IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JUAN ENRIQUE LOPEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 84689-COA

ORDER OF AFFIRMANCE AND REMANDING TO CORRECT JUDGMENT OF CONVICTION

Juan Enrique Lopez appeals from a judgment of conviction, entered pursuant to a jury verdict, of first-degree arson and five counts of third-degree arson. Eighth Judicial District Court, Clark County; Ronald J. Israel, Judge.

Lopez first argues that the district court erred by admitting evidence of other bad acts when D. McCartney improperly testified that she had to sell her vehicle when Lopez got into trouble previously. Generally, evidence of other crimes or bad acts cannot be admitted at trial solely for the purposes of proving that a defendant has a certain character trait and acted in conformity with that trait on the particular occasion in question. NRS 48.045(1). "However, inadvertent references to other criminal activity not solicited by the prosecution, which are blurted out by a witness, can be cured by the trial court's immediate admonishment to the jury to disregard the statement." *Sterling v. State*, 108 Nev. 391, 394, 834 P.2d 400, 402 (1992).

Ms. McCartney's testimony appears to have been inadvertent as the prosecutor did not ask her about this prior act. Further, prior to her

testimony, Ms. McCartney was instructed by the State not to testify about other criminal acts. Lopez objected to Ms. McCartney's testimony, and following a bench conference, the district court immediately instructed the jury to disregard the testimony. Therefore, we conclude that any error resulting from this testimony was cured and Lopez is not entitled to relief on this claim.

Lopez next argues that Ms. McCartney and other witnesses improperly testified about additional bad acts. Lopez did not object below to the testimony he challenges on appeal, and therefore, he did not preserve the errors.[1] "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, and Lopez bears the burden of demonstrating plain error, *see Miller v. State*, 121 Nev. 92, 99, 110 P.3d 53, 58 (2005). Lopez fails to argue plain error on appeal, and we therefore decline to exercise our discretion to review these alleged errors.

Lopez next argues that insufficient evidence supports his convictions. When reviewing a challenge to the sufficiency of the evidence, we review the evidence in the light most favorable to the prosecution and determine whether "*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443

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[1]Lopez objected during the State's opening when the prosecutor started talking about prior conflicts between Lopez and the victims. However, Lopez did not contemporaneously object to the testimony he challenges on appeal. *See Riddle v. State*, 96 Nev. 589, 591, 613 P.2d 1031, 1033 (1980) (providing that one must make a "contemporaneous objection" in order to preserve an issue for appeal).

U.S. 307, 319 (1979); *accord Mitchell v. State*, 124 Nev. 807, 816, 192 P.3d 721, 727 (2008). "[I]t is the function of the jury, not the appellate court, to weigh the evidence and pass upon the credibility of the witness." *Walker v. State*, 91 Nev. 724, 726, 542 P.2d 438, 439 (1975). And circumstantial evidence is enough to support a conviction. *Washington v. State*, 132 Nev. 655, 661, 376 P.3d 802, 807 (2016).

First, Lopez claims there was insufficient evidence that he was the perpetrator of the crimes to support his convictions. Lopez was found guilty of starting a house fire and five vehicle fires. A fire investigator testified that four of the vehicle fires were incendiary in nature with each being started separately using ordinary combustibles or ignitable liquids.[2] The jury heard evidence that each of the four vehicle operators recently had negative interactions with or involving Lopez, that a surveillance camera Lopez installed on Ms. McCartney's home had been disabled prior to the fires, that a vehicle similar to Lopez's was captured on a surveillance camera in close proximity to the offenses, and that police found a bottle of lighter fluid in Lopez's vehicle. Based on the evidence presented, any rational juror could have found beyond a reasonable doubt that Lopez was the perpetrator, and we thus conclude Lopez is not entitled to relief on this claim.

Second, Lopez claims that there was insufficient evidence of specific intent to support his first-degree-arson conviction for starting the house fire. Specifically, Lopez argues that the State failed to establish that Lopez had the specific intent to start the house fire. Arson is a specific

[2]The investigator also determined that the fifth vehicle fire and the house fire were progression fires caused by their proximity to one of the intentionally set vehicle fires.

intent crime, *Kassa v. State*, 137 Nev. 150, 157, 485 P.3d 750, 758 (2021), and intent may be imputed through the doctrine of transferred intent, *Ochoa v. State*, 115 Nev. 194, 197, 981 P.2d 1201, 1203 (1999). Although the doctrine "was developed to address situations where a defendant, intending to kill A, misses A and instead accidentally kills B," *id.*, it is not limited to such "bad aim" situations, *id.* at 198, 981 P.2d at 1204, nor is it limited, as Lopez contends, to situations where the intended harm or crime is the equivalent of the unintended harm or crime, *id.* at 198-200, 981 P.2d at 1204-05 (defining such an "equivalency theory" rationale of transferred intent and then rejecting it as the sole rationale). Rather, "the doctrine applies in any case where there is intent to commit a criminal act and the only difference between the actual result and the contemplated result is the nature of the personal or property injuries sustained." *Id.* at 198, 981 P.2d at 1204.

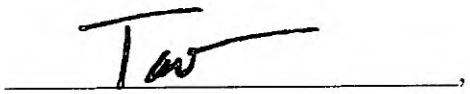
Lopez does not argue he lacked the intent to start the vehicle fire from which the house fire progressed. And based on the testimony of the fire investigator, described above, any rational juror could have found beyond a reasonable doubt that the vehicle fire was set with specific intent. Pursuant to *Ochoa*, that intent may be transferred to the house fire, and the jury was instructed on specific and transferred intent. Therefore, any rational juror could have found beyond a reasonable doubt through the doctrine of transferred intent that Lopez had the specific intent necessary to start the house fire. Accordingly, we conclude he is not entitled to relief on this claim.[3]

[3]Lopez also argues that jury instruction no. 17, which largely mirrors NRS 205.045, and the State's closing argument related to that instruction prompted the jury to convict him based on a lesser standard of intent. Lopez

Finally, the parties agree that the judgment of conviction contains a clerical error: It incorrectly refers to first-degree arson as a category D felony, but it is a category B felony. NRS 205.010. Because the district court has the authority to correct a clerical error at any time, *see* NRS 176.565, we direct the district court, upon remand, to enter a corrected judgment of conviction clarifying that Lopez was convicted of a category B felony. For the foregoing reasons, we

ORDER the judgment of conviction AFFIRMED and REMAND to the district court to correct the judgment of conviction.

_____, C.J.
Gibbons



_____, J.
Tao

_____, J.
Bulla

cc: Hon. Ronald J. Israel, District Judge
Steven S. Owens
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

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failed to object to the instruction and argument below or argue plain error on appeal. Therefore, we decline to exercise our discretion to review this claim. *See Jeremias*, 134 Nev. at 52, 412 P.3d at 49.