

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CURTIS ALLAN PRINDLE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 72850

FILED

MAY 18 2018

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

ORDER OF AFFIRMANCE

Curtis Allan Prindle appeals from a judgment of conviction, pursuant to a jury verdict, of principal to grand larceny of personal goods or property with a value of \$3,500, principal to injury to other property \$5,000 or more, principal to damaging or interfering with the use of telegraph or telephone line, and possession of an instrument with burglarious intent. Tenth Judicial District Court, Churchill County; Thomas L. Stockard, Judge.

Prindle was arrested after Churchill County Sheriff's Office investigators observed him loading stolen telecommunication wire into a jeep and discovered he had been selling wire to scrapyards.¹ At trial, four witnesses including Investigator Paul Loop testified on behalf of the State. Following Investigator Loop's testimony, juror four passed a note to the district court judge disclosing that juror four had previously worked with Investigator Loop's wife, and that juror four's cousin was a local deputy sheriff. Prindle expressed concern over retaining juror four due to this late disclosure and suggested to the district court that juror four be replaced with an alternate. The next day, the district court determined that juror

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

four did not intentionally conceal her relationships and could be fair and impartial, and did not replace her with an alternate.

On appeal, Prindle argues that the district court erred by insufficiently questioning juror four regarding her disclosures during trial. He contends a new trial is warranted or, in the alternative, this case should be remanded for hearing on the issue of whether juror four should have been excused. We disagree.

Since Prindle did not challenge juror four for cause, and did not otherwise object to the district court's decision not to remove juror four, we review for plain error. *Nelson v. State*, 123 Nev. 534, 543, 170 P.3d 517, 524 (2007) (reviewing a challenge to a juror for plain error where the appellant did not make a challenge during trial).² "To be plain, an error must be so unmistakable that it is apparent from a casual inspection of the record. As a general rule, an appellant must demonstrate that the error was prejudicial in order to prove that it affected his substantial rights." *Id.* (citation and internal quotation marks omitted).

We first note Prindle never requested that the district court further question juror four, thereby waiving this argument on appeal. *McCullough v. State*, 99 Nev. 72, 74, 657 P.2d 1157, 1158 (1983) ("The general rule is that failure to object to asserted errors at trial will bar review of an issue on appeal."). Further, juror four's disclosures did not suggest bias and juror four continued to assert that she could be fair and impartial. Accordingly, no plain error occurred.

²We also note that Prindle did not make a motion to excuse juror four for cause or a motion for a mistrial due to juror misconduct, and to the extent Prindle argues that the district court failed to sua sponte remove Juror Four for cause, we find no plain error. See *Nelson*, 123 Nev. at 543, 170 P.3d at 524.


To the extent Prindle contends juror four engaged in intentional misconduct by failing to disclose the information during voir dire, we conclude a new trial is not warranted. To obtain a new trial based upon juror misconduct, the appellant must show that the juror failed to honestly answer a material question *and* that the honest answer would serve as a valid basis for a for-cause challenge. *Brioady v. State*, 133 Nev. ___, ___, 396 P.3d 822, 823 (2017). The determination of whether the juror failed to honestly answer a question turns on whether the juror intentionally concealed the information. *Id.* at ___, 396 P.3d at 825.


Here, during voir dire, juror four disclosed relationships with law enforcement that would potentially raise concerns, and during trial she again disclosed additional relationships after a witness' testimony jogged her memory. Thus, nothing in the record indicates that juror four intentionally concealed any information during voir dire. *Cf. id.* at ___, 396 P.3d at 823-25 (concluding a juror intentionally concealed the fact that she had been molested as a child where she admitted the prosecution's questions made her think of her childhood molestation and she purposely decided not to disclose that information because she decided it was not relevant). Because, the record does not demonstrate juror misconduct, we conclude that the district court did not plainly err by allowing juror four to remain on the jury.³ *See id.* at ___, 396 P.3d at 825 (holding that juror


³Moreover, Juror Four's disclosures during trial would not have served as a basis for a challenge for cause because the disclosures did not establish bias or provide grounds for a challenge under NRS 16.050. *See Brioady*, 133 Nev. at ___, 396 P.3d at 823; *see also Maestas v. State*, 128 Nev. 124, 141, 275 P.3d 74, 85 (2012) (stating that "the critical question is whether the juror intentionally concealed bias").

misconduct arises where the juror *intentionally* conceals information).
Accordingly we,

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Thomas L. Stockard, District Judge
David Kalo Neidert
Attorney General/Carson City
Churchill County District Attorney/Fallon
Churchill County Clerk