IN THE SUPREME COURT OF THE STATE OF NEVADA

ISAIAH ALEXANDER NORWOOD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 86268

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of murder in the second degree with use of a deadly weapon and discharging a firearm from a vehicle in a populated area. Second Judicial District Court, Washoe County; Egan K. Walker, Judge.

A jury convicted Isaiah Norwood of second-degree murder with the use of deadly weapon and discharging a weapon from a vehicle into a populated area. Norwood appeals his conviction, raising issues with numerous aspects of the proceedings below related to admissibility of evidence at trial, an alleged Miranda violation, improper jury instruction, and prosecutorial misconduct. Because we conclude that none of Norwood's challenges require reversal, we affirm the conviction.

FACTS AND PROCEDURAL HISTORY

While driving two friends home, Appellant Isaiah Norwood accidentally cut Thomas Schlesinger's motorcycle off in traffic, and the two honked at each other. At a red light, Schlesinger knocked Norwood's side-view mirror off and drove away. Norwood then fired a gun out of the car window. Norwood chased Schlesinger for more than a mile at high speeds. The chase ended in a parking lot. Schlesinger stopped, and Norwood accelerated, striking Schlesinger. Schlesinger died two days later in the hospital.

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Norwood and his passengers abandoned Norwood's car and left the scene. Law enforcement officers apprehended Norwood days later, for unrelated matters, in Douglas County. While Norwood was in custody, Sparks Detective Eric Curtis interviewed Norwood concerning the Schlesinger killing. Curtis advised Norwood of his *Miranda* rights. Norwood then told his story with minimal prompting from Curtis, making several incriminating statements during the interrogation. Norwood later moved to suppress the statements, arguing that he had invoked his right to an attorney. The district court denied Norwood's motion, and the interrogation was admitted at trial.

During the trial, the State called Officer Brian Sullivan as a lay witness. Sullivan offered an analysis of the tire skid marks at the scene of the collision. Sullivan testified that skid marks caused by a collision differ from skid marks caused by a vehicle slamming on its brakes. When asked to lay foundation for the statements, Sullivan explained his analysis was based on his specialized training as a major accident investigation team officer.

The State also called Detective Curtis to testify regarding a video Curtis made of the route Norwood and Schlesinger drove the night of the collision. Curtis narrated during the video. At trial, Curtis explained the differences between the driving in the video and the driving done by Norwood, including that Curtis drove the speed limit and obeyed all traffic signals.

Additionally, the State offered testimony from a myriad of other witnesses. The two passengers in Norwood's vehicle testified that Norwood accelerated and did not brake before striking Schlesinger. Other eyewitnesses testified about different parts of the chase or to hearing the

crash. One witness described her feelings seeing Norwood when he drove past her. The witness stated that she "saw the devil" in Norwood's face and that she did not like the feeling she got looking at Norwood; the court overruled Norwood's relevance objection to this testimony.

The defense's only witness was Norwood, who maintained that he did not intend to strike Schlesinger. Norwood testified the collision was an accident, caused in part by Schlesinger stopping suddenly.

During closing arguments, while vehemently arguing for premeditation supporting a first-degree murder conviction, the State repeatedly referenced the witness statement calling Norwood the devil, over Norwood's objection. In closing, Norwood admitted to firing his gun at the intersection but argued that this was a road-rage incident that went bad, deserving of a manslaughter conviction at worst. The jury convicted Norwood of second-degree murder and discharging a firearm from a vehicle within a populated area. The district court sentenced Norwood to an aggregate sentence of life in prison with the possibility of parole after 264 months. Norwood now appeals.

DISCUSSION

On appeal, Norwood challenges evidentiary decisions related to (1) the admission of testimony that he was arrested for "unrelated matters," (2) admission of the interrogation video shown to the jury, (3) admission of video evidence of the driving route Norwood took on the night of the incident, (3) testimony from an officer regarding the tire skid marks found at the scene, and (4) the denial of Norwood's motion to suppress statements based on Norwood's invocation of his right to counsel. Norwood also asserts that there was prosecutorial misconduct and that the district court should have provided his proposed jury instructions.

The district court abused its discretion by admitting testimony that Norwood was arrested on "unrelated matters," but the error was harmless

Norwood asserts the district court failed to provide the proper instruction concerning testimony referring to Norwood's arrest on "unrelated matters." Although Norwood's challenge points to the failure to instruct the jury concerning other acts evidence, that challenge necessarily requires that we consider whether the evidence should have been admitted, as there would be no valid instruction to give if the evidence were improperly admitted. We review a district court's decision to admit or exclude potential other acts evidence for manifest abuse of discretion. *See Rhymes v. State*, 121 Nev. 17, 21-22, 107 P.3d 1278, 1281 (2005). Even where the district court abuses its discretion, we will not overturn a conviction due to the admission of improper other act evidence if the error is harmless. *See Tavares v. State*, 117 Nev. 725, 732, 30 P.3d 1128, 1132 (2001).

Other acts evidence used to show a defendant's propensity or conformity with a particular character trait is prohibited. NRS 48.045(2). Here, the State argues the reference to Norwood's arrest on unrelated matters was admitted as *res gestae*, to give a complete story of Norwood's charged crime. *See Bellon v. State*, 121 Nev. 436, 444, 117 P.3d 176, 181 (2005) (allowing admission of *res gestae* evidence that is "so closely related to the act in controversy that the witness cannot describe the act without referring to the other uncharged act or crime"). *Res gestae* evidence is not considered to be other acts evidence and is not admitted under the same safeguards as other acts evidence. *Id.* at 444, 117 P.3d at 180. Under the appropriately narrow construction of *res gestae*, however, the reference to Norwood's arrest for "unrelated matters" serves no purpose in completing the story of the collision. *Id.* at 444 117 P.3d at 181 (citing *Tabish v. State*,

119 Nev. 293, 307, 72 P.3d 584, 593 (2003) (construing *res gestae* narrowly). An ordinary witness, describing the act in controversy, would not need to note that Norwood ended up in Douglas County days later and was arrested for "unrelated matters." Thus, this evidence cannot be considered *res gestae* and the court must evaluate whether a valid non-propensity reason exists for the evidence's admission.

A *Petrocelli* hearing is required before admitting other acts evidence to determine the non-propensity use of such evidence. *Qualls v. State*, 114 Nev. 900, 902, 961 P.2d 765, 766 (1998). The district court here failed to conduct a *Petrocelli* hearing. Under a *Petrocelli* analysis, no valid non-propensity reason exists to invite the jury to speculate about why Norwood was arrested on unrelated matters. *See Dickey v. State*, 140 Nev., Adv. Op. 2, 540 P.3d 442, 448 (2024) (requiring the district court conduct a *Petrocelli* hearing before admitting other acts evidence and considering the *Petrocelli* analysis in the first instance where the district court performed a different analysis). The admission of other acts evidence without a *Petrocelli* hearing, without a valid non-propensity reason, and without a limiting instruction is an abuse of discretion by the district court.

Yet the reference to Norwood's arrest does not appear to have had a "substantial and injurious effect or influence in determining the jury's verdict." *Newman v. State*, 129 Nev. 222, 236, 298 P.3d 1171, 1181 (2013) (internal quotation marks omitted) (reviewing for harmless error). These few scattered references to this unrelated arrest following a traffic stop were minimal and unlikely to inflame the passions or prejudices of the jury. Additionally, the evidence of Norwood's guilt is overwhelming, notwithstanding the comments about his arrest on other matters. Therefore, the error in admitting this propensity evidence is harmless.

The district court did not plainly err by admitting the interrogation video

While arguing about the other acts evidence, Norwood claims for the first time on appeal that showing the jury a video of Norwood's interview with Curtis constituted plain error. As Norwood did not object to the video's admission below, the error is not preserved for review. *Valdez v. State*, 124 Nev. 1172, 1190, 196 P.3d 465, 477 (2008) (reviewing unpreserved errors only for plain error).

Admitting this video was not a plain error. *Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48 (2018) (correcting a plain error only when "(1) there was an 'error'; (2) the error is 'plain,' meaning that it is clear under current law from a casual inspection of the record; and (3) the error affected the defendant's substantial rights"). The video of Norwood shown to the jury, though depicting him shackled, did not affect Norwood's substantial rights, because Norwood appeared before the jury unrestrained and in civilian clothing at all times during his trial. *See McGervey v. State*, 114 Nev. 460, 462, 958 P.2d 1203, 1205 (1998) (concluding that the defendant has the right "to appear before his jurors clad in the apparel of an innocent person" (quoting *Grooms v. State*, 96 Nev. 142, 144, 605 P.2d 1145, 1146 (1980))). Prior testimony had established Norwood's detention, and the jury was aware the video depicted a custodial interrogation, so there was little chance the video would shock or prejudice the jurors against Norwood by showing him in custody. The evidence of Norwood's guilt is also overwhelming, so Norwood has not demonstrated that any error impacted his substantial rights.

The district court did not plainly err by admitting Curtis's video of the scene

Norwood next challenges the district court's decision to admit a video created by Curtis showing the driving path taken by Norwood and Schlesinger the night of the incident. Norwood changes the basis of his

argument on appeal, objecting to the video at trial as "not based on the personal knowledge of the witness and it's speculation" and now arguing on appeal that the reenactment is irrelevant experimental evidence. An appellant may not change a theory of objection on appeal. *See Ford v. Warden*, 111 Nev. 872, 884, 901 P.2d 123, 130 (1995) (concluding that an appellant "cannot change her theory underlying an assignment of error on appeal.").

Even were we to consider Norwood's objection for plain error as we would an otherwise forfeited error, the district court did not err by admitting the video. *See Jeremias*, 134 Nev. at 50, 412 P.3d at 48 (reviewing an otherwise forfeited error for plain error). The video was relevant, being filmed only a few days after the incident, at the same time of day, and under substantially the same traffic conditions. The differences between the video and the manner Norwood and Schlesinger drove were made clear to the jury from the outset, including that Curtis drove the speed limit and obeyed traffic signals. Any differences between the video and the actual event affect the weight to be given the video as evidence, rather than its admissibility. *See United States v. Jackson*, 479 F.3d 485, 490 (7th Cir. 2007) ("[D]issimilarities of the type Jackson points out can be identified in cross-examination to weaken the evidence's impact, but they do not bar its admission in the first place."). We discern no error in admitting Curtis's video reenactment.

The district court abused its discretion by allowing Officer Sullivan to offer inadmissible expert testimony, but the error was harmless

Norwood next claims the district court erred by permitting Officer Sullivan to offer testimony about Sullivan's opinion on the skid marks found at the scene of the collision, amounting to inadmissible expert testimony. We review a district court's decision on the need for expert

witnesses for an abuse of discretion. *Brown v. State*, 138 Nev. 464, 469, 512 P.3d 269, 275 (2022). Sullivan's observations that the skid marks were caused by a collision rather than a vehicle braking fall beyond the realm of everyday experience. Sullivan specifically referenced his specialized training—training even most police officers do not receive—as the basis for his opinion. *See Burnside v. State*, 131 Nev. 371, 382-83, 352 P.3d 627, 636 (2015) (concluding that a witness's testimony amounts to expert testimony when it requires specialized knowledge or skill beyond everyday experience).

Because Sullivan offered testimony beyond the realm of everyday experience and based on specialized training, he needed to be qualified as an expert to do so. *See Hallmark v. Eldridge*, 124 Nev. 492, 498, 189 P.3d 646, 650 (2008) (quoting NRS 50.275) (requiring that an expert witness (1) be "qualified in an area of 'scientific, technical or other specialized knowledge;'" (2) must "assist the trier of fact to understand the evidence or to determine a fact in issue;" and (3) must limit the testimony "to matters within the scope of [his or her specialized] knowledge"). After Norwood objected, the district court failed to conduct a *Hallmark* analysis or explain why an analysis was unnecessary, and allowed Sullivan to continue testifying. *See Dickey*, 140 Nev., Adv. Op. 2, 540 P.3d at 452 (clarifying that when a party objects to witness qualifications, the district court must "either conduct a full *Hallmark* analysis or . . . make clear that qualification is not necessary"); *Williams v. Eighth Jud. Dist. Ct.*, 127 Nev. 518, 529, 262 P.3d 360, 367 (2011) (holding that a nurse lacked requisite qualifications to offer expert testimony on medical causation, and thus allowing such testimony was an abuse of discretion). Failing to conduct the

proper *Hallmark* analysis in this case was an abuse of the district court's discretion.

Even where the district court abuses its discretion, we will not vacate a conviction where the error is harmless. *Tavares*, 117 Nev. at 732, 30 P.3d at 1132. Sullivan's erroneously admitted testimony was markedly brief, consisting of only two or three questions. The facts offered by Sullivan—that Norwood struck Schlesinger and neither vehicle slammed on the brakes—are supported by significant other credible evidence, including the testimony of both passengers in Norwood's car. *See Leonard v. State*, 117 Nev. 53, 69-70, 17 P.3d 397, 407-08 (2001) (reviewing inadmissible evidence for harmless error where the fact in question is supported by other credible evidence). Overwhelming independent evidence supports Norwood's guilt and Sullivan's inadmissible expert testimony amounts to harmless error that does not require reversal.

Norwood's invocation of his right to counsel was equivocal, so the district court did not err when it denied Norwood's motion to suppress

Norwood next argues that the district court erred when it declined to suppress Norwood's statements based on his invocation of his right to counsel. Because Norwood challenges the actual impact of the words spoken, we review the question de novo. *Carter v. State*, 129 Nev. 244, 247, 299 P.3d 367, 370 (2013) (reviewing the impact of a suspect's alleged invocation de novo). During the interview after Norwood was read his *Miranda* rights, Norwood and Curtis had the following exchange:

> [Norwood]: Like, um, just to start over, and some crazy shit happened, so it's just like, there's not, there's a certain amount that I will say, you know?
>
> Det. Curtis: Mmm.
>
> [Norwood]: But I would like to have an attorney just because I feel like it may look like I was doing,

completely doing something wrong because of the circumstances, but, um, I'm sure you know what happened that night.

Det. Curtis: And that's why I came-

[Norwood]: Yes.

Det. Curtis: -in. I wanna get your side of the story.

[Norwood]: Yes, um, so I, I'm willing to give that, you know?

We conclude that Norwood's reference here to an attorney was ambiguous and would not convey a clear request for a lawyer to a reasonable interrogating officer, so Curtis was not required to cease the interrogation. *Harte v. State*, 116 Nev. 1054, 1067, 13 P.3d 420, 429 (2000) (quoting *Davis v. United States*, 512 U.S. 452, 461 (1994) (concluding that "after a knowing and voluntary waiver of the *Miranda* rights, law enforcement officers may continue questioning until and unless the suspect clearly requests an attorney"). Norwood expressed an interest in telling Curtis "a certain amount" but then indicated a qualified interest in an attorney because it looked like Norwood had done something wrong. Yet Norwood indicated he was sure Curtis already knew the story. These multiple modifying statements indicate an equivocal request. *See United States v. Carrillo*, 660 F.3d 914, 923-24 (5th Cir. 2011) (concluding that the defendant's statements "I wanted to see if we could push this to where I could get my lawyer" and "I wanted to see if you could work with me and push this deal to where I can get a lawyer" were ambiguous in the context of the entirety of his statements and did not require questioning to cease). However, we do reject the State's argument to consider Norwood's subsequent statements expressing an interest in providing Norwood's "side of the story" to Curtis, as a suspect's subsequent statements must not be considered

when determining the impact of an alleged invocation. *Carter*, 129 Nev. at 249, 299 P.3d at 371.

Because Norwood's statement to Curtis was ambiguous, Curtis did not need to cease questioning. *Davis*, 512 U.S. at 459 (declining to require officers to cease questioning where a suspect makes an "ambiguous or equivocal" reference to counsel). The district court did not err by declining to suppress Norwood's statements made during his interview with Curtis because Norwood's invocation of his right to counsel was ambiguous and equivocal.

The prosecutor improperly invoked testimony meant to inflame the passions and prejudices of the jury, but the conduct does not warrant reversal

Norwood next accuses the prosecutor of misconduct by repeatedly referring to the witness statement that she "saw the devil" in Norwood during the State's closing argument. When reviewing claims of prosecutorial misconduct, this court determines first whether the prosecutor's conduct was improper, and second, if so, whether that conduct warrants reversal. *Valdez*, 124 Nev. 1172, 1188, 196 P.3d 465, 476 (2008). At the second step—determining if improper conduct warrants reversal—the court determines whether the misconduct is of a constitutional dimension and must be reviewed for constitutional harmless error; otherwise, the court applies the standard for nonconstitutional harmless error. *Id.* at 1189, 196 P.3d at 476.

Here, the prosecutor repeatedly referred to a witness statement that would be impermissible if it were the prosecutor's own words. Repeatedly referencing the witness' testimony about seeing "the devil" could inflame the prejudices of the jury and placed a pejorative label on Norwood. *Id.* at 1192, 196 P.3d at 478 (concluding that a prosecutor must not "attempt to inflame the jury's fears or passions in the pursuit of a conviction"); *Jones*

v. State, 113 Nev. 454, 469, 937 P.2d 55, 65 (1997) (likening a defendant "to a rabid animal" constituted misconduct). The mere fact that the prosecutor was parroting a witness does not alleviate the prosecutor's obligations to avoid misconduct. Of course, repeating a witness's harsh or even inflammatory statements to the jury in closing argument is not automatically or necessarily misconduct if those witness statements serve a valid and permissible purpose in the totality of the State's case. What a witness described seeing in the face of the defendant prior to his commission of a homicide could certainly be relevant to the issue of intent and premeditation. However, when the witness uses inflammatory language, it is the obligation of the prosecutor to use caution in how the prosecutor argues that testimony to the jury to avoid inappropriately prejudicing the defendant. The State may not use witness statements as a proxy to say something that would have been unequivocally unacceptable coming from their own mouth if it had no relevance to proving or disproving the charges. Here, the prosecutor's repeated references to the witness' testimony about seeing "the devil" and the manner in which it was argued were improper.

Although improper, the prosecutor's three comments did not "so infect the trial with unfairness as to make the resulting conviction a denial of due process," so we review the harm for nonconstitutional error. *Valdez*, 124 Nev. at 1189, 196 P.3d at 477 (quoting *Darden v. Wainwright*, 477 U.S. 168, 181 (1986)). As such, we will not overturn the conviction unless the misconduct substantially affected the jury's verdict. *Id.* at 1189, 196 P.3d at 476. Here, the jury did not convict Norwood of first-degree murder, the charge for which the prosecutor used the pejorative label to suggest Norwood's premeditation. Therefore, although the prosecutor's comments

were undoubtedly improper, they were ultimately harmless and do not require reversal of Norwood's conviction.

The district court did not err when instructing the jury

Norwood next claims the district court erred by declining to provide two proposed defense jury instructions. We review a district court's refusal to provide a jury instruction for an abuse of discretion. *Jackson v. State*, 117 Nev. 116, 120, 17 P.3d 998, 1000 (2001).

Norwood's first proposed instruction contained the elements of vehicular manslaughter, which Norwood argues is a lesser included offense in this case. The district court declined to provide this instruction because vehicular manslaughter is not a lesser included offense of involuntary manslaughter. The district court was correct as a matter of law on this question. NRS 200.070(2) ("Involuntary manslaughter does not include vehicular manslaughter as described in NRS 484B.657."); *Smith v. State*, 120 Nev. 944, 947, 102 P.3d 569, 571 (2004) (concluding that the legislature may render offenses mutually exclusive rather than lesser included by statutory language). Though Norwood also now argues that vehicular manslaughter is a lesser included offense of open murder, he failed to raise that argument before the district court, and only raised the argument before this court in his reply brief, so we decline to consider the question. *LaChance v. State*, 130 Nev. 263, 277 n.7, 321 P.3d 919, 929 n.7 (2014) (declining to consider appellant's argument raised for the first time in the reply brief). Thus, the district court was within its discretion to refuse to give an instruction on vehicular manslaughter, as that offense was not implicated in this case.

Norwood's second proposed instruction recited the elements of involuntary manslaughter but omitted statutory language informing the jury that "where the involuntary killing occurs in the commission of an

unlawful act, which, in its consequences, naturally tends to destroy the life of a human being, or is committed in the prosecution of a felonious intent, the offense is murder." NRS 200.070(1). The district court declined to give Norwood's proposed instruction and instead gave jury instruction 15, which provided the entire language of the involuntary manslaughter statute. We see no abuse of discretion in the district court's choice to give an instruction that included the full language of the statute.

To the extent the issue is properly preserved, we decline to reverse for cumulative error

Finally, Norwood, in the conclusion of the opening brief, requests reversal based on "the overall cumulative effect" of the errors identified. We are doubtful that this single sentence in the conclusion of a brief, unsupported by citation, argument, or authority, sufficiently raises the issue of cumulative error for this court to consider. *Greenlaw v. United States*, 554 U.S. 237, 243 (2008) ("[W]e rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present."). Nevertheless, cumulative error review plays an important role in ensuring a fair process, even for cases with substantial evidence of guilt. *Valdez*, 124 Nev. at 1195, 196 P.3d at 481 ("This court must ensure that harmless-error analysis does not allow prosecutors to engage in misconduct by overlooking cumulative error in cases with substantial evidence of guilt.").

Even assuming Norwood properly raises the issue of cumulative error, we conclude that Norwood is not entitled to reversal under the cumulative error standard. *Mulder v. State*, 116 Nev. 1, 17, 992 P.2d 845, 854-55 (2000) (evaluating cumulative error on "(1) whether the issue of guilt is close, (2) the quantity and character of the error, and (3) the gravity of the crime charged"). Three harmless errors occurred here: the improper

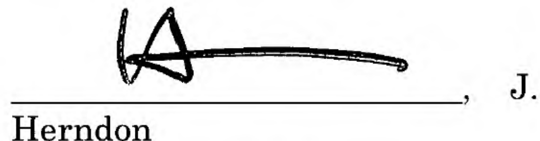
testimony concerning Norwood's arrest in Douglas County on unrelated matters; the improper expert testimony by Officer Sullivan; and the improper statements by the prosecutor during closing arguments.

In this case, the issue of guilt is not close, and none of the errors touched on Norwood's own incriminating statements nor the testimony from the passengers in Norwood's vehicle. The few errors were discrete and did not pervade the trial. *See Valdez*, 124 Nev. at 1197-98, 196 P.3d at 482 (concluding that the quantity and character of errors were particularly troubling because the errors "occurred throughout the trial"). Norwood was convicted on overwhelming testimonial evidence, notwithstanding the errors found. Having considered all three factors, we conclude that Norwood was not denied a fair trial by the cumulative effect of the errors that occurred.

CONCLUSION

Norwood raises several issues with his proceedings below, and although we do find some errors, no error, nor the cumulative effect of the errors, overcomes the overwhelming evidence of Norwood's guilt. Accordingly, we

ORDER the judgment of conviction AFFIRMED.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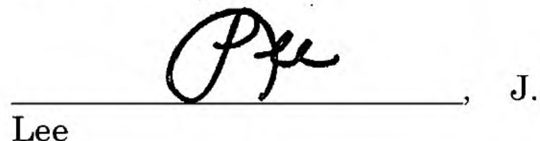
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cc: Hon. Egan K. Walker, District Judge
Ristenpart Law
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