


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RODRIGO HAYNES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 77572-COA

FILED

DEC 11 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Rodrigo Haynes appeals from a judgment of conviction entered pursuant to a jury verdict of conspiracy to commit robbery, robbery, and grand larceny of a motor vehicle. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

First, Haynes claims the district court abused its discretion by permitting a lay witness to provide expert testimony about his cellphone's GPS tracking app. He asserts the lay witness used a cellphone app to generate a map depicting the GPS locations of his stolen cellphone over a period of time. And he argues specialized knowledge was required to explain to the jury how the map was created, the veracity of the map, and the underlying GPS technology.

"We review a district court's decision to admit or exclude evidence for an abuse of discretion." *McLellan v. State*, 124 Nev. 263, 267, 182 P.3d 106, 109 (2008). "The scope of lay and expert witness testimony is defined by statute." *Burnside v. State*, 131 Nev. 371, 382, 352 P.3d 627, 636 (2015); see NRS 50.265 (defining lay witness testimony); NRS 50.275 (defining expert witness testimony). The key to distinguishing between lay and expert testimony lies with "the substance of the testimony—does the

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testimony concern information within the common knowledge of or capable of perception by the average layperson or does it require some specialized knowledge or skill beyond the realm of everyday experience?" *Burnside*, 124 Nev. at 382-83, 352 P.3d at 636.

The district court ruled that if the State's witness uses the cellphone app and finds it to be accurate and reliable he can testify as such, but it will be up to the State to lay the proper foundation for admitting the map into evidence. We conclude the district court did not abuse its discretion by admitting the lay witness testimony because the testimony consisted of information that fell within the common knowledge of the average layperson. *See Johnson v. State*, 179 A.3d 984, 994-95 (Md. 2018) (discussing GPS data and holding expert testimony is not necessary every time information derived from a GPS device is offered into evidence).

Second, Haynes claims the district court abused its discretion by admitting the GPS tracking app data because the data was hearsay. To this end, he appears to argue that the data *asserted* the locations of his stolen cellphone.

"We review a district court's decision to admit or exclude evidence for an abuse of discretion." *McLellan*, 124 Nev. at 267, 182 P.3d at 109. Hearsay is an out-of-court "statement offered in evidence to prove the truth of the matter asserted." NRS 51.035. A statement is "[a]n oral or written assertion; or . . . [n]onverbal conduct of a person, if it is intended by him as an assertion." NRS 51.045. Hearsay is inadmissible unless it falls within an exemption or exception. NRS 51.065.

We conclude the district court did not abuse its discretion by admitting the GPS tracking app data because the app made the relevant assertion and there was no statement as defined by the hearsay rule. *See*


United States v. Lizarraga-Tirado, 789 F.3d 1107, 1109-10 (9th Cir. 2015) (holding that “[a] tack placed by the Google Earth program and automatically labeled with GPS coordinates isn’t hearsay” and joining other circuits in the rule that “machine statements aren’t hearsay”).

Finally, we conclude that even if there was error, the error was harmless because without the GPS tracking app data there was still ample direct and circumstantial evidence for the jury to find Haynes guilty of the charged offenses. *See Newman v. State*, 129 Nev. 222, 236, 298 P.3d 1171, 1181 (2013) (“A nonconstitutional error, such as the erroneous admission of evidence at issue here, is deemed harmless unless it had a substantial and injurious effect or influence in determining the jury’s verdict.” (internal quotation marks omitted)).

Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Michelle Leavitt, District Judge
Sanft Law, P.C.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk