackson v. Virginia*, 443 U.S. 307, 319 (1979).

As stated previously, the evidence produced at trial demonstrated the romantic relationship had ended when the incident occurred and Eleisa could not access the victim's room absent her permission. Accordingly, Eleisa did not have "an absolute, unconditional right to enter" the victim's room. *White*, 130 Nev. at \_\_\_, 330 P.3d at 486. Based on the evidence produced at trial, we conclude the jury could reasonably find Eleisa committed burglary. See NRS 205.060. It is for the jury to determine the weight and credibility to give conflicting testimony, and the jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict. See *Bolden v. State*, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981). Accordingly, we

ORDER the judgment conviction AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Silver

cc: Hon. Michelle Leavitt, District Judge  
Clark County Public Defender  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk