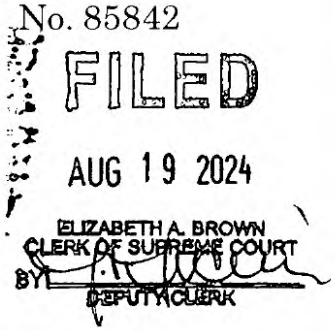
IN THE SUPREME COURT OF THE STATE OF NEVADA

TYAIREON JASHA COLLINS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 85842



ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of second-degree murder with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Carli Lynn Kierny, Judge. Appellant Tyaireon Jasha Collins raises five issues.

First, Collins argues that the State withheld exculpatory evidence—specifically, a folder labeled "Persons of Interest," a photographic lineup, and a key witness's contact information. We conclude that no relief is warranted based on this argument.

As to the "Persons of Interest" folder, Collins contends he was not aware such a folder existed until trial, immediately after he challenged a detective about the thoroughness of the investigation and about the failure to follow leads or obtain pictures of alternate suspects. Although Collins labels this error a *Brady*[1] violation, we conclude the issue is one of late disclosure, given that Collins received the evidence at trial. *Cf. Thomas v. Eighth Jud. Dist. Ct.*, 133 Nev. 468 478 n.12, 402 P.3d 619, 628 n.12 (2017) (stating "it is not practicable to analyze a *Brady* violation prior to entry of a verdict" where disclosure was made during trial and necessitated a mistrial, and analyzing the case "in terms of late disclosure, rather than

[1]*Brady v. Maryland*, 373 U.S. 83 (1963).

Brady"). The district court found that Collins did not have the folder before trial and allowed Collins the opportunity to argue for a mistrial, but Collins demanded that the case be dismissed or that they proceed with the trial. The district court determined that dismissal was not appropriate but granted Collins' request to strike the State's question regarding the "Persons of Interest" folder and preclude the State from asking about that evidence. We conclude that, under these circumstances, the district court did not abuse its discretion in concluding the State's conduct did not warrant dismissal and offering Collins lesser remedies. *See Hill v. State*, 124 Nev. 546, 550, 188 P.3d 51, 54 (2008) (reviewing a district court's denial of a motion to dismiss for an abuse of discretion). And, because Collins expressly and intentionally refused the district court's offer to argue for a mistrial, Collins cannot now argue that a mistrial should have been granted.

As to the photographic lineup, the district court found that the evidence had been disclosed to Collins before trial, likely to his previous counsel. Collins does not cite authority to support the notion that the prosecution has a duty to repeat disclosures each time the defendant changes counsel. Nor does he demonstrate that he was prejudiced by any late disclosure. *See United States v. McKinney*, 758 F.2d 1036, 1049-50 (5th Cir. 1985) (considering a claim involving the disclosure of exculpatory evidence at trial and determining "the inquiry is whether the defendant was prejudiced by the tardy disclosure"). Collins was able to confirm during cross-examination that the witness who was shown the lineup could not identify anyone from the pictures, and the district court obliged Collins' request that the photographic lineup not be admitted.

Finally, as to the witness's contact information, Collins has not alleged he was prejudiced. And the record does not suggest any such prejudice, as Collins was able to speak with the witness before the witness testified, and Collins has not argued he would have investigated or presented his defense differently had he known the witness's address. *Cf. Jones v. State*, 113 Nev. 454, 473, 937 P.2d 55, 67 (1997) ("[F]ailure to endorse a witness constitutes reversible error only where the defendant has been prejudiced by the omission."). Accordingly, we conclude Collins's arguments regarding the disclosure of evidence do not warrant relief.

Second, Collins argues that the district court improperly precluded him from fully cross-examining Officer Klemp, a police officer with the school district at the time of the shooting, about Klemp's disciplinary history. The district court determined that an incident from Klemp's history was relevant and allowed Collins to ask Klemp about the incident. But the court warned Collins that he had to accept Klemp's answer because, pursuant to NRS 50.085(3), Collins could not impeach Klemp with extrinsic evidence. Collins asked Klemp if he had been disciplined, and Klemp responded in the negative. At a bench conference, Collins asserted that Klemp had committed perjury, but the district court commented it was not "as clear cut as [Collins was] making it" because there was a discrepancy as to whether Klemp was disciplined and the matter had been closed administratively. The court concluded that Collins was "stuck with the answer."

Collins contends he should have been able to ask further questions about the incident to clarify that Klemp was disciplined but that the discipline was rescinded. Collins alleges that the evidence showed a contentious relationship between himself and Klemp and thus a bias and

motive to testify. Although "extrinsic evidence relevant to prove a witness's motive to testify in a certain way, *i.e.*, bias, interest, corruption or prejudice, is never collateral to the controversy and not subject to the limitations contained in NRS 50.085(3)," *Lobato v. State*, 120 Nev. 512, 519, 96 P.3d 765, 770 (2004), Collins did not show that the previous misconduct went to Klemp's motive to testify in this case. Therefore, we conclude the district court did not abuse its discretion in limiting Collins' cross-examination of Klemp consistent with NRS 50.085(3). *See Leonard v. State*, 117 Nev. 53, 72, 17 P.3d 397, 409 (2001).

Third, Collins contends the district court erred by allowing the State to elicit testimony from Officer Tolliver about Collins' reaction to another person's statement. Officer Tolliver testified that she overheard a conversation in which another male told Collins that the male's dad had asked about a shooting and whether the male was involved. Tolliver then heard the male say that the dad asked about Collins. The male and Collins laughed, and Collins did not answer. The district court admitted this testimony under NRS 51.035(3)(b), which provides that a statement offered to prove the truth of a matter asserted is not hearsay if it is offered against a party and is "[a] statement of which the party has manifested adoption or belief in its truth."

We cannot conclude that Collins' laughter constituted an adoptive admission under these circumstances. It is unclear from the testimony if Collins' laughter was merely in response to the dad asking the question. It is also unclear if the dad was asking about the shooting at issue in this case. In short, it is not clear that the statement—made by the dad, relayed by the male, and overheard by Tolliver—was "of such a nature that, in ordinary experience, dissent would have been expected" if the statement

was not true. *Maginnis v. State*, 93 Nev. 173, 175, 561 P.2d 922, 923 (1977) (concluding that statements made in front of a codefendant and other witnesses, discussing the details of a homicide and implicating the codefendant, were admissible as adoptive admissions); *cf. McKenna v. State*, 101 Nev. 338, 344-45, 705 P.2d 614, 618-19 (1985) (considering a detective's question to the defendant "[a]re you involved in the case of the jail in reference to Nobles' murder" and determining the defendant's nodding yes and smiling was an unambiguous adoptive admission); *People v. Pappadiakis*, 705 P.2d 983, 987 (Colo. App. 1985) (concluding that the defendant's silence and laughter were adoptive admissions where she did not respond to the codefendant's incriminating statements about her serving as a lookout while the codefendant broke into a shop and where she laughed at the codefendant's statement about the ease of the burglary and theft). Therefore, the district court abused its discretion in admitting this evidence.

Nevertheless, the admission of this evidence was harmless error. *See Valdez v. State*, 124 Nev. 1172, 1189, 196 P.3d 465, 476 (2008) (stating that an error of a non-constitutional dimension is harmless if it does not substantially affect the verdict). Maurice Crawford—an eyewitness to the shooting—identified Collins as the shooter. Klemp and two juvenile probation officers who had previously dealt with Collins identified him from the surveillance video, with Klemp immediately identifying Collins. And the jury was able to view this video, which the State describes as "high quality," at trial to determine whether Collins was the perpetrator

depicted.[2] Furthermore, given the ambiguity in the question and Collins' laughter, it would have been difficult for the jury to assign much weight to the erroneously admitted evidence. Collins emphasized the ambiguity on redirect examination of Tolliver, confirming that Tolliver had no context for what shooting was being discussed and that people laugh for all sorts of reasons. And the purported adoptive admission was not emphasized during the State's closing argument nor referenced as an admission. Accordingly, we conclude that Collins was not prejudiced by the admission of this evidence.

Fourth, Collins alleges the district court erroneously excluded evidence regarding the victim's violent criminal history. He contends the evidence was admissible as part of his defense that, based on the victim's behavior, there were lots of people angry with the victim who could have had a motive to shoot the victim. Collins did not show a connection between the victim's criminal history and the instant crime to establish relevance for the evidence. *See Bigpond v. State*, 128 Nev. 108, 117, 270 P.3d 1244, 1250 (2012) (recognizing the first step for admissibility of other act evidence is that the evidence be relevant to the charged crime). Additionally, we disagree with Collins that the criminal history was admissible for impeachment purposes, as the victim was not a witness at the trial. *See Bennett v. State*, 138 Nev. 268, 272, 508 P.3d 410, 414 (2022) ("Impeachment evidence is evidence used to undermine a witness's credibility." (internal quotation marks and alterations omitted)). Accordingly, the district court

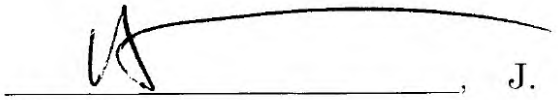
[2]Collins did not ask for any video evidence to be transmitted to this court, *see* NRAP 30(d), and "[t]he burden to make a proper appellate record rests on appellant." *Greene v. State*, 96 Nev. 555, 558, 612 P.2d 686, 688 (1980).

did not abuse its discretion by excluding this evidence. *See Mclellan v. State*, 124 Nev. 263, 267, 182 P.3d 106, 109 (2008) (reviewing the district court's decision to exclude evidence for an abuse of discretion).

Lastly, Collins alleged that after the verdict was returned, a juror indicated to Collins' attorney that the jury wanted to review a bodycam video that had been admitted but which was not with the evidence the jury received and therefore, a new trial was warranted. At a subsequent hearing before the district court, it was revealed that the jury received all admitted evidence during its deliberation and the bodycam video in question had been shown to the jury during trial but was not admitted because the defense mislabeled their exhibit. It was also revealed that the jury never asked the court to provide the bodycam video in question during their deliberations and did not ask for any playbacks of testimony, although they did inquire as to whether a transcript of a detective's testimony was available, which it was not. Thereafter, the district court noted in its ruling that the jury had already seen the bodycam video in question and the fact that it did not get admitted would not have changed the verdict. The district court also correctly noted that NRS 175.441 does not require the jury have all exhibits during its deliberations: "Upon retiring for deliberation, the jury *may* take with them . . . [a]ll papers and all other items and materials which have been received as evidence in the case . . . ." (Emphasis added.). Accordingly, the district court did not abuse its discretion in denying Collins' motion for a new trial. *See* NRS 176.515 (providing the district court with discretion to grant a new trial under certain circumstances).

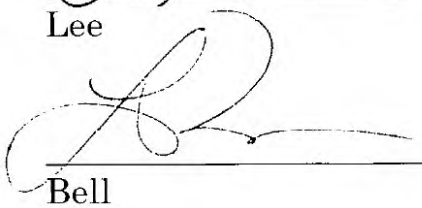
Having considered Collins' arguments and concluded that they do not warrant relief, we

ORDER the judgment of conviction AFFIRMED.



_____, J.
Herndon

_____, J.
Lee



_____, J.
Bell

cc: Hon. Carli Lynn Kierny, District Judge
Law Office of Betsy Allen
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk