


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MICHAEL LEE MCDONALD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 81045-COA

FILED

NOV 09 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

Michael Lee McDonald appeals from a judgment of conviction, entered pursuant to a jury verdict, of two counts of unlawful interception of wire communications. Eighth Judicial District Court, Clark County; Cristina D. Silva, Judge.

McDonald contends his jury verdicts were legally inconsistent or not unanimous and, therefore, violate the Double Jeopardy Clause. McDonald did not object below in the first instance, and therefore, he did not preserve the error. "The failure to preserve an error . . . forfeits the right to assert it on appeal." *Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48 (2018). We may nevertheless review a forfeited issue for plain error, *id.*, but "the decision whether to correct a forfeited error is discretionary," *id.* at 52, 412 P.3d at 49. Because McDonald bears the burden of demonstrating plain error, *see Miller v. State*, 121 Nev. 92, 99, 110 P.3d 53, 58 (2005), but he failed to argue plain error in his opening brief on appeal, we decline to

exercise our discretion and review this alleged error on appeal. Accordingly,
we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Cristina D. Silva, District Judge
Mueller & Associates
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk