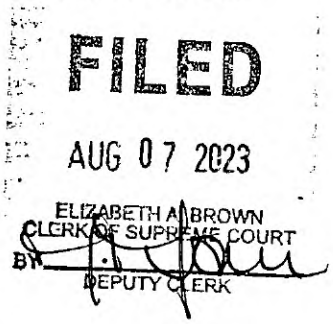
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KEON TREMAIN TAPLETT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 85102-COA



ORDER OF AFFIRMANCE

Keon Tremain Taplett appeals from a judgment of conviction entered pursuant to a jury verdict of two counts of attempted murder with the use of a deadly weapon, two counts of battery with the use of a deadly weapon resulting in substantial bodily harm, discharge of a firearm at or into an occupied structure or vehicle, carrying a concealed weapon, and felon in possession of a firearm. Second Judicial District Court, Washoe County; Lynne K. Simons, Judge.

First, Taplett argues that the district court committed plain error by finding he had impliedly waived his right to a speedy trial by requesting the appointment of substitute counsel. Taplett contends that the delay was caused by problems stemming from his conflicts with appointed counsel and by the district court's decisions related to the appointment of counsel, and he contends that those problems should not have forced him to waive his right to a speedy trial.

Taplett concedes he did not object to the district court's finding that he waived his speedy trial rights and, thus, he is not entitled to relief absent a demonstration of plain error. *See Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48-49 (2018). To demonstrate plain error, Taplett must

show "(1) there was error; (2) the error is plain, meaning that it is clear under the current law from a casual inspection of the record; and (3) the error affected [his] substantial rights." *Id.* at 50, 412 P.3d at 48 (internal quotation marks omitted). "[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 51, 412 P.3d at 49.

Whether the State is responsible for a delay in bringing a case to trial "is the focal inquiry in a speedy trial challenge." *State v. Inzunza*, 135 Nev. 513, 517, 454 P.3d 727, 731 (2019). Moreover, where procedural delays are either ordered for good cause or are the result of the defendant's actions, the defendant's right to a speedy trial is not violated. *Bates v. State*, 84 Nev. 43, 46, 436 P.2d 27, 29 (1968). "A district court's finding on the reason for delay and its justification is reviewed with considerable deference." *Inzunza*, 135 Nev. at 517, 454 P.3d at 731-32 (quotation marks omitted).

During the pretrial proceedings, Taplett made several requests for the substitution of counsel, and the district court conducted several hearings concerning those requests. The district court ultimately found that Taplett's multiple requests for substitution of counsel caused a delay such that it was not possible to conduct a trial without first continuing the matter. Taplett does not demonstrate that the district court's findings constitute error plain from the record. Because the State was not responsible for the delay and the delay was instead caused by Taplett's requests for substitute counsel, Taplett fails to demonstrate that his right to a speedy trial was violated. *See Furbay v. State*, 116 Nev. 481, 485, 998 P.2d 553, 555-56 (2000) (concluding a five-and-one-half-year delay between arrest and trial did not violate the defendant's constitutional speedy trial

right where "all but one of the [nine] continuances were for good cause or were occasioned by defense motions or tactics"). Therefore, Taplett has not met his burden to demonstrate plain error, and he thus is not entitled to relief based on this claim.

Second, Taplett argues that the district court erred by finding that out-of-court statements made by a victim who identified Taplett as the shooter were admissible under the excited-utterance exception to the hearsay rule. Taplett argues that the statements should not have been admitted because the State did not show that the victim was acting under the stress of the shooting and the State did not establish the timeframe in which the statements were made in relation to the shooting.

"A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition is not inadmissible under the hearsay rule." NRS 51.095. "While the time elapsed between the startling event and the statement is an important factor, the absence of an express time requirement in the statute demonstrates that the Legislature did not intend to limit the statute's application to those statements made within a specified time after a startling event." *Medina v. State*, 122 Nev. 346, 352, 143 P.3d 471, 475 (2006). We review a district court's decision to admit or exclude evidence for an abuse of discretion. *Crowley v. State*, 120 Nev. 30, 34, 83 P.3d 282, 286 (2004).

A witness testified that directly after the shooting, she and a victim drove toward a Sonic restaurant. As they were driving, a victim called the witness's aunt. During the ensuing conversation, the victim stated that Taplett was the person that shot her. The witness stated that the victim was scared, "freaking out," and in shock when she made the

relevant statements. The State moved to admit the statements as excited utterances, and the district court admitted the statements.

The witness's testimony regarding the mental state of the victim as she made the challenged statements supported the finding that the victim was under the stress of the shooting when she identified Taplett as the shooter. Moreover, Taplett has not demonstrated that the State was required to establish that the challenged statements were uttered within a specific time period following the shooting. Accordingly, we conclude that Taplett has not demonstrated that the district court abused its discretion by admitting the challenged statements under the excited-utterance exception to the hearsay rule. Therefore, we conclude that Taplett is not entitled to relief based on this claim.

Finally, Taplett argues that he is entitled to relief due to cumulative error. However, Taplett fails to demonstrate any error, and therefore, he is not entitled to relief. *See Morgan v. State*, 134 Nev. 200, 201 n.1, 416 P.3d 212, 217 n.1 (2018) ("As there are no errors to cumulate, [appellant's] argument that cumulative error warrants reversal lacks merit.") Accordingly, we

ORDER the judgment of conviction AFFIRMED.

_____, C.J.
Gibbons

_____, J.
Silver

_____, J.
Westbrook

cc: Hon. Lynne K. Simons, District Judge
Ristenpart Law
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk