

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RYAN ANDREW DUNN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 86612-COA

**FILED**

MAY 28 2024

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Ryan Andrew Dunn appeals from a judgment of conviction, pursuant to a jury verdict, of six counts of burglary of a business while in possession of a deadly weapon, five counts of robbery with use of a deadly weapon, one count of attempted robbery with use of a deadly weapon, one count of conspiracy to commit robbery, and one count of possession of a silencer. Eighth Judicial District Court, Clark County; Erika D. Ballou, Judge.

In January 2022, the first of a string of six burglaries and robberies of businesses in the Las Vegas area was committed. During the first incident, a man between six feet and six feet three inches tall, and described as stocky, entered a business, Fukuburger, in Las Vegas. He was wearing dark clothing that covered almost his entire body, including a black hat and a blue face covering, which was later identified as a bandana, and gloves, however the cashier was able to identify the man as white. After ordering, the man said he wanted the entire cash register. The cashier then heard a thump and saw that the man was tapping the counter with an exposed handle of a black handgun. The handgun was in the man's pocket, and he kept his left hand on the handle of the gun. The cashier gave the man the money from the register and the man left the store. The man entered a black sedan in the parking lot and drove away.

In February, another burglary and robbery were committed at Denny's that was strikingly similar to the January incident. A tall and stocky white man wearing a face mask and a hat entered the business. As the cashier counted change for the man, she heard a thump. The cashier looked up to see that the man was holding a black handgun on the counter. The man then told the cashier to give him the money in the cash register. The cashier complied with the order and the man left the restaurant and drove away in a black sedan, which was noted as being similar to the vehicle driven by the suspect of the January robbery. Police detectives reviewed the available security camera footage and concluded that the black vehicle was likely a BMW.

The third robbery occurred ten days later at AutoZone, and it also followed a near-identical pattern to the previous incidents. A man dressed in khaki colored clothing and wearing a skull mask approached the cashier and demanded the contents of the cash register. The man attempted to pull something from his left side. The cashier identified the object as the handle of a black handgun and gave the man the contents of the cash register. The cashier saw the man drive away in a black sedan. Security footage revealed that the sedan was a black BMW and that the model was likely a 2009-2015 Seven Series BMW. The security cameras did not capture the license plate of the vehicle but revealed that the man appeared to have a very similar body shape and size to the suspect from the previous two robberies.

The next burglary and attempted robbery, following the same formula, occurred a week and a half later at another Denny's. A man, with the same physical characteristics of the suspect from the previous events and wearing a black facemask, entered a business, showed that he had a

black handgun in his left hand, and demanded the contents of the cash register. The cashier was not able to open the cash register and the suspect left the business and was seen driving away in a black sedan.

One week later another business, Panda Express, was targeted by an individual who had the same physical characteristics as the suspect from the previous events and was wearing black clothing that covered most of his body.<sup>1</sup> The cashier heard two thumps on the counter and looked up to see that the individual had drawn a handgun and was holding it close to his waist. The cashier handed the armed robber the money from the cash register and the robber left the business. Security camera footage revealed that the robber drove away in what appeared to be a Home Depot white sprinter van.

The sixth and final robbery occurred two days later. Two men, one of whom was white and approximately six feet tall and the other shorter and Hispanic, entered a Hampton Inn. The taller white man had the same physical characteristics of the suspect from the previous events and was wearing a black trench coat. Both men pulled out firearms and demanded the money from the cash register. The taller white man used a gun to open drawers containing cash in the hotel. He removed the cash and he and his accomplice drove away in a Home Depot white sprinter van.

Because the robber was careful to either wear gloves or touch as few surfaces as possible during the robberies, the police were unable to find fingerprint or DNA evidence at the crime scenes. During the course of the police investigation, the police utilized the "CAD" system to search for

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<sup>1</sup>We note that the cashier initially described the armed robber as a light skinned Hispanic, but after reviewing the color security footage during trial testified that the armed robber was white.

any incidents that occurred in Las Vegas involving a Home Depot van.<sup>2</sup> The police discovered that Ryan Dunn had reported the Home Depot sprinter van he had been renting as stolen. The police noticed that Dunn rented the van the day before the fifth robbery. The police then checked Dunn's DMV records and discovered that Dunn owned a black 2011 BMW 7 Series. Next, the police found body camera footage from a traffic stop involving Dunn. They reviewed the footage and discovered that the vehicle Dunn was driving at the time of the traffic stop had the same style of tires, rims, and trim as the BMW seen leaving the first four crime scenes.

The Home Depot van that Dunn had reported missing was found in the parking lot of the Home Depot where Dunn had rented the vehicle. The police collected fingerprints from the van and discovered the prints of Dunn and Lathan Kay in the vehicle. Based on this information, Dunn was identified as a suspect and taken into custody. When he was arrested, he was wearing shoes consistent with shoes worn by the robber, and he had on his person a bandana consistent with the bandana worn by the robber during the first robbery. Dunn also had a black handgun and the rental agreement for a Home Depot van on his person.

The police executed a search warrant on Dunn's residence. There, the police found a shirt that had distinct markings similar to that of a shirt worn by the robber during one of the robberies. They also discovered several black tubes made of steel or aluminum that could be used to suppress the sound of gunfire. The police were also able to locate Dunn's BMW, which was not at his residence and was not operable. The police executed an additional search warrant on Dunn's cell phone and found a

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<sup>2</sup>CAD is a repository of all incidents that occur in the Las Vegas Valley.

text message sent from AAA to Dunn one day before the fifth robbery, stating that an AAA truck was on its way to Dunn's location.

When the police executed a digital forensic lab warrant on Dunn's cell phone, they discovered that it was serviced by cell towers that were geographically consistent with the cell towers that would have been used by an individual visiting the businesses that were robbed shortly before and after the third, fourth, fifth, and sixth robberies. Police also discovered that Dunn's phone was not used during the time the robberies occurred but was used shortly before and after the robberies. Finally, the police discovered that Dunn's phone had been factory wiped after the first robbery, so no data could be recovered from any time leading up to and immediately following the first robbery.

Dunn was arrested in March 2022, and the State charged Dunn with 14 counts: six counts of burglary of a business while in possession of a deadly weapon, five counts of robbery with use of a deadly weapon, one count of attempted robbery with use of a deadly weapon, one count of conspiracy to commit robbery, and one count of possession of a silencer.

In October 2022, an eight-day jury trial was held on the matter. During trial, each of the cashiers that had been robbed, except the cashier from the Hampton Inn, testified. Additionally, the various police officers, detectives, crime scene analysts, and forensic analysts that worked on the case testified showing the similarities between each offense and the evidence recovered from Dunn.

During its closing argument, the State argued that the cell mapping, the sudden cessation of phone activity during the robberies, the physical description of the robber, and the use of vehicles associated with Dunn to transport the suspect away from the crime scenes were enough

circumstantial evidence to find Dunn guilty. Dunn did not object to any argument made during the State's closing argument. The jury returned a guilty verdict on all counts. Dunn was sentenced to an aggregate sentence of 32 years with parole eligibility after 12 years. Dunn now appeals and argues that the prosecutor engaged in misconduct during closing argument by shifting the burden of proof and that there was not sufficient evidence to support the jury's verdict.

*Dunn failed to show that the prosecutor plainly erred during the State's closing argument*

Dunn argues that the State engaged in prosecutorial misconduct by shifting the burden of proof to Dunn to prove that he was not at the locations of the robberies while they were committed. Dunn goes on to argue that this was prejudicial because the entirety of the State's case was based on circumstantial evidence. The State replies that the prosecutor did not shift the burden of proof but, instead, commented on the facts in the record that tended to show evidence of Dunn's involvement with the crimes.

This court applies plain error review when a defendant fails to object to alleged prosecutorial misconduct below. *Rose v. State*, 123 Nev. 194, 208-09, 163 P.3d 408, 418 (2007). Prosecutorial misconduct will be reviewed for plain error "if the error either (1) had a prejudicial impact on the verdict when viewed in the context of the trial as a whole, or (2) seriously affects the integrity or public reputation of the judicial proceedings." *Id.* (citation and internal quotation marks omitted). Dunn fails to argue that the alleged misconduct "seriously affect[ed] the integrity or public reputation of the judicial proceedings." *Id.* at 209, 163 P.3d at 418. Accordingly, we do not consider this argument. *See Greenlaw v. United States*, 554 U.S. 237, 243 (2008) (noting that courts follow the "principle of party presentation" on appeal, which requires the litigants to frame the

issues). Under plain error review, this court will not reverse “unless the defendant demonstrates that the error affected his or her substantial rights, by causing ‘actual prejudice or a miscarriage of justice.’” *Valdez v. State*, 124 Nev. 1172, 1190, 196 P.3d 465, 477 (2008) (quoting *Green v. State*, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003)).

“During closing argument, the prosecution can argue inferences from the evidence and offer conclusions on contested issues.” *Jones v. State*, 113 Nev. 454, 467, 937 P.2d 55, 63 (1997). A prosecutor improperly shifts the burden of proof to the defendant where the prosecutor comments on the defense’s failure to call witnesses or produce evidence. *Whitney v. State*, 112 Nev. 499, 502, 915 P.2d 881, 882-83 (1996).

Here, Dunn argues that the State implied that it was Dunn’s responsibility to explain his location at the time of the crimes and that the lack of cell phone data proved Dunn’s guilt unless Dunn could explain the lack of data. A careful review of the State’s closing argument reveals that the prosecutor did not make these arguments. Instead, the prosecutor stated “[s]o, yes, the phone does not place him at the scene during the robbery, but it certainly doesn’t place him somewhere else during that robbery.” When this statement is put into the context of the prosecutor’s argument, it serves as a conclusion to his argument that while Dunn could not be placed at the location of the second robbery with 100 percent certainty, the cell phone records placed Dunn in the same general location immediately before and after the robbery, and that Dunn used his phone immediately before and after the robbery but not during the robbery. The prosecutor did not state, or even insinuate, that Dunn needed to produce an explanation for his location. Instead, the prosecutor argued the inference that Dunn committed the robbery because his cell phone placed him in the

location of the robbery, Dunn's physical characteristics matched the description of the robber, and Dunn's vehicles matched those used to flee the crime scenes.

Dunn also contends that the prosecutor argued that the lack of cell phone data proved Dunn's guilt unless Dunn explained the lack of data. A careful review of the closing argument reveals that Dunn's interpretation of the argument is not supported by the transcript. Rather, when placed in the context of the argument, the prosecutor was arguing that the circumstantial evidence all pointed to Dunn being the robber—including the evidence that he wiped his phone after the first robbery and that his phone had no activity during the robberies—and that the jury could make the inference that Dunn was the robber based on this evidence. The prosecutor did not argue that Dunn had to prove that he had a reason for wiping his cell phone. Instead, the prosecutor argued that the jury could infer, based on this action, the cell phone location data, the physical characteristics of the robber, and the use of vehicles connected with Dunn, that Dunn was the robber.

Accordingly, we conclude that Dunn has failed to show that there was prosecutorial misconduct, that there is plain error supported by the record, or that any alleged error affected his substantial rights by causing actual prejudice or a miscarriage of justice.

*Sufficient evidence supports the jury's verdict*

Dunn argues that there was not sufficient evidence to support the verdict because the evidence at trial raised only the inference that he committed the crimes, and a criminal conviction requires more than conjecture. The State replies that there was overwhelming evidence of Dunn's guilt.



In reviewing a challenge to the sufficiency of evidence supporting a criminal conviction, this court considers “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.” *McNair v. State*, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) (emphasis omitted)). “The established rule is that it is the jury’s function, not that of the court, to assess the weight of the evidence and determine the credibility of witnesses.” *Id.* (citing *Walker v. State*, 91 Nev. 724, 726, 542 P.2d 438, 438-39 (1975)). This court will not disturb a verdict supported by substantial evidence. *Id.* Additionally, “a jury may reasonably rely upon circumstantial evidence.” *Wilkins v. State*, 96 Nev. 367, 374, 609 P.2d 309, 313 (1980).

Here, there is an abundance of circumstantial evidence that could lead a rational trier of fact to find Dunn guilty beyond a reasonable doubt. Each witness identified the robber as having the same physical characteristics as Dunn. Additionally, the robber dressed similarly, either wore gloves or touched as few surfaces as possible, and kept a firearm in his left hand and near his waist. This evidence supports a finding that the robber was the same individual in each instance. The robber and Dunn also had access to the exact same type of vehicles. During the early stages of the investigation, the police had determined that the make and model of Dunn’s black BMW was the same as the one likely driven by the robber. Additionally, Dunn rented a Home Depot sprinter van the day before the fifth robbery—the same day that he received a text message from AAA stating that an AAA truck was en route to his location—and a Home Depot van was seen driving away from the scene of the fifth robbery and was

confirmed to be the vehicle driven by the robber after the sixth robbery. A search of Dunn's residence also found a shirt with distinctive markings that matched the markings of a shirt worn by the robber during one of the robberies. Finally, Dunn's cell phone was serviced at cell towers that were geographically consistent with the cell towers that would have been used by an individual visiting the businesses that were robbed shortly before and after the third, fourth, fifth, and sixth robberies. Police also discovered that Dunn's phone was not used during the time the robberies occurred but was used shortly before and after the robberies. Therefore, we conclude that sufficient evidence supports the jury's verdict.

Accordingly, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Bulla

  
\_\_\_\_\_, J.  
Westbrook

cc: Hon. Erika D. Ballou, District Judge  
The Law Firm of C. Benjamin Scroggins, Chtd.  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk