IN THE SUPREME COURT OF THE STATE OF NEVADA

KENDRICK LADELL WILLIAMS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 83812

FILED

MAR 24 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

Appeal from a judgment of conviction, pursuant to a jury verdict, of first-degree murder with use of a deadly weapon, a category A felony. Eighth Judicial District Court, Clark County; Tierra Danielle Jones, Judge.

Appellant Kendrick Ladell Williams was charged by way of indictment with murder with use of a deadly weapon for the death of Herbert Harris. Williams pleaded not guilty, and the case proceeded to a five-day jury trial. At trial, the State called 12 witnesses, three of whom saw or heard the events immediately preceding Harris's death. Another witness testified regarding Williams's conduct after the shooting. The jury found Williams guilty, and the district court sentenced him to an aggregate term of 21 years to life. Williams now appeals the judgment of conviction.

DISCUSSION

Williams argues that his conviction is not supported by substantial evidence. He also argues the district court abused its discretion in admitting certain evidence. Finally, he argues that cumulative error warrants reversal of his conviction. We address each of his arguments in turn.

23-09114

Substantial evidence supports Williams's conviction

At trial, three percipient witnesses testified to having seen or heard the events leading up to Harris's death. A fourth witness did not see or hear the events leading up to Harris's death but did encounter Williams after the shooting.

The first percipient witness testified that she was homeless at the time of Harris's death and would sleep in a tent on a pedestrian bridge. She knew both Williams and Harris. Shortly before Harris was shot, she heard Williams rapping outside her tent. She heard Harris approach Williams and say, "[Y]ou pulled out on me." In response, Williams said, "I never pulled out." After a few moments of silence, the witness heard one gunshot outside her tent, and she felt Williams and Harris running on the bridge. After the two ran down the bridge, she heard seven more gunshots coming from the direction of a nearby parking lot where Harris's body would later be found.

The second percipient witness also testified that she knew both Williams and Harris. Williams and Harris were at her apartment a few days before the shooting, and she perceived tension between the two. The next day (still a few days before the shooting), she saw Harris park a car behind Williams and pull out a bag that appeared to the witness to have a gun inside it. At that point, Williams ran away. The night of Harris's death, she went to the pedestrian bridge to visit a friend in his tent. She heard Williams singing and rapping on the bridge. She heard Harris approach Williams and Williams say, "[Y]ou pulled a gun on me," to Harris. She heard Harris apologize and then heard a bang followed by running and screaming. She exited the tent and saw Williams chase Harris down the street below the bridge. She lost sight of them and then heard four or five

gunshots from the direction of the parking lot where Harris's body was found. Several days later, she ran into Williams, and he asked if anyone was looking for him. On a separate occasion, Williams admitted to her that he killed Harris, describing details of the killing as though it was a joke.

The last percipient witness testified that she was hanging out on the pedestrian bridge with friends the night of Harris's death. She knew both Williams and Harris and was outside of her friend's tent before the shooting. While falling asleep, she heard a scuffle and saw Williams and Harris tussling in the street below the bridge and Williams chase Harris into the parking lot. The witness heard one gunshot after they ran into the parking lot and then heard six more gunshots from the direction of the parking lot soon after.

A fourth witness who was not present during the shooting testified that he had heard Williams discuss killing Harris in the weeks following Harris's death. He said that Williams threatened him to stay silent about the shooting while brandishing a firearm in the witness's face. He further testified that Williams threatened other potential witnesses.

The State also presented evidence that Williams's cell phone pinged off cell towers near the scene of the murder at the time it took place and that Williams turned off his cell phone permanently approximately 12 minutes after Harris's death. Harris's body was found in a pool of blood in the parking lot described by the witnesses. The cause of Harris's death was determined to be from multiple gunshot wounds.

Williams argues there was insufficient evidence to support his conviction. He argues that no one saw the shooting and that there was eyewitness testimony that described a suspect that does not look like Williams. He concludes that no rational trier of fact could have found him

guilty beyond a reasonable doubt. The State counters that multiple witnesses testified that they saw or heard Williams confront Harris on the pedestrian bridge, followed by a gunshot, a pursuit, and another series of gunshots. It also argues that Williams's cell phone located him at the scene of the murder. Accordingly, the State concludes, sufficient evidence supports Williams's conviction.

In reviewing a sufficiency of the evidence claim, we consider "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Koza v. State*, 100 Nev. 245, 250, 681 P.2d 44, 47 (1984) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). "[I]t is the jury's function, not that of the court, to assess the weight of the evidence and determine the credibility of witnesses." *McNair v. State*, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992). We will affirm a jury verdict that is supported by substantial evidence. *Hernandez v. State*, 118 Nev. 513, 531, 50 P.3d 1100, 1112 (2002). Circumstantial evidence alone may support a conviction. *Id.*

Sufficient evidence supports Williams's conviction. Witnesses heard multiple gunshots coming from the direction of the parking lot where Harris's body was found, saw Williams chasing Harris in the direction of that parking lot, and heard Williams bragging about killing Harris and threatening potential witnesses. And cellphone data placed Williams in the area of the shooting when it occurred.

Insofar as Williams points to inconsistencies in the witnesses' stories and highlights credibility issues, the jury judges the credibility of witnesses and reconciles any inconsistencies with testimony. *See McNair*, 108 Nev. at 56, 825 P.2d at 573. In light of the evidence, a rational juror

could have found Williams guilty beyond a reasonable doubt of first-degree murder with the use of a deadly weapon. *See* NRS 193.165; NRS 200.010; NRS 200.030(1); *Koza*, 100 Nev. at 250, 681 P.2d at 47. Accordingly, Williams has not shown that relief is warranted in this regard.

The district court's abuse of discretion in admitting hearsay does not warrant reversal of Williams's conviction

Williams next argues the district court abused its discretion in admitting hearsay. A witness testified that she heard Harris state to Williams, "you pulled out on me." Defense counsel objected to the statement as hearsay. The district court permitted the statement as showing Harris's state of mind. A separate witness testified that it was Williams who said, "you pulled a gun on me," to Harris right before Williams shot Harris. During closing arguments, the State argued that the first witness's testimony was inaccurate and that Williams—not Harris—was the declarant. The State said, "Remember she said [Harris] seemed nervous. And this time [the witness] thought that it was [Harris] who said, you pulled out on me. And then the Defendant who said, I never pulled out. So[,] she had the words flipped."

Williams argues the state-of-mind exception does not apply because Harris's state of mind was not a relevant issue in this case. Williams argues the district court's abuse of discretion was egregiously prejudicial and not harmless beyond a reasonable doubt. The State counters that the statement was not inadmissible hearsay because Williams himself was the declarant and the first witness mistakenly attributed it to Harris. It points to the second witness's testimony that Williams said, "[Y]ou pulled a gun on me," to Harris immediately before the shooting.

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). We review a district court's abuse of discretion in admitting or excluding evidence for harmless error. *See Vallery v. State*, 118 Nev. 357, 371-72, 46 P.3d 66, 76 (2002) (reviewing a district court's exclusion of evidence for harmless error). An error is harmless, and not grounds for reversal, unless there was a "substantial and injurious effect or influence in determining the jury's verdict." *Mclellan*, 124 Nev. at 270, 182 P.3d at 111 (internal quotations omitted); *see also Schoels v. State*, 115 Nev. 33, 35, 975 P.2d 1275, 1276 (1999) (noting that an error is harmless if in absence of the error the outcome would have been the same).

Hearsay is an out-of-court statement offered to prove the truth of the matter asserted. NRS 51.035. Hearsay is generally inadmissible unless there is a statutory exception. NRS 51.065(1).

Here, the district court abused its discretion in permitting the witness's statement because it was an out-of-court statement offered for the truth of the matter asserted and to which no statutory exception applies.[1] However, the district court's error was harmless because it did not have a substantial and injurious influence on the jury's verdict. There was overwhelming evidence of Williams's guilt given the witness testimony. *See Rowland v. State*, 118 Nev. 31, 43, 39 P.3d 114, 122 (2002) (concluding that a district court's error in admitting a "highly prejudicial" hearsay statement was harmless because there was overwhelming evidence provided by numerous eyewitnesses). Moreover, the State argued that the jury should disregard the hearsay testimony, and as a result it is less likely that the

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[1]The State does not argue that the district court properly admitted the witness's statement as going to Harris's state-of-mind and thereby concedes that such was error. *See Polk v. State*, 126 Nev. 180, 185, 233 P.3d 357, 360 (2010) (stating that the State confesses error when its answering brief "effectively fail[s] to address a significant issue on appeal").

jury relied on the hearsay testimony in reaching its verdict. Accordingly, the district court's abuse of discretion in admitting the hearsay testimony was harmless.

The district court did not abuse its discretion in admitting evidence that a firearm was recovered during Williams's arrest

Williams next argues the district court abused its discretion in admitting evidence that a firearm (not the murder weapon) was recovered during his arrest. He argues the firearm was evidence of an uncharged bad act that was inadmissible without the district court first holding a *Petrocelli*[2] hearing. He alternatively argues the evidence should have been barred "as extrinsic and related only to a collateral matter." The State counters that Williams fails to demonstrate that the evidence of the recovered gun was propensity or bad character evidence. It explains that no evidence was presented that would communicate to the jury that Williams was not allowed to possess a firearm and that generally people have a right to own firearms.

Evidence of other bad acts is not admissible to demonstrate a defendant's character and that he was acting consistent with that character. NRS 48.045(2). Prior to admitting evidence of other bad acts, a district court must conduct a *Petrocelli* hearing outside the presence of the jury. *Armstrong v. State*, 110 Nev. 1322, 1323, 885 P.2d 600, 600 (1994). At the hearing, the court must determine (1) that the evidence is relevant to the crime charged; (2) that the other act is proven by clear and convincing

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[2]*Petrocelli v. State*, 101 Nev. 46, 51-52, 692 P.2d 503, 507-08 (1985) (describing the procedure a district court must follow prior to admitting evidence of a criminal defendant's other bad acts), *superseded in part by statute as stated in Thomas v. State*, 120 Nev. 37, 44-45, 83 P.3d 818, 823 (2004).

evidence; and (3) that the probative value of the other act is not substantially outweighed by the danger of unfair prejudice. *Tinch v. State*, 113 Nev. 1170, 1176, 946 P.2d 1061, 1064-65 (1997); *Armstrong*, 110 Nev. at 1323-24, 885 P.2d at 600-01.

Here, the evidence of the firearm does not constitute other bad act evidence. People generally have a right to possess firearms. *See* U.S. Const. Amend. 2; Nev. Const. art. 1, § 11(1). Although—being a felon—Williams was in possession of the firearm illegally, the jury was unaware of that fact because no evidence was presented related to it. And Williams fails to cogently argue or provide relevant authority for why the evidence should have been barred as extrinsic evidence related to a collateral matter. Accordingly, we need not consider this argument.[3] *See Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (explaining that this court need not consider an appellant's argument that is not cogently argued or lacks the support of relevant authority). Accordingly, we conclude that Williams has not shown that the district court abused its discretion in admitting evidence of the recovered firearm.

The district court did not err in admitting testimony that Williams threatened potential witnesses

During trial, the State elicited testimony that a witness heard Williams state, "[P]eople need to keep their [expletive] mouth shut before they see the same fate that [Harris] seen." The witness also testified that

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[3]Regardless, the portion of the case Williams cites, *Jezdik v. State*, stands for the proposition that "[i]t is error to allow the State to impeach a defendant's credibility with extrinsic evidence relating to a collateral matter." 121 Nev. 129, 136-37, 110 P.3d 1058, 1063 (2005) (alteration in original) (internal quotation marks omitted). However, the State did not use evidence of the recovered firearm to impeach Williams's credibility, and *Jezdik* therefore does not apply.

Williams would make comments glorifying Harris's murder and talking about the incident like it was out of a movie. On cross-examination, the witness clarified that Williams made the statement that people better keep their mouths shut to the witness while brandishing a Glock 40 pistol in his face. The State further elicited from the witness that Williams had told him, "[P]eople were going to see Richie Rich type [expletive]," and that Williams said he "knocked [Harris] off and [he would] knock you off too." The court did not hold a *Petrocelli* hearing before this testimony, and defense counsel did not object or request a limiting instruction.

Williams argues the district court should have held a *Petrocelli* hearing before admitting testimony regarding his threatening witnesses because the testimony was evidence of an uncharged bad act. He further argues that the district court should have given a *Tavares*[4] limiting instruction. The State counters that the witness's testimony was admissible because it was not admitted to show Williams's propensity for murder.

Because Williams failed to object below to the admission of the testimony that he had threatened potential witnesses, we review for plain error. *See Jeremias v. State*, 134 Nev. 46, 47, 412 P.3d 43, 46 (2018) (explaining that by failing to object to an error below a criminal defendant fails to preserve the error for appellate review and must therefore demonstrate plain error that affected his substantial rights). To demonstrate plain error, an appellant must show that (1) there was an

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[4]*Tavares v. State*, 117 Nev. 725, 731, 30 P.3d 1128, 1132 (2001) (holding that the State has a duty to request that the jury be instructed on the limited use of uncharged bad act evidence and, if the State fails to do so, a district court should raise the issue sua sponte).

error, (2) the error was plain or clear, and (3) the error affected the appellant's substantial rights. *Id.* at 50, 412 P.3d at 48. An error is "plain" if it is clear under current law from a casual inspection of the record. *Id.* "[A] plain error affects a defendant's substantial rights when it causes actual prejudice or a miscarriage of justice (defined as a 'grossly unfair' outcome)." *Id.* at 50-51, 412 P.3d at 49.

Williams fails to demonstrate that the district court erred in admitting testimony that he threatened a potential witness. "Evidence that after a crime a defendant threatened a witness with violence is directly relevant to the question of guilt . . . [and therefore] is neither irrelevant character evidence nor evidence of collateral acts requiring a hearing before its admission." *Evans v. State*, 117 Nev. 609, 628, 28 P.3d 498, 512 (2001), *overruled on other grounds by Lisle v. State*, 131 Nev. 356, 366 n.5, 351 P.3d 725, 732 n.5 (2015). And the fact that Williams brandished a firearm while making such threats does not make the threats an uncharged bad act. *See id.* at 619-20, 628, 28 P.3d at 506, 512 (holding that a witness's testimony that the defendant threatened her was not inadmissible evidence of an uncharged bad act where the defendant showed the witness a gun and bullets and said they were for her if she said anything).

Even if the district court erred in admitting testimony that Williams had threatened potential witnesses, Williams fails to demonstrate that any such error affected his substantial rights. First, the evidence that Williams threatened witnesses was not offered as propensity evidence and was admissible as showing knowledge or identity. *See* NRS 48.045(2) (providing that evidence of other wrongs may "be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident"). Second, a separate

witness also testified that on two different occasions Williams described Harris's murder and admitted to shooting Harris at least once. Therefore, the jury heard similar evidence also demonstrating Williams admitting to the murder. Finally, as described above, there was overwhelming evidence of Williams's guilt in the form of percipient witness testimony and his cell phone placing him in the vicinity of the murder. *Cf. Green v. State*, 119 Nev. 542, 548, 80 P.3d 93, 97 (2003) (concluding that a district court's error in giving a jury instruction did not affect the defendant's substantial rights in light of the overwhelming evidence of his guilt).

In light of the foregoing, the district court did not err in admitting testimony that Williams threatened potential witnesses. And to the extent that the district court may have erred in this regard, any such error did not affect Williams's substantial rights.

Cumulative error does not warrant reversal

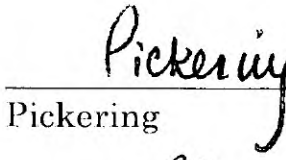
Lastly, Williams argues cumulative error requires reversal of his conviction. Even if every error below fails to provide grounds for reversal alone, the cumulative effect of those errors may provide such grounds. *Hernandez*, 118 Nev. at 535, 50 P.3d at 1115. When reviewing a cumulative error claim, we look to three factors: "(1) whether the issue of guilt is close, (2) the quantity and character of the error, and (3) the gravity of the crime charged." *Mulder v. State*, 116 Nev. 1, 17, 992 P.2d 845, 854-55 (2000).

Here, even assuming Williams presents two errors to cumulate, cumulative error does not warrant reversal of his conviction. As to the first *Mulder* factor, the State presented substantial evidence of Williams's guilt in the form of witness testimony and cellphone data placing Williams in the vicinity of the parking lot at the time of the shooting. Accordingly, we conclude that the issue of Williams's guilt was not close.

As to the second factor, the district court abused its discretion in admitting the hearsay testimony. However, as explained above, the court's abuse of discretion was harmless, and it is unlikely the jury relied on the witness's testimony in reaching its verdict. And to the extent that the district court may have erred in admitting evidence of Williams threatening a potential witness without holding a *Petrocelli* hearing or offering a limiting instruction, Williams fails to demonstrate that any such error affected his substantial rights considering that the evidence was not admitted for propensity purposes and that another witness testified that Williams admitted to murdering Harris. Therefore, these errors do not warrant reversal of Williams's conviction, even considering the gravity of the crime of which he was convicted, under the third *Mulder* factor. Accordingly, we

ORDER the judgment of conviction AFFIRMED.[5]

_____, J.
Cadish



_____, J.
Pickering

_____, J.
Bell

[5]To the extent the parties' additional arguments are not addressed, we have reviewed those arguments and conclude they do not warrant a different result.

cc: Hon. Tierra Danielle Jones, District Judge
Steven S. Owens
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk