

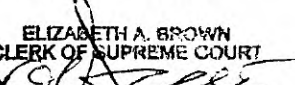
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LAMONT BOLDER, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 86907-COA

FILED

JUL 26 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Lamont Bolder, Jr., appeals from a judgment of conviction, entered pursuant to a jury verdict, of robbery with the use of a deadly weapon, residential burglary while in possession of a firearm, being a felon in possession of a firearm, and possession of a schedule I controlled substance, less than 14 grams, third or subsequent offense. Second Judicial District Court, Washoe County; Kathleen M. Drakulich, Judge.

First, Bolder argues the district court erred by denying his pretrial motion to compel the State to disclose “reports, evaluations, and diagnosis related to” the victim’s competency from a separate legal proceeding in order to impeach the victim as a witness at Bolder’s trial based on the victim’s “perception, memory, communication, and ability to understand the oath to testify.” Although the State is required to disclose certain materials at the request of the defendant, *see* NRS 174.235(1), it is not required to disclose information that is privileged or protected from disclosure or inspection pursuant to state or federal law, *see* NRS 174.235(2)(b).

The district court found that Bolder failed to address the State’s argument that it could not produce records related to the victim’s

competency because they were confidential medical records. Bolder does not appear to argue that the records were not privileged. Rather, he appears to argue that his constitutional right to confront the victim compels disclosure of the records. While a defendant's right to confront a witness may prevail over the witness's right to keep information confidential, such situations are better addressed during trial and likely require a particularized showing by the defendant before a district court may even review such information *in camera*. Cf. *Bradley v. Eighth Jud. Dist. Ct.*, 133 Nev. 754, 761 n.5, 405 P.3d 668, 674 n.5 (2017).

The district court found that Bolder had not shown that the victim's mental health evaluations regarding competency to stand trial were relevant to the victim's ability to testify at Bolder's trial. Compare NRS 178.400(2) (setting forth the criteria for a criminal defendant to be deemed competent to stand trial), with *Shuff v. State*, 86 Nev. 736, 738, 476 P.2d 22, 24 (1970) (providing that "[w]hen the competency of any witness has been questioned, it is within the discretion of the trial court to consider factors relative to qualification and to determine if such person is competent to testify"). The district court specifically referenced the fact that the victim had no apparent difficulty testifying at the preliminary hearing and that Bolder had not shown how the victim's competency to stand trial impacted the victim's ability to testify truthfully and accurately at Bolder's trial.

Further, the district court's order denying Bolder's pretrial motion allowed Bolder to renew his motion during trial if the victim's testimony "call[ed] for impeachment based on the *Lobato* factors." See *Lobato v. State*, 120 Nev. 512, 518, 96 P.3d 765, 770 (2004) (listing four modes of impeachment that attack a witness's competency to testify as "attacks based upon defects of perception, memory, communication and

ability to understand the oath to testify truthfully”). Bolder did not renew his motion to compel or argue during trial how the victim’s competency in the separate legal proceeding impacted his competency or qualification as a witness.¹ Therefore, we conclude the district court did not abuse its discretion by denying Bolder’s pretrial motion to compel disclosure of records related to the victim’s competency in a separate legal proceeding. Accordingly, Bolder is not entitled to relief based on this claim.

Second, Bolder argues the district court erred by allowing the victim to testify without the jury being permitted to know about his alleged incompetency “and other impairments” which would have impacted his credibility. Bolder did not preserve this issue below and thus forfeited the right to assert this issue on appeal.² See *Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48 (2018). Although the court can correct forfeited error if the appellant demonstrates there was an error that is clear under current law from a casual inspection of the record that affected the appellant’s substantial rights, see *id.*, we do not consider Bolder’s argument regarding plain error review because he did not make this argument until his reply brief, see *LaChance v. State*, 130 Nev. 263, 277 n.7, 321 P.3d 919, 929 n.7 (2014). Therefore, he has not satisfied his burden of demonstrating plain error. See *Miller v. State*, 121 Nev. 92, 99, 110 P.3d 53, 58 (2005) (stating it

¹Bolder thus failed to make a particularized showing for even *in camera* review of the records.

²As is discussed above, the district court ruled that Bolder could renew his motion to compel during trial depending on the victim’s testimony. However, Bolder did not renew his motion to compel nor did he make any motions or objections related to this issue during his or the State’s examination of the victim. He consequently did not properly preserve the issue on appeal as now argued.

is the appellant's burden to demonstrate plain error); *see also State v. Eighth Jud. Dist. Ct. (Doane)*, 138 Nev., Adv. Op. 90, 521 P.3d 1215, 1221 (2022) (recognizing the Nevada appellate courts "follow the principle of party presentation" and thus "rely on the parties to frame the issues for decisions and assign to courts the role of neutral arbiter of matters the parties present" (quoting *Greenlaw v. United States*, 554 U.S. 237, 243 (2008))); *Senjab v. Alhulaibi*, 137 Nev. 632, 633-34, 497 P.3d 618, 619 (2021) ("We will not supply an argument on a party's behalf but review only the issues the parties present.").

Finally, Bolder argues the district court erred by denying him the ability to cross-examine the victim about any potential benefit or leniency he might receive in exchange for his testimony. "A district court's decision to admit or exclude evidence rests within its sound discretion and will not be disturbed unless it is manifestly wrong." *Libby v. State*, 115 Nev. 45, 52, 975 P.2d 833, 837 (1999). This court will disregard a claim that the trial court erred by prohibiting a defense inquiry on cross-examination when the defense counsel has failed to make an offer of proof and, as a result, we have "no way of determining whether appellant's substantial rights were prejudiced by the trial court's refusal to allow the witness to respond." *Van Valkenberg v. State*, 95 Nev. 317, 318, 594 P.2d 707, 708 (1979); *see also* NRS 47.040(1)(b) (stating an alleged "error may not be predicated upon a ruling which . . . excludes evidence unless a substantial right of the party is affected" and "the substance of the evidence was made known to the judge by offer or was apparent from the context within which the questions were asked").

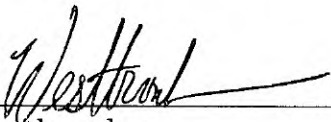
Our review of the record reveals Bolder did not inform the district court that he sought to cross-examine the victim about any potential

benefit or leniency he might receive in exchange for his testimony nor did he make any offer of proof to facilitate our review.³ In light of these circumstances, Bolder fails to demonstrate that the district court abused its discretion. Accordingly, Bolder is not entitled to relief based on this claim, and we

ORDER the judgment of conviction AFFIRMED.⁴


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

³Prior to the victim’s testimony, the court ruled that Bolder could ask “[n]o questions about weapons, about other cases . . . [n]o questions about the fact that he is currently facing, potentially, charges in another case” This ruling appears to have been in response to discussions about the victim’s separate criminal proceeding and about protecting the victim’s Fifth Amendment right against self-incrimination while testifying at Bolder’s trial. Bolder did not request to use this information to determine whether there was any potential benefit or leniency.

⁴The State moved to strike portions of Bolder’s appendix because the documents were not part of the trial record below. Bolder withdrew his objection to the State’s motion, and Bolder’s amended appendix appears to cure the deficiencies identified in the State’s motion to strike. Accordingly, we direct the clerk of the court to strike Bolder’s original appendix filed on January 8, 2024. In taking this matter under consideration, the court relied upon Bolder’s amended appendix filed on May 3, 2024.

cc: Hon. Kathleen M. Drakulich, District Judge
Orrin Johnson Law
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk