

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JAMES BURR WHITE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 87674-COA

FILED

APR 09 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

James Burr White appeals from a judgment of conviction, entered pursuant to jury verdict, of battery which constitutes domestic violence with a prior felony conviction for domestic battery. Second Judicial District Court, Washoe County; Egan K. Walker, Judge.

First, White argues the State produced insufficient evidence of guilt. Evidence is sufficient to support a jury verdict 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) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)).

At trial, White’s fiancé testified that White punched her in the face while driving to a convenience store. The altercation then spilled out of the car into the convenience store parking lot, where it was witnessed by a third party and captured on surveillance video. The surveillance video documented White and the victim struggling and White punching the victim. The State also introduced a recording of a phone call in which White acknowledged the video showed him striking the victim. Responding officers photographed the victim’s injuries, and those photographs were

shown to the jury. From this evidence, a rational juror could have found White guilty of battery which constitutes domestic violence. See NRS 33.018; NRS 200.485(3). To the extent the victim's testimony was inconsistent or contradicted by other witnesses, "it is the jury's function, not that of the [reviewing] court, to assess the weight of the evidence and determine the credibility of witnesses." *McNair*, 108 Nev. at 56, 825 P.2d at 573. A jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict. *Id.*

Second, White argues the district court erred in denying his motion to reconsider the joinder of the July 21, 2021, counts with the remaining charged offenses, and sever those charges. In three separate cases, the State charged White with battery which constitutes domestic violence and second-degree kidnapping occurring on or about December 5, 2020; eluding a police officer occurring on or about December 24, 2020; and second-degree kidnapping and two counts of battery which constitutes domestic violence on or about July 21, 2021. The district court granted the State's pretrial motions to join these three cases. White asserts the district court erred by not severing the July charges from the instant prosecution.

White did not oppose the motion seeking to join the July 2021 offenses with the remaining counts. Although he filed a motion to reconsider joinder and sever the July counts below, the district court denied the motion, relying on White's decision to not oppose joinder, and did not reconsider the merits of the joinder motion; thus, we review for plain error. See NRS 178.602; *Cohen v. Padda*, 138 Nev. 149, 151-51, 507 P.3d 187, 190 (2022) (noting there is "a two-part test to determine whether a motion for reconsideration preserves arguments for appeal . . . the order denying reconsideration must have been entered before the notice of appeal was

filed . . . [and] the district court must have entertained the motion on its merits"); *Green v. State*, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003) ("In conducting plain error review, we must examine whether there was 'error,' whether the error was 'plain' or clear, and whether the error affected the defendant's substantial rights.").

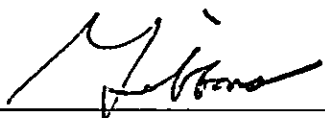
Here, the record reveals White was acquitted of all but one charge. As discussed above, that charge was supported by the victim's and an eyewitness's testimony, surveillance video of the conduct, photographs of the injuries, and White's admission in a recorded call. Accordingly, even if the district court erred in granting joinder, White has not demonstrated it affected his substantial rights and therefore has not shown plain error. *See Jeremias v. State*, 134 Nev. 46, 50-51, 412 P.3d 43, 49 (2018) ("Under Nevada law, 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).").

Third, White asserts trial counsel was ineffective for not challenging the motion to join the July offenses with the December offenses. He also contends counsel alienated a defense witness with misrepresentations about a subpoena. An ineffective-assistance-of-counsel claim is generally inappropriate on direct appeal, and White has failed to demonstrate his claim falls into an exception to that general rule. *See Pellegrini v. State*, 117 Nev. 860, 883, 34 P.3d 519, 534 (2001) ("[W]e have generally declined to address claims of ineffective assistance of counsel on direct appeal unless there has already been an evidentiary hearing or where an evidentiary hearing would be unnecessary."), *abrogated on other grounds by Rippo v. State*, 134 Nev. 411, 423 n.12, 423 P.3d 1084, 1097 n.12 (2018). Thus, we decline to consider this claim.

Fourth, White asserts that the cumulative effect of trial errors warrants reversal. Here, White failed to demonstrate any alleged errors to cumulate. *See Chaparro v. State*, 137 Nev. 665, 673-74, 497 P.3d 1187, 1195 (2021) (holding a claim of cumulative error lacked merit where there were no errors to cumulate). Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. Egan K. Walker, District Judge
American Freedom Group, LLC
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk