

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DEVIN ALAN CAMPBELL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 87969-COA

FILED

DEC 19 2024

ORDER OF AFFIRMANCE

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

Devin Alan Campbell appeals from a judgment of conviction, pursuant to a jury verdict, of battery by an inmate against a first responder. Seventh Judicial District Court, White Pine County; Gary Fairman, Judge.

Devin Campbell is an inmate at Ely State Prison in White Pine County.¹ Correctional Officer Michael Jannacone was performing a search of Campbell's cell block and escorted Campbell to the showers during the search. When Jannacone later came back to the showers to transport Campbell back to his cell, Campbell headbutted him in the face, allegedly over confiscated headphones.

The State charged Campbell with battery by an inmate against a first responder. Before the trial started, Campbell filed a motion requesting that the correctional emergency response team (CERT)² officers transporting him to the courtroom dress in civilian clothes during trial. The district court denied the motion. It found that, because the trial was held

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

²CERT officers are specially trained correctional officers tasked with responding to disturbances, riots, cell extractions, mass searches, and other situations in prisons or courts that are likely to involve uncooperative or violent inmates.

in Ely, the ubiquity and normalcy of Nevada Department of Correction (NDOC) officers present in the community meant that their uniformed presence at trial would have little prejudicial effect on jurors. The district court additionally found that Campbell had a demonstrated history of disregarding others' safety, including a prison disciplinary history for the possession of weapons, use of force, and threats of the use of force and that the CERT officers needed to have their equipment with them to protect the occupants of the courtroom and themselves. And the district court reasoned that the jury would be aware that Campbell was an inmate due to the nature of the charge against him, lessening any prejudice from the uniformed officers. The district court additionally explained that it would give a cautionary instruction to the jurors informing them that CERT personnel always escort prisoners when they travel to the courthouse, and it gave that instruction at the start of the trial.

During voir dire, when asking standard questions pertaining to potential bias, the district court asked whether any prospective juror had a family member who was charged with or convicted of a felony. One juror said he had a brother who was charged, tried, and acquitted for hindering a telecommunication device, assault and battery, and attempted murder of a correctional officer. The court asked the juror if he would be influenced by his brother's experience, and the juror responded, "I don't know," and "I don't think it would, but I couldn't say for sure." The State posed additional follow-up questions to the juror, and when asked if he could be impartial, the juror responded that he "can't 100 percent say [he] could." Accordingly, the State moved to excuse the juror for cause, and the district court granted the motion over Campbell's objection.

The jury was empaneled and, during the presentation of the evidence, Jannacone was called as a witness. At the time of the trial, Jannacone was no longer employed by the NDOC and was working for the White Pine County Sheriff's Office at the jail attached to the courthouse, where Campbell was being held for trial. Jannacone and Campbell encountered each other when Jannacone went through the connecting tunnel between the jail and the courthouse to testify as a witness and had an interaction outside of the presence of the jury. Campbell called out to Jannacone, "hey," to which Jannacone responded, "I'm good man, how are you?" The CERT officers escorting Campbell informed Jannacone that he should not communicate with Campbell. Jannacone agreed and proceeded to the courthouse.

As a witness, Jannacone testified about the search of Campbell's cell block and stated that Campbell headbutted him when he went to retrieve Campbell from the showers after searching Campbell's cell. After Jannacone was excused as a witness, he tried to go back through the tunnel to the jail, but the CERT officers and the court bailiff told him he had to leave through the front of the courthouse, which he did. Campbell raised no issue with the court about the interaction between him and Jannacone during trial.

The jury found Campbell guilty of the battery by an inmate charge and of the first-responder enhancement. Seven days after the verdict, Campbell moved for a mistrial or a new trial and requested a hearing based on the interaction he had with Jannacone. The State submitted statements from the bailiff and the CERT officers concerning the incident, and the court released them to Campbell. Notably, the CERT officers stated that they were stationed outside of the courtroom and did not

permit "unauthorized people" from entering during the trial. They explained that the deputy attorney general gave them instructions to direct witnesses to a specific conference room to conform with the witness exclusion rule.

The district court subsequently conducted an evidentiary hearing concerning Campbell's motion. Jannacone testified and explained the previously discussed events. Campbell argued that Jannacone's behavior was suspicious and challenged the credibility of his trial testimony. Campbell did not argue that his right to a public trial was infringed nor raise any argument relating to a potential cover up around the statements of the CERT officers.

The district court subsequently denied the motion for a new trial, finding that there was an interaction between Jannacone and Campbell, but that the communication was brief, lasted less than a minute, was a greeting, and that Campbell initiated it. It also found that the communication did not interfere with or influence Jannacone's testimony. The court further found that the jury did not learn about the communication and that it did not influence the verdict. Finally, the district court found that the communication did not interfere with Campbell's right to a fair trial. Campbell now appeals from the judgment of conviction.

First, Campbell argues that the district court abused its discretion by denying his motion requesting the CERT officers to be dressed in civilian clothes. Absent a showing of specific prejudice, uniformed officers present in a courtroom do not prejudice a defendant. *McKenna v. State*, 114 Nev. 1044, 1050-51, 968 P.2d 739, 743-44 (1998). Further, even if the officers do prejudice the defendant, it is not unduly prejudicial if the

prisoner's past or present behavior justifies the presence of the security. *Id.* at 1051, 968 P.2d at 744.

The district court considered Campbell's motion for the CERT officers to wear plain clothes and denied it because the Ely community is used to NDOC personnel, Campbell had a prison disciplinary history of violence, the officers needed their equipment to be at heightened readiness, and the jury would know that he was an inmate because of the charges against him. The court gave a curative instruction, and Campbell provides no evidence that he suffered prejudice from the CERT officers being in uniform. Thus, Campbell fails to demonstrate that he is entitled to relief based on this argument.

Second, Campbell argues the district court abused its discretion by denying his motion for a mistrial or for a new trial based on Jannacone's interaction with him outside of the presence of the jury. Campbell contends the interaction was improper and potentially violated the witness-exclusionary rule.

The district court generally enjoys discretion in granting or denying a motion for a new trial, and "this court will not set aside a district court new trial ruling absent an abuse of discretion." *State v. Carroll*, 109 Nev. 975, 977, 860 P.2d 179, 180 (1993). Likewise, the trial court has sound discretion to deny a motion for mistrial, and "[t]he trial court's determination will not be disturbed on appeal absent a clear showing of abuse." *Smith v. State*, 110 Nev. 1094, 1102-03, 881 P.2d 649, 654 (1994). A district court may grant a new trial "if required as a matter of law or on the ground of newly discovered evidence." NRS 176.515(1). When analyzing these issues, "a defendant is entitled to a fair trial, not a perfect one" and "[a] criminal conviction is not to be lightly overturned." *Rudin v.*

State, 120 Nev. 121, 136-37, 86 P.3d 572, 582 (quoting *United States v. Young*, 470 U.S. 1, 11 (1985)).

Campbell provides no authority or evidence to support his argument that the interaction prejudiced him, especially as the district court found that Campbell initiated the communication, it was a mere greeting, it lasted less than a minute, it was outside of the presence of the jury, and it had no meaningful effect on Jannacone's testimony or the trial. Campbell also fails to demonstrate that he is entitled to relief based on a violation of the witness-exclusionary rule. The witness-exclusionary rule prevents a witness from listening to the testimony of another witness. NRS 50.155(1). Violations of the witness-exclusionary rule can warrant a mistrial. See *Dickey v. State*, 140 Nev., Adv. Op. 2, 540 P.3d 442, 451 (2024). But, if the violation does not affect the witness's testimony, then a mistrial is unnecessary. *Id.* The brief interaction between Campbell and Jannacone did not involve Jannacone's testimony, and Campbell did not testify. Thus, Campbell is not entitled to relief based on this argument.

Third, Campbell argues that he was denied his constitutional right to a public trial because CERT officers kept "unauthorized people" from the court. Campbell contends that the CERT officers in the hallway outside the courtroom preventing "unauthorized people" from entering the court violated his constitutional right to a public trial. The State responds that the "unauthorized people" mentioned in the officers' statements were witnesses who were not allowed inside the courtroom, and that this was standard procedure for correctional officers during a trial. Campbell concedes that he did not raise this issue before the district court at trial and thus seeks plain error review. See *Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48 (2018) (explaining that NRS 178.602 allows a court to take

notice of plain errors when an error has otherwise been forfeited for failure to raise it below).

“When properly preserved, a violation of a defendant’s Sixth Amendment right to a public trial, whether due to a full or partial courtroom closure, is structural error.” *Palmer v. State*, 140 Nev., Adv. Op. 41, 553 P.3d 447, 452 (Ct. App. 2024). To demonstrate plain error, Campbell must show that “(1) there was an error; (2) the error is plain, meaning that it is clear under the current law from a casual inspection of the record; and (3) the error affected [his] substantial rights.” *Jeremias*, 134 Nev. at 50, 412 P.3d at 48 (internal quotation marks omitted). “[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).” *Id.* at 51, 412 P.3d at 49.

As discussed previously, the CERT officers provided statements concerning Jannacone’s interaction with Campbell. In those statements, they explained that they were tasked with transporting Campbell to the courtroom and stated that they were also in charge of making sure that unauthorized persons did not enter the courtroom. However, Campbell identifies nothing from the record to show the CERT officers actually prevented anyone from entering the courtroom. At most, the record suggests that witnesses could not enter the courtroom unless it was their turn to testify, to prevent violations of the witness-exclusionary rule. Nothing in the record demonstrates that the courtroom was closed to the public. Thus, a casual inspection of the record does not reveal that the direction to exclude “unauthorized people” resulted in Campbell’s Sixth Amendment right to a public trial being violated, and his argument fails.


Fourth, Campbell argues that the district court abused its discretion when it excluded a prospective juror for cause without trying to rehabilitate him. The State responds that the court acted within its discretion because the juror equivocated on whether he could be unbiased and impartial during the trial.

This court analyzes a district court's ruling on a challenge for cause against a juror for an abuse of discretion. *See Sayedzada v. State*, 134 Nev. 283, 291, 419 P.3d 184, 192 (Ct. App. 2018) (reviewing for an abuse of discretion a district court's denials of challenges for cause). "The importance of a truly impartial jury, whether the action is criminal or civil, is so basic to our notion of jurisprudence that its necessity has never really been questioned in this country." *Azucena v. State*, 135 Nev. 269, 273, 448 P.3d, 534, 538 (2019) (quoting *Whitlock v. Salmon*, 104 Nev. 24, 27, 752 P.2d 210, 212 (1988)). "The voir dire process is a crucial means of ensuring the defendant's right to an impartial jury, as it allows the parties and the district court to identify unqualified jurors and to remove prospective jurors who will not be able to impartially follow the court's instructions and evaluate the evidence." *Id.* (internal quotation marks omitted). "It is well-established that trial judges are in the best position to view the prospective juror's demeanor and judge the veracity of the juror's assertion of impartiality." *Sanders v. Sears-Page*, 131 Nev. 500, 509, 354 P.3d 201, 207 (Ct. App. 2015).


The district court did not abuse its discretion when it removed the prospective juror for cause after he equivocated on setting aside his potential bias. It is the court's duty to identify unqualified jurors and remove them to ensure that the parties receive a fair trial. Here, the juror indicated that he might not be impartial in response to the court's question,

the State inquired about his answer, and his answer remained the same. That is a sufficient reason to excuse a juror, and we discern no abuse of discretion. Campbell provides no authority to support his proposition that a court must attempt to rehabilitate a juror who indicates bias and therefore we need not consider it further. *See Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) ("It is appellant's responsibility to present relevant authority and cogent argument; issues not so presented need not be addressed by this court."). Thus, Campbell's argument does not warrant relief. Accordingly we

ORDER the judgment of conviction AFFIRMED.³


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Gary Fairman, District Judge
Nevada State Public Defender's Office
Attorney General/Carson City
Attorney General/Ely
White Pine County Clerk

³Insofar as Campbell has raised arguments that are not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.