

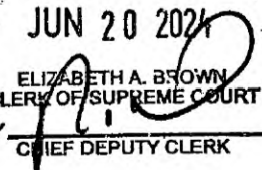
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROBERT M. GOBER, III,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 87111-COA

FILED

JUN 20 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

Robert M. Gober, III, appeals from a judgment of conviction, pursuant to a jury verdict, of three counts of attempted theft. Eighth Judicial District Court, Clark County; Eric Johnson, Judge.

In 2020, Detective Kenneth Mead of the Las Vegas Metropolitan Police Department (LVMPD) received a tip from Chase Bank concerning the suspicious deposit of a check into one of its accounts.¹ LVMPD began an investigation into three checks written by the same individual that were deposited into two different accounts between April and May of 2020. After subpoenaing information on the bank accounts involved, Detective Mead discovered that all three checks attempted to draw \$250,000 from a U.S. Bank account opened by Gober. Two were deposited by Gober himself, and the third was deposited by Gober's fiancée, Rhonda Piazza. All three checks were returned for insufficient funds.

Subsequently, Detective Mead executed a search warrant on the residence at the address associated with the account, where he found several banking documents for the accounts at issue, showing that Gober opened a U.S. Bank account ending in 4335 with an initial deposit of \$100 on April 23, 2020. Further documents recovered from the home showed that

¹We do not recount the facts except as necessary to our disposition.

the account was overdrawn and had an outstanding negative balance. Law enforcement discovered several documents and notes containing banking terms and the phrase “sovereign.”

Based on this information, the State charged Gober with three counts of attempted theft in violation of NRS 205.0832 and three counts of attempted drawing and passing a bad check without sufficient funds in a drawee bank in violation NRS 205.130(1)(a). Gober was bound over to district court on all six charges and a criminal information was filed. In 2021, the district court entered an order of commitment after Gober was determined to be incompetent to stand trial. The following year, Gober was determined to have attained competence.

Across several pretrial proceedings, Gober spent a significant amount of time telling the district court that he was not Robert M. Gober, III, and that he was beyond the court’s jurisdiction. Gober repeatedly informed the court that he did not consent to the representation of his appointed counsel and refused to speak to his appointed counsel throughout the pendency of the case, which spanned several years. In May 2023, the case proceeded to a jury trial. On the first day of trial, prior to voir dire, Gober requested to represent himself. The court conducted a *Faretta*² canvass and ultimately determined that Gober was not competent for the purposes of self-representation. Gober also requested, to replace his appointed counsel with retained counsel. The district court rejected this request, finding that the request was untimely.

After the district court seated the venire panel, Gober objected to the underrepresentation of Hispanic or Latino individuals on the venire,

²*Faretta v. California*, 422 U.S. 806 (1975).

arguing that the venire did not represent a fair cross section of the community. Specifically, Gober argued that only 6 of the 45 venire members identified as Hispanic or Latino, making up just 13.3 percent of the venire, while about 30 percent of the Clark County population was Hispanic or Latino. To that end, Gober introduced testimony of the Clark County Jury Commissioner from a prior case explaining Clark County's jury selection process. The district court denied Gober's objection, finding that he failed to show the underrepresentation of Hispanic or Latino individuals on the venire was the result of the systematic exclusion of Hispanic or Latino individuals in the jury selection process.

At the conclusion of voir dire, the district court instructed the parties to submit their peremptory strikes. Gober objected under *Batson*³ to the State's striking of jurors 561, 574, and 468, who all identified as Hispanic or Latino. The court found that, while Gober was Black and the struck jurors were Hispanic or Latino, he nevertheless had standing to challenge their removal under *Batson*. See *Holland v. Illinois*, 493 U.S. 474, 476 (1990) (holding that a criminal defendant may raise a *Batson* challenge to a peremptory strike of a prospective juror that is of a different race or ethnicity than the defendant). Further, the district court found that Gober had demonstrated a prima facie case of purposeful discrimination and asked the State to provide its race-neutral reasons for striking each juror.

The State claimed that it struck juror 561 for three reasons: (1) he raised his eyebrows when the State asked if the jurors could deliver a guilty verdict even if they had sympathy for the defendant, (2) he was convicted of a felony in 1996 for illegally selling a car to an undercover police

³*Batson v. Kentucky*, 476 U.S. 79 (1986).

officer, and (3) he changed his answer several times when the district court asked if he could treat the testimony of a police officer the same as the testimony of an ordinary witness. As for juror 574, the State offered two reasons: (1) she had difficulty understanding and speaking the English during voir dire, and (2) she indicated that she may have been charged with felony domestic violence in 2006 but was unclear as to whether that was resolved. Finally, that State asserted that it struck juror 468 because she was not paying attention during voir dire and seemed generally disinterested. Gober argued that the State's proffered reasons as to all three peremptory strikes were a pretext for racial discrimination.

Ultimately, the district court found that the State had provided sufficient race-neutral reasons supporting its strikes of jurors 561 and 574 and therefore denied Gober's *Batson* challenges as to those jurors. However, the court found the State's justification for striking juror 468 "puzzl[ing]," and generally rejected the State's argument that juror 468 failed to pay attention during voir dire. Thus, the district court explained that it did not "see a justification for removing [juror 468] that's race neutral" and sustained Gober's *Batson* challenge as to juror 468.

At trial, the State called three witnesses. First, it called Detective Mead, who detailed his investigation into Gober's bank accounts and his search of Gober's residence. Detective Mead also testified as an expert as to sovereign citizen ideology. The State played the recordings of ten phone calls made from Gober to Piazza, as well as to his brother and his daughter, while he was incarcerated. Detective Mead explained to the jury that these calls invoked many common beliefs of sovereign citizen ideology. One of the beliefs Gober discussed was that a sovereign citizen's birth certificate or social security card acts as collateral that allows the individual

to access an infinite amount of money from the U.S. Treasury, and that banks act as intermediaries for accessing these funds. When asked if individuals truly believe these ideas, Detective Mead answered, "Absolutely. Yes."

Second, the State called Sarah Banks, a forensic legal auditor with the Clark County District Attorney's Office. Banks stated that she reviewed financial information in preparation for her testimony and broke down the checks and bank accounts at issue. She explained that three checks, 1101, 1151, and 1153, were all written out of an account ending in 4553 for \$250,000. Checks 1101 and 1153 were made out to Robert M. Gober, III, and check 1151 was made out to Rhonda Piazza. Banks explained that all three were deposited but rejected for insufficient funds. She also testified that the bank account never had more than approximately \$100 in it and therefore was never able to support the checks. In reviewing ATM receipts, Banks stated that, on May 5, 2020, \$200 was withdrawn from the account while the check was processing. The State asked Banks to explain "check kiting" to the jury. Banks stated that most banks take up to five days to process a check and make the funds available and therefore will generally make about \$200 from a deposited check immediately available. Check kiting, she explained, occurs when an individual writes a check to withdraw these immediately available funds during this five-day period knowing that the underlying check will not clear.

The State called Piazza as its final witness. Piazza invoked her Fifth Amendment rights and refused to substantively answer any questions; therefore, the State introduced the transcript of Piazza's testimony at Gober's preliminary hearing. At the preliminary hearing, Piazza testified that Gober gave her a check for \$250,000 and instructed her

to deposit it. Piazza also testified that, at the time, she believed Gober had the funds to support the check.

Gober did not present any witnesses. During the settling of jury instructions, Gober objected to two of the State's proposed instructions. First, Gober objected to an instruction stating that the jury could presume intent if it found one of the scenarios set forth under NRS 205.132(1)(a)-(c) applied. Gober argued that the jury had to find all the scenarios set forth under NRS 250.132(1)(a)-(c) applied to presume intent. Second, Gober objected to an instruction defining reasonable doubt as set forth under NRS 175.211(1), arguing that the court should adopt his proposed instruction further defining reasonable doubt using language from a Nevada Supreme Court case. The district court rejected both of Gober's arguments, finding that Nevada jurisprudence suggested that intent may be implied if any of the individual circumstances set forth in NRS 250.132(1)(a)-(c) applied, and that the definition of reasonable doubt as set forth under NRS 175.211(1) was sufficient.

The jury found Gober guilty on all six counts. At sentencing, the district court dismissed the three counts of attempted drawing and passing a bad check without sufficient funds in drawee bank under NRS 205.130(1)(a). The district court sentenced Gober on the remaining three counts of attempted theft to an aggregate prison term of 4-15 years. This appeal followed.

On appeal, Gober raises six assignments of error. First, Gober argues that the district court erred in rejecting his fair-cross-section challenge to his jury venire. Second, Gober argues that the district court committed clear error in rejecting his *Batson* challenges. Third, Gober argues that the district court erred in rejecting two of his proposed jury

instructions and committed plain error in issuing a third jury instruction. Fourth, Gober argues that the district court abused its discretion in denying his request to replace his appointed public defender with privately retained counsel. Fifth, Gober argues that the State presented insufficient evidence at trial to support his convictions. Sixth, Gober argues that the district court improperly admitted evidence and that the State committed prosecutorial misconduct which cumulatively warrants reversal. We address each argument in turn.

The district court did not err in finding that Gober failed to show that Clark County's venire selection process is unconstitutional

Gober argues that the district court erred in rejecting his challenge to the jury venire as failing to contain a fair cross section of the community. Specifically, Gober argues that Hispanic or Latino individuals were severely underrepresented in his jury venire compared to the population of Hispanic or Latino individuals in Clark County, and therefore the venire violated the Sixth Amendment. Gober further argues that this underrepresentation was the result of the systematic exclusion of Hispanic or Latino individuals in Clark County's venire selection process because the Clark County Jury Commissioner fails to track the race and ethnicity of jury-eligible individuals and consider those factors in selecting individuals for venires.

The State responds that, based on the testimony of the jury commissioner, Gober has failed to demonstrate how Clark County's jury selection process entails the systematic exclusion of Hispanic or Latino individuals. Specifically, the State explains that Clark County properly selects potential jurors from several different sources, and that Gober failed to show that this process systematically excluded Hispanic or Latino individuals from serving on juries.

This court reviews a district court's denial of a fair-cross-section challenge de novo. *Buchanan v. State*, 130 Nev. 829, 831, 335 P.3d 207, 209 (2014) (reviewing de novo a district court's failure to hold a hearing on a defendant's fair-cross-section challenge); *see also United States v. Hernandez-Estrada*, 749 F.3d 1154, 1158 (9th Cir. 2014) (reviewing "independently and non-deferentially" a party's challenge to a venire-selection process (internal quotation marks omitted)). Under the Sixth and Fourteenth Amendments of the United States Constitution, a criminal defendant "is entitled to a venire selected from a fair cross section of the community." *Williams v. State*, 121 Nev. 934, 939, 125 P.3d 627, 631 (2005). This protection does not mandate that juries or venires contain an accurate cross section of the community; rather, it "requires that venires from which juries are drawn must not systematically exclude distinctive groups in the community and thereby fail to be reasonably representative thereof." *Id.* at 939-40, 125 P.3d at 631 (internal quotation marks omitted). To set forth a prima facie case of a fair-cross-section violation, the defendant must demonstrate

(1) that the group alleged to be excluded is a distinctive group in the community; (2) that the representation of this group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community; and (3) that this underrepresentation is due to systematic exclusion of the group in the jury-selection process.

Id. at 940, 125 P.3d at 631 (emphases and internal quotation marks omitted).

Here, the district court found that Gober satisfied the first two requirements: Hispanic or Latino individuals make up "a distinctive group" in the community, and the representation of Hispanic or Latino individuals

on Gober's jury venire was not fair or reasonable in relation to the population of those individuals in Clark County. The State does not challenge these findings on appeal. Rather, Gober challenges the district court's finding that he failed to show that the comparative disparity of Hispanic or Latino venire members in his case was the result of systematic exclusion in Clark County's jury selection process.

In *Williams*, the Nevada Supreme Court rejected a defendant's fair-cross-section challenge because he failed to present any "facts indicating that the jury selection process in Clark County systematically discriminates against African Americans." *Id.* at 941, 125 P.3d at 632. While African American individuals were underrepresented in two of the three venires in that case, the supreme court noted that, on average, three to four African American individuals were selected for venires in Clark County, which was in line with the population of African American individuals in Clark County at large—about 9%. *Id.* Additionally, the supreme court explained that statistical variations like the venires there—the three 40-person venires in that case contained one, six, and three African American individuals, respectively—were "normal in constitutional systems and appear to indicate the health of the jury selection system in Clark County." *Id.* Thus, because the defendant did not point to any evidence suggesting that the underrepresentation of African Americans in his venire was the result of systematic exclusion in Clark County's selection process, his fair-cross-section challenge was unavailing. *Id.* at 942, 125 P.3d at 632-33.

In this case, much like the defendant in *Williams*, Gober fails to show that Clark County's jury-selection process systematically excludes Hispanic or Latino individuals. *Id.* at 941, 125 P.3d at 632. Specifically,

Gober fails to explain how Clark County's jury-selection process, which randomly selects prospective jurors from a pool of several million individuals, does not represent a fair cross section of Clark County, nor does he explain how randomly selecting names from this pool systematically excludes Hispanic or Latino individuals. *See id.* at 939, 125 P.3d at 631 (explaining that defendants have a right to venires *drawn from* a fair cross section of the community).

Additionally, Gober's contention that "Clark County has an obligation to collect information about its jury pool to ensure that a fair cross-section of the community is represented" (emphasis omitted) is unpersuasive, as jury venires must simply be *drawn* from a pool consisting of an accurate cross section of the community. *See id.* at 939-40, 125 P.3d at 631. And because Gober does not explain how the pool from which venires are drawn in Clark County is unrepresentative of the community, we conclude that his challenge to Clark County's venire-selection process is without merit. *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).

The district court did not commit clear error by rejecting Gober's Batson challenges and finding that the State did not strike jurors 561 or 574 with discriminatory intent

Gober argues that the district court committed clear error in finding that the prosecution did not exercise its peremptory strikes of jurors 561 and 574 with discriminatory intent on the basis of their Hispanic or Latino status. Specifically, Gober argues that the record shows the State's reasons for striking each juror were pretextual and, for the first time on appeal, argues that, under *Flowers v. Mississippi*, 588 U.S. 284 (2019), the Clark County District Attorney's Office's history of discriminatory

peremptory strikes further supports the conclusion that the State's strikes in this case were made with discriminatory intent.

The State argues in response that the district court correctly found that the prosecution presented legitimate, race-neutral explanations supporting its peremptory strikes of jurors 561 and 574. Additionally, the State argues that, in contrast to the strong pattern of discriminatory strikes across the defendant's prior trials in *Flowers*, Gober points to attenuated examples of prior Nevada appellate court cases involving the Clark County District Attorney's Office where criminal convictions were reversed based on improperly decided *Batson* objections, which does not support a finding of discriminatory intent here. The State points out that four of the cases cited by Gober required reversal because the district courts did not properly conduct their *Batson* analyses, not because the appellate courts determined there was discriminatory intent.

Under the Equal Protection Clause of the United States Constitution, U.S. Const. amend. XIV, § 1, a party may not exercise a peremptory strike to remove a prospective juror on the basis of their race, ethnicity, or gender. *Batson v. Kentucky*, 476 U.S. 79, 84-85 (1986); *J.E.B. v. Alabama*, 511 U.S. 127, 129 (1994). The constitutionality of a peremptory strike is reviewed under the three-step process set forth in *Batson*. *Conner v. State*, 130 Nev. 457, 464, 327 P.3d 503, 508 (2014). First, "the opponent of the peremptory [strike] must make out a prima facie case of discrimination." *Ford v. State*, 122 Nev. 398, 403, 132 P.3d 574, 577 (2006). Second, if the court finds that the party opposing the strike has made a prima facie case of discrimination, "the production burden then shifts to the proponent of the [strike] to assert a neutral explanation for the [strike]," *id.*, that is "clear and reasonably specific," *Purkett v. Elem*, 514 U.S. 765, 768

(1995) (internal quotation marks omitted). And third, the district court must determine “whether the opponent of the [strike] has proved purposeful discrimination.” *Ford*, 122 Nev. at 403, 132 P.3d at 577. The proper inquiry at this stage is whether, considering all relevant circumstances, it is more likely than not that the State exercised its peremptory strike with discriminatory intent. *Conner*, 130 Nev. at 465, 327 P.3d at 509.

“Appellate review of a *Batson* challenge gives deference to [t]he trial court’s decision on the ultimate question of discriminatory intent.” *Hawkins v. State*, 127 Nev. 575, 577, 256 P.3d 965, 966 (2011) (alteration in original) (internal quotation marks omitted) (2008). If “the district judge finds no unlawful discrimination occurred, we give great deference to the district court’s finding and will only reverse if the district court clearly erred.” *Williams v. State*, 134 Nev. 687, 688, 429 P.3d 301, 305 (2018).

In this case, we conclude that the district court did not commit clear error when it found that the State did not strike jurors 561 or 574 with discriminatory intent. Beginning with juror 561, while Gober argues that the State’s proffered reasons for striking juror 561 were pretextual, we conclude that the State offered several adequately neutral reasons for his strike that were supported by the record: his prior felony conviction and his changed answers as to whether he would weigh the testimony of a police officer the same as an ordinary witness. And while the State failed to strike a juror who was not Hispanic or Latino that stated during voir dire that he was convicted of DUI, it was unclear whether that conviction was a felony or a misdemeanor. Additionally, as recognized by the State, juror 561’s prior felony conviction for illegally selling a car to an undercover police officer is vastly different from a DUI. Finally, the record supports the State’s proffered neutral reason that juror 561 changed his answer several

times as to whether he would weigh law enforcement's testimony the same as an ordinary witness, and the district court's finding that this proffered reason was sufficient is owed great deference. Thus, we conclude that the district court did not commit clear error in rejecting Gober's *Batson* challenge as to juror 561.

Next, we likewise conclude that the district court did not clearly err in finding that the State did not strike juror 574 with discriminatory intent. Specifically, the State provided two adequately neutral reasons for its strike of juror 574, including that she indicated she was previously charged with felony domestic battery and that she had difficulty speaking and understanding English. While Gober argues that the record shows juror 574 did not struggle with speaking and understanding English, the district court found that juror 574 had "language issues"—again, a finding that is owed great deference on appeal—and that finding is supported by the transcript of voir dire.

Finally, we conclude Gober's argument that the Clark County District Attorney's Office has established a relevant pattern of past discrimination is unpersuasive. At the outset, we note that Gober failed to raise this argument in the district court. *See Lamb v. State*, 127 Nev. 26, 40, 251 P.3d 700, 709 (2011) (reiterating that failing to specifically object below on the grounds urged on appeal precludes appellate consideration on those grounds unless plain error is demonstrated). And even if he had, we are unconvinced that *Flowers* is apposite here insofar as Gober fails to tie his proffer to a particular prosecutor or case, and unconvincingly points to past cases that did not deal with discrimination towards Hispanic or Latino jurors. *See Flowers*, 588 U.S. at 304-07 (considering evidence of past discrimination by the same prosecutor in prior cases against same

defendant, trying the same charges); *Gilliland v. State*, No. 79903, 2020 WL 6271203, *3 n.2 (Nev. Oct. 23, 2020) (Order Affirming in Part and Reversing in Part and Remanding) (rejecting the defendant’s argument concerning past discriminatory peremptory strikes by the Clark County District Attorney’s Office in different cases). Therefore, we conclude that the district court did not commit clear error in rejecting Gober’s *Batson* challenges as to jurors 561 and 574.

The district court did not abuse its discretion or commit plain error in rejecting Gober’s proposed jury instructions

Gober challenges three jury instructions on appeal. First, Gober challenges Instruction 19, which informed the jury when it may presume Gober acted with the requisite intent to defraud for his charges of attempted drawing and passing a check without sufficient funds as set forth under NRS 205.132(1). Second, Gober challenges Instruction 10, which defined reasonable doubt as set forth under NRS 175.211(1). Finally, Gober challenges Instruction 26 regarding his sovereign citizen beliefs, although he did not object to this instruction below.

As to Instruction 19, the district court dismissed all three counts related to drawing and passing bad checks, and therefore any potential error could not have prejudiced Gober. *See Nay v. State*, 123 Nev. 326, 333, 167 P.3d 430, 435 (2007) (explaining that this court reviews jury instruction errors for harmless error). And as to Instruction 10, we reject Gober’s argument that the district court abused its discretion in failing to add Gober’s proposed additional language defining reasonable doubt to Instruction 10 insofar as the instruction included the definition of reasonable doubt as set forth under NRS 175.211(1), and NRS 175.211(2) states that “[n]o other definition of reasonable doubt may be given by the court to juries in criminal actions in this State.”

Gober also challenges Instruction 26, which states in its entirety,

Every person, whether an inhabitant of this state, or any other state, or of a territory or district of the United States, is liable to punishment by the laws of this state for a public offense committed therein, except where it is by law cognizable exclusively in the courts of the United States.

Regardless of an individual's claimed status of descent, be it as a "sovereign citizen," a "secured-party creditor," or a "flesh-and-blood human being," that person is not beyond the jurisdiction of the courts. *These theories should be rejected summarily, however they are presented.*

(Emphasis added.) Gober argues that the last sentence of the instruction constituted plain error because it may have been interpreted by the jury to mean that *all* of Gober's sovereign citizen beliefs should be disregarded, rather than just his beliefs as they related to the district court's jurisdiction. Gober contends that the instruction prejudiced his substantial rights because his theory of defense was that his sovereign citizen beliefs caused him to act under a mistake of fact that negated his intent to commit the charged crimes, and by instructing the jury to disregard his sovereign citizen ideology, the instruction undermined his defense. The State responds that the instruction was an accurate statement of the law. The State further responds that the instruction did not constitute plain error because Gober was able to effectively present his theory of defense, and that Gober otherwise points to nothing in the record suggesting that the instruction undermined Gober's defense.

When a defendant raises an issue on appeal that was not raised before the district court, this court may review for plain error. See NRS 178.602 ("Plain errors or defects affecting substantial rights may be noticed

although they were not brought to the attention of the court.”); *Valdez v. State*, 124 Nev. 1172, 1190, 196 P.3d 465, 477 (2008). “Under that standard, an error that is plain from a review of the record does not require reversal unless the defendant demonstrates that the error affected his or her substantial rights” *Valdez*, 124 Nev. at 1190, 196 P.3d at 477. “To amount to plain error, the error must be so unmistakable that it is apparent from a casual inspection of the record.” *Martinorellan v. State*, 131 Nev. 43, 49, 343 P.3d 590, 593 (2015) (internal quotation marks omitted). Further, “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).” *Jeremias v. State*, 134 Nev. 46, 51, 412 P.3d 43, 49 (2018).

We conclude that Gober’s conjecture as to whether or not the instruction *may* have been misconstrued by the jury suggests that, even if the instruction was erroneous, the error was not plain from a casual inspection of the record. The first three sentences of the instruction narrowly explain that, despite Gober’s potential beliefs, he was subject to the criminal jurisdiction of the district court; therefore, the instruction likely was interpreted by the jury to only disregard Gober’s beliefs insofar as they related to the court’s jurisdiction. *See McNamara v. State*, 132 Nev. 606, 622, 377 P.3d 106, 117 (2016) (“Jurors are presumed to follow the instructions they are given.”).

Additionally, Gober was otherwise able to effectively present his defense. Indeed, Gober used his entire closing argument to discuss the defense theory that Gober’s sovereign citizen ideology negated his intent to commit the charged crimes. Also, the district court adopted Gober’s proposed mistake-of-fact instruction, which instructed the jury “[i]f you find that [Gober] performed the acts of constituting an attempt under an

ignorance or mistake of fact, which disproves any specific intent required to constitute the offense, you must find him not guilty.” Therefore, we conclude that Gober has failed to show how the district court committed plain error in issuing Instruction 26.

The district court did not abuse its discretion in denying Gober’s request to replace his appointed counsel with retained counsel

Gober argues that the district court abused its discretion in denying his request to replace his appointed public defender with privately retained counsel because Gober had a significant and irreconcilable conflict with his appointed counsel. Specifically, Gober repeatedly informed the district court that he did not consent to the representation of the Clark County Public Defender’s Office, and Gober refused to communicate with his appointed counsel throughout the pendency of his case, which spanned over two years. The State responds that Gober’s request to replace his appointed counsel with retained counsel on the first day of trial was untimely, and that Gober was not prejudiced by his appointed counsel’s representation at trial.

This court reviews a district court’s “denial of a motion for substitution of counsel for abuse of discretion.” *Young v. State*, 120 Nev. 963, 968, 102 P.3d 572, 576 (2004). In determining whether a district court abused its discretion in denying a defendant’s request to substitute appointed counsel with retained counsel, the relevant inquiry is (1) whether denying the substitution significantly prejudiced the defendant, or (2) whether the request “was untimely and would result in a disruption of the orderly processes of justice unreasonable under the circumstances of the particular case.” *Patterson v. State*, 129 Nev. 168, 175-76, 298 P.3d 433, 438 (2013) (internal quotation marks omitted).

[W]hile the right to select and be represented by one's preferred attorney is comprehended by the Sixth Amendment, the essential aim of the Amendment is to guarantee an effective advocate for each criminal defendant rather than to ensure that a defendant will inexorably be represented by the lawyer whom he prefers.

Wheat v. United States, 486 U.S. 153, 159 (1988). Thus, "in evaluating Sixth Amendment claims, 'the appropriate inquiry focuses on the adversarial process, not on the accused's relationship with his lawyer as such.'" *Id.* (quoting *United States v. Cronin*, 466 U.S. 648, 657 n.21 (1984)).

Applying these principles to the present case, we conclude that the district court did not abuse its discretion in denying Gober's request to replace his appointed counsel with retained counsel. First, Gober's request was untimely. Gober did not directly request to replace his appointed counsel with retained counsel until the first day of trial prior to voir dire. Thus, even assuming that Gober had the resources to hire private counsel, granting Gober's request would have caused a significant delay to a case that was already several years old, as Gober had not yet contacted any private attorneys about representing him, and any new attorney would have to familiarize themselves with the case. *See Gohar v. State*, No. 73872, 2018 WL 3351984, at *3 (Nev. Ct. App. June 22, 2018) (Order of Affirmance) (explaining that a request to substitute retained counsel with appointed counsel made four days before trial would have disrupted the calendar of the district court and the attorneys).

Further, Gober fails to demonstrate how being represented by appointed counsel prejudiced him. To be sure, Gober had significant conflict with his attorneys, as he generally refused to speak to them throughout the two years leading up to trial. However, the record suggests that, despite these conflicts, his appointed counsel was able to negotiate an

“extraordinary” plea deal that would have resolved eight of Gober’s other pending cases, which Gober ultimately refused. Further, Gober’s appointed counsel presented a defense, even though the evidence against Gober was significant. *Cf. Haywood v. State*, 107 Nev. 285, 288, 809 P.2d 1272, 1273 (1991) (“When the evidence of guilt is overwhelming, even a constitutional error can be comparatively insignificant.”). Thus, considering all the circumstances together, we conclude that Gober has failed to show that he was prejudiced by his appointed counsel’s representation.

Sufficient evidence supports Gober’s convictions

Gober argues that the State presented insufficient evidence showing that Gober acted with the requisite intent needed for a conviction of attempted theft. Specifically, Gober suggests that he genuinely believed he was entitled to infinite money from the U.S. Treasury and could access that money by depositing checks in this manner. Therefore, Gober argues that he did not specifically intend to take the property of another—as required for theft—but rather believed he was accessing his own property.⁴ The State responds that it introduced evidence showing that Gober wrote three checks made payable to himself from his own account that had insufficient funds, which supports his conviction of attempted theft. The State further argues that Gober’s sovereign citizen beliefs manifested a mistake of law, not a mistake of fact, and that a mistake of law cannot serve as a defense.

⁴Gober also argues that Detective Mead’s testimony negated Gober’s intent to defraud, which was required for attempted passing a bad check under NRS 205.130(1)(a). We reject this argument to the extent that, as mentioned above, the district court dismissed all three counts of attempted passing a bad check at sentencing.

Evidence adduced at trial is sufficient to support a conviction if, “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) (emphasis omitted) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). “This court will not reweigh the evidence or evaluate the credibility of witnesses because that is the responsibility of the trier of fact.” *Mitchell v. State*, 124 Nev. 807, 816, 192 P.3d 721, 727 (2008).

To sustain a conviction of attempted theft, the State must prove beyond a reasonable doubt that an individual attempted to knowingly control the property of another “with the intent to deprive that person of the property.” NRS 205.0832(1)(a); NRS 193.153(1) (“An act done with the intent to commit a crime, and tending but failing to accomplish it, is an attempt to commit that crime.”) Attempt crimes require the specific intent to commit the attempted crime, *Tanksley v. State*, 113 Nev. 844, 849, 944 P.2d 240, 243 (1997), and specific intent may be negated if the defendant “committed the [charged] act . . . under an ignorance or mistake of fact, which disproves [their] criminal intent,” NRS 194.010(5).

Based on the evidence adduced at trial, we conclude that a reasonable juror could have concluded that Gober acted with the necessary intent to sustain his convictions of attempted theft. Specifically, the State introduced evidence suggesting that Gober was “check kiting” with the checks at issue, which supported that he was aware that what he was doing was unlawful, and therefore intended to control the property of another. The State also introduced Piazza’s preliminary hearing testimony in which she stated that Gober gave her a \$250,000 check and instructed her to deposit it in her bank account, and Detective Mead’s testimony that the

evidence and bank records found during his investigation were consistent with attempts to deposit bad checks. Additionally, Gober asks this court to independently weigh the evidence and find that he genuinely subscribed to sovereign citizen ideology such that he did not think he was taking the property of another; however, such a finding is exclusively within the province of the jury. Thus, we conclude that sufficient evidence supports Gober's convictions of attempted theft.

There are no errors regarding the admission of evidence or prosecutorial misconduct that cumulatively warrant reversal

Finally, Gober contends that several other errors cumulated to warrant reversal. First, Gober argues that the district court improperly admitted irrelevant and prejudicial evidence on two occasions: (1) by allowing the State to play a portion of a jailhouse phone call where Gober stated he was "going to make them all pay"; and (2) when Detective Mead testified that the majority of papers he wrote in graduate school were "related to a sovereign ideology, domestic terrorism, and domestic extremism." Second, Gober argues that the State committed prosecutorial misconduct when it misstated prior testimony during its closing arguments. The State responds that Gober has failed to show cumulative error warranting reversal. We agree with the State.

"The cumulative effect of errors may violate a defendant's constitutional right to a fair trial even though errors are harmless individually." *Valdez*, 124 Nev. at 1195, 196 P.3d at 481 (quoting *Hernandez v. State*, 118 Nev. 513, 535, 50 P.3d 1100, 1115 (2002)). In evaluating a claim of cumulative error, this court considers "(1) whether the issue of guilt is close, (2) the quantity and character of the error, and (3) the gravity of the crime charged." *Id.* (internal quotation marks omitted).

We review a district court's admission or exclusion of evidence for an abuse of discretion or manifest error. *Thomas v. State*, 122 Nev. 1361, 1370, 148 P.3d 727, 734 (2006). NRS 48.025(2) provides that evidence must be relevant to be admissible. Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence." NRS 48.015 (emphasis added). However, relevant evidence may be inadmissible "if its probative value is substantially outweighed by the danger of unfair prejudice." NRS 48.035(1). "Because all evidence against a defendant will on some level 'prejudice' (i.e., harm) the defense, NRS 48.035(1) focuses on 'unfair prejudice.'" *State v. Eighth Jud. Dist. Ct.*, 127 Nev. 927, 933, 267 P.3d 777, 781 (2011). The Nevada Supreme Court "has defined 'unfair prejudice' under NRS 48.035 as an appeal to 'the emotional and sympathetic tendencies of a jury, rather than the jury's intellectual ability to evaluate evidence.'" *Id.* (quoting *Krause Inc. v. Little*, 117 Nev. 929, 935, 34 P.3d 566, 570 (2001)).

We first conclude that the challenged portion of the phone call played for the jury meets the low threshold of relevance. In the context of the whole phone call with Piazza, Gober was discussing his plans to obtain money from financial institutions and explaining to his family members that he had figured out a way to access funds—the overarching theme of the State's case. Additionally, this isolated comment cannot be considered unfairly prejudicial when it was a minor statement juxtaposed with several minutes of Gober explaining how to obtain money from financial institutions. And when considered in light of the State's overwhelming evidence showing that Gober deposited several bad checks, this brief statement cannot be said to have influenced the jury to the extent that it

was unfairly prejudicial. Thus, we conclude that the district court did not abuse its discretion in admitting that portion of the phone call.

Additionally, to the extent that Detective Mead's statement concerning his education was problematic, the district court sustained Gober's objection and instructed the jury to disregard the statement, and "this court generally presumes that juries follow district court orders and instructions." *McNamara*, 132 Nev. at 622, 377 P.3d at 117. Thus, any potential error associated with the statement does not require reversal.

Next, this court reviews a claim of prosecutorial misconduct in two steps: "[f]irst, we must determine whether the prosecutor's conduct was improper. Second, if the conduct was improper, we must determine whether the improper conduct warrants reversal." *Valdez*, 124 Nev. at 1188, 196 P.3d at 476 (footnote omitted). Because the misstatement of prior testimony raises a nonconstitutional issue, this court "will reverse only if the error substantially affect[ed] the jury's verdict." *Id.* at 1189, 196 P.3d at 476. "[A] prosecutor may not make statements unsupported by evidence produced at trial." *Guy v. State*, 108 Nev. 770, 780, 839 P.2d 578, 585 (1992). Therefore, the prosecution arguably committed misconduct by stating that, according to Detective Mead's testimony, Gober attempted to *cash* the checks instead of attempting to *deposit* them.

However, Gober fails to explain how this semantic difference warrants reversal, as the charged crimes did not turn on whether Gober attempted to cash or deposit the bad checks. *See Maresca*, 103 Nev. at 673, 748 P.2d at 6. Additionally, the district court instructed the jury to rely on its own recollection of the evidence at trial, which this court presumes the jury followed. Thus, to the extent that the State committed prosecutorial misconduct by misstating the evidence in its closing argument by using the

term "cash" instead of "deposit," we conclude that such error does not warrant reversal. And because there are no other errors to cumulate, Gober's final argument is without merit. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Eric Johnson, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk