


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JAMIE LEE SAM,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 86729-COA

FILED

MAY 28 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Jamie Lee Sam appeals from a judgment of conviction, pursuant to a jury verdict, of assault with the use of a deadly weapon, resisting a public officer with the use of a deadly weapon, and violation of a temporary protection order for stalking, aggravated stalking, or harassment. Sixth Judicial District Court, Humboldt County; Michael Montero, Judge.

In June 2022, Maxine Sam returned home to find her door unlocked and her son, appellant Jamie Lee Sam, asleep on her sofa.¹ Maxine had previously obtained a temporary protection order against Sam. When she woke him up and told him to leave, Sam was “in a mad state of mind.” He pulled out a knife and held it to his throat, threatening to kill himself while screaming profanities. Maxine left and walked to a nearby gas station, where she called the police.

Multiple Winnemucca Police Department officers responded to Maxine’s residence. When they arrived, Sam was standing out front, still holding the knife, and “was immediately confrontational.” Sam waved the knife around in an aggressive manner while shouting profanities at the officers, who unsuccessfully attempted to reason with Sam to drop the knife. A short time later, Sam walked away from Maxine’s residence and officers followed him in vehicles and on foot, still attempting to get Sam to drop the

¹We recount the facts only as necessary for our disposition.

knife. However, Sam continuously refused to obey the officers' commands, telling them that he "wouldn't go back to jail." When Sam approached a populated area, Officer Aaron Brown deployed his taser, causing Sam to fall to the ground and drop the knife. Deputy Manda Howard attempted to kick the knife away from Sam, but before she could reach it, Sam picked the knife back up. Deputy Howard backed away, and as Officer Brown reloaded his taser, Sam finally dropped the knife and was taken into custody without further incident.

Sam was charged with assault with a deadly weapon, assault with a deadly weapon on an officer, resisting an officer with the use of a deadly weapon, and violation of a temporary protection order for stalking, aggravated stalking, or harassment. His two-day jury trial began in March 2023. During jury selection, the State discussed the presumption of innocence with prospective jurors and told them that Sam was completely innocent and "white as the driven snow" unless the State proved his guilt beyond a reasonable doubt. Immediately after discussing the presumption of innocence, the prosecutor added that "[o]ur mission today kind of reminded me, and it seems weird, but I just wanted to share this with you," and then referenced a story from his military experience. Specifically, on a cold day, the prosecutor's drill sergeant told him that being cold was "just a figment of your imagination. Think warm, you'll be warm." The prosecutor then said that his drill sergeant "was full of crap. He was full of crap in 1981 and he's full of crap today." Sam did not object to any of these statements.

The State presented Maxine as its first witness. The State asked her when she last saw her son, and Maxine responded it was "[l]ast year, June 20th, 2022, and when he was released two days before he went back to

jail in, this year I think it was.”² She further testified that she was afraid that Sam would attack her with the knife. During her testimony, the State also sought to admit Maxine’s temporary protection order packet, which included the certificate of service, the temporary protection order itself, Maxine’s application for the protection order, and Maxine’s written police statement from a prior incident involving Sam that had been included with her application. Sam objected that the packet was not properly authenticated under NRS 51.135 because it did not include an affidavit from the custodian of records. The district court overruled Sam’s objection and admitted the protection order packet in its entirety.

Following Maxine’s testimony, Sam moved for a mistrial because Maxine had referenced Sam being in jail. The district court found Maxine’s reference was inadvertent and not prejudicial and denied Sam’s motion for a mistrial, but cautioned the State going forward to avoid references to Sam’s custodial status. The district court also offered a curative instruction, which Sam declined. Officer Brown testified next and stated that Sam refused multiple officers’ commands to drop the knife. Near the end of Officer Brown’s testimony, Sam stipulated to admit body camera footage which captured the event, including Sam’s conduct in front of Maxine’s house and when Sam was eventually tased and arrested. The video was played for the jury.

The jury ultimately found Sam guilty of assault with the use of a deadly weapon, resisting a public officer with the use of a deadly weapon, and violation of a temporary protection order for stalking, aggravated stalking, or harassment. The jury acquitted Sam of assault with a deadly

²Following Maxine’s statement, Sam’s counsel asked to approach the bench. However, the bench conference was not transcribed.

weapon on an officer. The district court sentenced him to an aggregate prison term of 43 to 120 months, and Sam timely appealed.

Admitting the temporary protection order application, even if erroneous, did not affect Sam's substantial rights

Sam argues that the district court abused its discretion in admitting Maxine's entire protection order packet, specifically her application for the protection order, because it contained hearsay and referenced other bad acts. The State responds that Sam forfeited this argument because he did not object on those grounds below, and he failed to demonstrate plain error.

Maxine's temporary protection order application contained several references to past incidents, including allegations that Sam broke into Maxine's home, stole her groceries, and threatened her, as well as Maxine's written statement to police from a prior incident involving Sam. However, at trial, Sam only objected that the protection order packet lacked an affidavit from the custodian of records, and so we agree with the State that Sam's claim is reviewed for plain error. *See Grey v. State*, 124 Nev. 110, 120, 178 P.3d 154, 161 (2008) (recognizing that plain error applies if the defendant fails to object on the same grounds he asserts on appeal). Plain error permits reversal only if an error, clear from the record, affected the defendant's substantial rights and the defendant showed actual prejudice or a miscarriage of justice. *Green v. State*, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003).

Because Sam did not object below on the hearsay grounds he now asserts on appeal, the parties did not address why the protection order application was admitted. As a result, we cannot determine in the first instance whether it was offered for the truth of the matter asserted, if it was nonhearsay, or if a hearsay exception may have applied. *See* NRS 51.035 (defining "[h]earsay" as an out of court statement "offered in evidence to

prove the truth of the matter asserted”). Nonetheless, on its face, the protection order application did reference several prior bad acts, which are presumptively inadmissible. *See* NRS 48.045(2). However, Sam does not demonstrate that the admission of this evidence affected his substantial rights, causing actual prejudice or a miscarriage of justice. *See Mclellan v. State*, 124 Nev. 263, 271, 182 P.3d 106, 112 (2008).

Because Sam was charged with violating a temporary protection order, the State was required to prove the existence of a protection order as a material element of that offense. The application was relevant to a material element of the crime, *see* NRS 200.591(5)(a), and not clearly offered for propensity purposes, where the State never referenced the underlying bad acts at any point during the trial, *cf. Tavares v. State*, 117 Nev. 725, 728-33, 30 P.3d 1128, 1130-33 (2001) (concluding that the State’s reference to prior bad acts without a limiting instruction was prejudicial when the State introduced prior bad act evidence that the appellant had previously engaged in the same behavior underlying the charge for which he stood trial), *holding modified on other grounds by Mclellan*, 124 Nev. at 268, 182 P.3d at 110.

Further, Sam’s convictions were supported by independent overwhelming evidence. For the charge of assault with the use of a deadly weapon, Maxine testified that Sam was angry and screaming while holding a knife, and that she was afraid Sam would attack her with the knife. Sam also stipulated to admit body camera footage that depicted him brandishing the knife in an aggressive and confrontational manner in front of Maxine’s house. Therefore, we conclude that evidence at trial established that Sam used a knife to place Maxine in reasonable apprehension of immediate bodily harm. *See* NRS 200.471(1)(a)(2) & (2)(b). For the offense of resisting an officer with the use of a deadly weapon, the body camera video depicted Sam failing to comply with multiple commands to drop his knife so that he could

be taken into custody, both at Maxine's residence and as Sam tried to walk away, which was corroborated by Officer Brown's testimony. Thus, overwhelming evidence at trial showed that Sam used a knife to delay and obstruct the officers' attempts to place him into custody. See NRS 199.280(2).

For the charge of charge of violating a temporary protection order for stalking, aggravated stalking, or harassment, as stated above, the body camera footage depicted Sam standing in front of Maxine's residence, and Sam acknowledges on appeal that the protection order itself was properly admitted. Therefore, overwhelming evidence established that Sam violated the temporary protection order by being present at Maxine's residence in violation of that protection order. See NRS 200.591(5)(a). In light of the overwhelming evidence at trial to support Sam's convictions, we conclude that Sam cannot demonstrate actual prejudice or a miscarriage of justice from the admission of the protection order application and is not entitled to relief under plain error review. See *Green*, 119 Nev. at 545, 80 P.3d at 95; cf. *Richmond v. State*, 118 Nev. 924, 934, 59 P.3d 1249, 1255 (2002) (noting that the failure to exclude bad act evidence is harmless when overwhelming evidence supports the defendant's conviction).³

³Sam also argues briefly that the district court erred in failing to hold a *Petrocelli* hearing or give a limiting instruction to the jury. However, Sam does not cogently argue these claims, and we decline to address them. 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). Sam also argues that admitting the protection order application violated his Confrontation Clause rights. Because Sam did not object below on Confrontation Clause grounds, his claim is reviewable only for plain error. *Green*, 119 Nev. at 545, 80 P.3d at 95; see also *Flowers v. State*, 136 Nev. 1, 8, 456 P.3d 1037, 1045 (2020) (applying plain error review to an otherwise forfeited Confrontation Clause claim). We conclude that Sam failed to establish plain error because the error is not clear from the record and any error did not affect his substantial rights.

Maxine's references to Sam previously being in jail did not violate Sam's due process rights

Sam argues that two references to his custodial status during trial violated his due process rights. The first was a reference in Maxine's protection order application that Sam "was hauled off to jail" on a previous occasion, and the second was during Maxine's testimony when she stated that she last saw Sam two days after his release before he went back to jail.

Informing the jury that a defendant is in jail *during trial* raises an inference of guilt similar to bringing the defendant to the courtroom in shackles. *Haywood v. State*, 107 Nev. 285, 287-88, 809 P.2d 1272, 1273 (1991). In *Haywood*, the Nevada Supreme Court determined that the State's questions to the defendant about being visited in jail were improper, but harmless beyond a reasonable doubt because "[o]verwhelming evidence connected Haywood with [the] crime." *Id.* at 288, 809 P.2d at 1273.

In this case, any error was also harmless beyond a reasonable doubt. First, the reference in the temporary protection order application was to a *prior* period of incarceration, not a reference to Sam's custodial status at the time of trial, and so the reference did not create an inference of guilt similar to bringing the defendant in the courtroom in physical restraints. *See id.* at 287-88, 809 P.2d at 1273. The second reference to Sam's custodial status during Maxine's testimony was nonspecific as to the timeframe; however, Sam stipulated to admit and play the body camera footage depicting Sam telling officers that he "wouldn't go back to jail," which was consistent with Maxine's reference to Sam previously being in jail. Further, as explained above, Sam's convictions were supported by overwhelming evidence. Therefore, we conclude Sam was not prejudiced from any reference to his custodial status, and any error was harmless beyond a reasonable doubt. *See id.* at 288, 809 P.2d at 1273; *see also Turner v. State*, 136 Nev.

545, 555, 473 P.3d 438, 448 (2020) (finding the erroneous admission of evidence harmless where similar evidence was properly admitted through another source).


The prosecutor's statements during jury selection were not plainly erroneous


Lastly, Sam contends that the prosecutor committed misconduct when it made two improper references to Sam's presumption of innocence during jury selection. First, Sam argues the prosecutor's reference to his drill sergeant being "full of crap" encouraged the jury to ignore the presumption of innocence. Second, he asserts the prosecutor's statement that Sam was "white as the driven snow" was improper because Sam is not Caucasian. As the State points out, Sam did not object to these statements below, and so they are reviewed for plain error. *See Valdez v. State*, 124 Nev. 1172, 1190, 196 P.3d 465, 477 (2008) (stating that an unpreserved prosecutorial misconduct claim is reviewed for plain error).


In this case, neither of the prosecutor's two allegedly improper references are errors clear on the face of the record because, as Sam recognizes on appeal, it is unclear if the prosecutor's statements were metaphorical or intended to be taken literally. The prosecutor's military anecdote is troubling insofar as he expressly connected the story to Sam's presumption of innocence, but Sam does not cogently argue that either of the prosecutor's comments resulted in actual prejudice or a miscarriage of justice. *See Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987). In addition, Sam cannot demonstrate that any error affected his substantial rights. For the reasons discussed above, overwhelming evidence supports Sam's convictions. *See Rowland v. State*, 118 Nev. 31, 40, 39 P.3d 114, 120 (2002) (concluding that prosecutorial misconduct did not amount to plain error when there was overwhelming evidence of the defendant's guilt and any misconduct did not deprive the defendant of a fair trial). Further, the

jury was properly instructed on both the presumption of innocence and the State's burden of proof, and jurors are presumed to follow their instructions. *See Leonard v. State*, 117 Nev. 53, 66, 17 P.3d 397, 405 (2001) ("A jury is presumed to follow its instructions." (internal quotation marks omitted)). Therefore, we conclude that Sam did not demonstrate prosecutorial misconduct amounting to plain error. *Green*, 119 Nev. at 545, 80 P.3d at 95. Accordingly, we

ORDER the judgment of conviction AFFIRMED.⁴


_____, J.
Bulla


_____, C.J.
Gibbons


_____, J.
Westbrook

cc: Hon. Michael Montero, District Judge
Nevada State Public Defender's Office
Humboldt County Public Defender
Attorney General/Carson City
Humboldt County District Attorney
Humboldt County Clerk

⁴Sam also argues that cumulative error warrants reversal. However, Sam did not establish more than one error to cumulate, and therefore is not entitled to relief based on cumulative error. *See McKenna v. State*, 114 Nev. 1044, 1060, 968 P.2d 739, 749 (1998) (concluding that a sole error "does not, by itself, constitute cumulative error"). Insofar as Sam has raised other issues which are not specifically raised or addressed in this appeal, we have considered the same and conclude that they do not present a basis for relief.