IN THE SUPREME COURT OF THE STATE OF NEVADA

JUAN CARLOS GALVIN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 86927

FILED

AUG 21 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of ownership or possession of a firearm by a prohibited person. Eighth Judicial District Court, Clark County; Eric Johnson, Judge.

While patrolling in response to a nearby shooting, Las Vegas Metro Police Officer Bernal observed appellant Juan Carlos Galvin throw an object over a fence, where it landed on residential property. Bernal stopped Galvin, who was wearing one blue latex glove, and discovered the tossed object was a firearm. Law enforcement also determined Galvin had previously been convicted of a felony and was, therefore, prohibited from possessing a firearm. Following a three-day trial, a jury convicted Galvin of possession of a firearm by a prohibited person.

The district court did not commit reversible error by declining to order the production of all emails between Officer Bernal and the State

Galvin argues that the district court violated his statutory right to pretrial discovery and his constitutional right to confrontation by not ordering the State to disclose all emails between Officer Bernal and the State. Before trial, Galvin moved the court for an order directing the State to disclose all emails between Officer Bernal and the State concerning Bernal's follow-up investigation. The court instructed the State to disclose any emails that contained information different from what was in the

25-36721

original investigation report. Galvin contends that the court's ruling violated NRS 174.235(1)(a), which requires the State to allow inspection of "any written or recorded statements made by a witness the prosecuting attorney intends to call during the case in chief of the State," and constitutes structural error requiring automatic reversal.

We agree that the district court erred by declining to order the State to disclose all emails from Officer Bernal. However, the district court's failure to order disclosure of all emails is not structural error. *See Cortinas v. State*, 124 Nev. 1013, 1024 n.41, 195 P.3d 315, 323 n.41 (2008) (citing *Johnson v. United States*, 520 U.S. 461, 469 (1997), for a catalogue of errors defined as structural error); *see also Knipes v. State*, 124 Nev. 927, 934, 192 P.3d 1178, 1182-83 (2008) (distinguishing structural errors as a "limited class of fundamental constitutional errors that are so intrinsically harmful to the concept of a fair trial as to require automatic reversal without regard to their effect on the outcome of the proceeding") (internal quotation marks and alterations omitted). Thus, we review the error for harmlessness. *Knipes*, 124 Nev. at 934-35, 192 P.3d at 1183.

Though Galvin argues that his constitutional right to confront witnesses was infringed by the district court's order limiting disclosure of the emails, the district court's order was not a constitutional error as Galvin was able to effectively cross-examine Officer Bernal. *See Chavez v. State*, 125 Nev. 328, 338, 213 P.3d 476, 483 (2009) ("[T]he Confrontation Clause guarantees an *opportunity* for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish." (internal quotation marks omitted)).

Because this error is of nonconstitutional dimension, the harmlessness standard turns on whether the error "had substantial and

injurious effect or influence in determining the jury's verdict." *Knipes*, 124 Nev. at 935, 192 P.3d at 1183 (internal quotation marks omitted). Galvin argues that he was never provided with the requested evidence. Thus, there are only two factual scenarios: (1) either any new emails reiterated what was contained in the report or did not contain new information, or (2) the State failed to comply with the district court order.

Galvin does not assert that any emails exist that were not disclosed, nor does he assert that any exculpatory evidence was not disclosed. Though the district court articulated an incorrect standard for the disclosure of evidence, Galvin does not argue that the State disobeyed the district court's order. Further, Galvin has failed to demonstrate that the correct standard for disclosure would have changed the jury's verdict. The State presented substantial evidence proving Galvin's guilt and his assertion that his right to confront witnesses was infringed is speculative. Accordingly, we conclude that the district court's error with respect to the disclosure of the emails did not prejudicially impact the jury's verdict and was therefore harmless.

The district court did not abuse its discretion by denying a for-cause juror challenge

Galvin argues that the district court erred in denying his for-cause challenge to prospective juror 058 for actual bias. Galvin additionally argues that because he had exhausted all peremptory challenges and prospective juror 058 was empaneled on the jury, the district court violated his right to a fair and impartial jury, warranting reversal of his conviction.

We review a district court's decision regarding a for-cause challenge to a prospective juror for an abuse of discretion. *Blake v. State*, 121 Nev. 779, 795-96, 121 P.3d 567, 578 (2005). The court should remove a prospective juror for cause "only if the prospective juror's views would

prevent or substantially impair the performance of his duties as a juror in accordance with his instructions and his oath." *Preciado v. State*, 130 Nev. 40, 44, 318 P.3d 176, 178 (2014) (internal quotation marks omitted). Here, while juror 058 initially expressed confusion regarding the burden of proof, review of the record shows that this juror was sufficiently questioned and made subsequent unequivocal assurances of impartiality. We therefore conclude the district court did not abuse its discretion in denying Galvin's for-cause challenge. *See Weber v. State*, 121 Nev. 554, 581, 119 P.3d 107, 125 (2005) *overruled in part on other grounds by Farmer v. State*, 133 Nev. 693, 405 P.3d 114 (2017) (holding that prospective jurors who question their own impartiality may be rehabilitated if they can "state without reservation that they had relinquished views previously expressed which were at odds with their duty as impartial jurors.")

The State did not violate Galvin's due process rights during closing argument

Galvin asserts that the State violated his due process rights by making improper comments during closing argument. Galvin did not object to any of these comments at trial. We therefore review for plain error. *Byars v. State*, 130 Nev. 848, 865, 336 P.3d 939, 950 (2014). "Before this court will correct a forfeited error, an appellant must demonstrate that: (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." *Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48 (2018). Statements made by the prosecution in closing must be considered in context and "a criminal conviction is not to be lightly overturned on the basis of a prosecutor's comments standing alone." *Thomas v. State*, 120 Nev. 37, 47, 83 P.3d 818, 825 (2004) (quoting *United States v. Young*, 470 U.S. 1, 11 (1985)).

Comment on Galvin's right not to testify

First, Galvin argues that the State improperly commented on his right to not present witnesses or testify and shifted the burden of proof to Galvin when it argued:

> Now, you'll hear a lot of conjecture and maybes about why he would wear only one glove. You'll probably hear arguments that [ ] he couldn't pull the slide, load the gun, handle the gun, et cetera with just one hand. But there is no evidence, zero, nada, nothing in the record showing that the Defendant was doing this (indicating) while walking down the sidewalk.

Specifically, Galvin takes issue with the statement "there is no evidence, zero, nada, nothing in the record showing that the Defendant was doing this (indicating) while walking down the sidewalk." He argues that his defense at trial was that he did not possess a firearm, and the State's comment improperly alerted the jury to the fact that he did not testify or present any evidence.

The Fifth Amendment protects a criminal defendant's right to not testify. *Harkness v. State*, 107 Nev. 800, 803, 820 P.2d 759, 761 (1991); U.S. Const. Amend. V. When, as here, the prosecutor's comment is an *indirect* reference to the defendant's decision not to testify, we must determine whether "the language used was manifestly intended to be or was of such a character that the jury would naturally and necessarily take it to be comment on the defendant's failure to testify." *Harkness*, 107 Nev. at 803, 820 P.2d at 761. The prosecutor, relying on facts in evidence, deduced or concluded that the defense's theory of the case was untenable. *See Parker v. State*, 109 Nev. 383, 392, 849 P.2d 1062, 1068 (1993) ("Statements by the prosecutor, in argument, indicative of his [or her] opinion, belief, or knowledge as to the guilt of the accused, when made as a deduction or a

conclusion from the evidence introduced in the trial, are permissible and unobjectionable." (internal quotation marks and citations omitted)).

The challenged statement is not an error that is clear under current law from a casual inspection of the record. Accordingly, we conclude that the State's comments did not constitute plain error.

Comment disparaging the defense's theory

Second, Galvin argues that the State's comment that "you'll hear a lot of conjecture and maybes about why he would wear only one glove" improperly disparaged the defense's theory of the case and lowered the burden of proof by "implying that the jury should disregard the theory of defense."

It is improper for the State to "disparage legitimate defense tactics." *Butler v. State*, 120 Nev. 879, 898, 102 P.3d 71, 84 (2004). However, by stating that the jury will hear "conjectures and maybes" from defense counsel during closing arguments, the prosecutor was anticipating inferences drawn by the defense concerning the facts in evidence. This comment was not improper disparagement and does not constitute an error that is clear under current law from a casual inspection of the record. *See, e.g., Burns v. State*, 137 Nev. 494, 502, 495 P.3d 1091, 1101 (2021) (finding statements referring to the defense's lack of engagement in "a search for a truth" were not disparaging or improper). Accordingly, we conclude that the State's comment on "conjectures and maybes" was not plain error.

Comments on presumption of innocence and witness vouching

Third, Galvin argues that a series of statements during the State's closing and rebuttal arguments were improper comments on his presumption of innocence and improperly vouched for a witness. Specifically, during closing arguments, the State said "[w]e already saw from the body-worn camera that the officer doesn't just drive around looking

for people to brace up."[1] And again, during rebuttal argument, the State said "[Officer Bernal is] not running around throwing handcuffs on people and

> it all comes down to do you think Officer Bernal is just wrong? Somebody that's not running around pulling people over, handcuffing them is just dead set on convincing himself that the Defendant threw a gun into these rocks? So hungry for that power that he's just going to make that up. It just doesn't make any sense.

Galvin argues that these statements invited the jury to find him guilty on the basis that the police stopped him and the police do not stop innocent people. Galvin also asserts that the prosecution improperly vouched for Officer Bernal by making these statements.

"A prosecutor may suggest that the presumption of innocence has been overcome; however, a prosecutor may never properly suggest that the presumption no longer applies to the defendant." *Morales v. State*, 122 Nev. 966, 972, 143 P.3d 463, 467 (2006). When the outcome of a case "depends on which witnesses are telling the truth, reasonable latitude should be given to the prosecutor to argue the credibility of the witness." *Rowland v. State*, 118 Nev. 31, 39, 39 P.3d 114, 119 (2002). However, arguments concerning witness credibility are improper if they impermissibly vouch for or against a witness. *Id.*

The State's comments during closing and rebuttal are not errors that are clear under current law from a casual inspection of the record. Accordingly, we conclude Galvin fails to demonstrate plain error regarding any of these comments. In addition, Galvin has failed to demonstrate that

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[1]In the body-cam footage, Officer Gonzalez stated to Galvin "[t]here's a reason we stopped you. We don't just stop random people."

any error affected his substantial rights. We further conclude that Galvin fails to show plain error with respect to the State's comments regarding Officer Bernal, as the comments did not vouch for the officer but rather pointed out the lack of motive for the officer to fabricate.

The district court did not violate Galvin's right to a fair trial by incorrectly instructing the jury

Galvin argues that the district court violated his rights by improperly instructing the jury. He challenges five instructions. We review a "district court's decision to give a particular instruction for an abuse of discretion or judicial error." *Jackson v. State*, 117 Nev. 116, 120, 17 P.3d 998, 1000 (2001). We review de novo whether an instruction is an accurate statement of the law. *Cortinas v. State*, 124 Nev. 1013, 1019, 195 P.3d 315, 319 (2008); *see also Crawford v. State*, 121 Nev. 744, 754, 121 P.3d 582, 588 (2005) (stating a jury should only "be provided with applicable legal principles by accurate, clear, and complete instructions specifically tailored to the facts and circumstances of the case").

Jury instruction 9

Jury instruction 9 addressed the elements of the offense. It read in part: "Neither the concealment of the firearm nor the carrying of the firearm are necessary elements of the offense." Galvin asserts that this instruction incorrectly lowered the State's burden of proof because the jury could convict Galvin "if he was simply near the firearm," even though the State's theory was one of actual possession, which requires Galvin to physically possess the firearm.

When viewed in its totality, jury instruction 9 was not inaccurate or improperly confusing. The jury was properly instructed on the necessary elements of the charged offense that the State was required to prove that (1) Galvin owned, possessed, or had under his custody or

control a firearm; and (2) he had been convicted of a felony. *See* NRS 202.360. Therefore, the district court did not abuse its discretion in giving instruction 9.

Jury instruction 10

Jury instruction 10 provides the definition for both actual and constructive possession. Galvin argues that the constructive possession definition was irrelevant because this was not a constructive possession case, and that this instruction allowed the jury to convict Galvin based on evidence not presented by the State.

Galvin was charged under NRS 202.360, which allows for a conviction under either actual or constructive possession. *See* NRS 202.360 ("A person shall not own or have in his or her possession or under his or her custody or control any firearm . . . ."). The instruction clearly set forth the necessary elements of the offense and was not improperly confusing. Though the district court could have tailored the instruction more to the facts and circumstances of the case, we conclude that the district court did not abuse its discretion in instructing the jury as to both actual and constructive possession.

Jury instruction 11

Jury instruction 11 reads:

> Although you are to consider only the evidence in the case in reading a verdict, you must bring to the consideration of the evidence your everyday common sense and judgment as reasonable men and women. Thus, you are not limited solely to what you see and hear as the witnesses testify. You may draw reasonable inferences from the evidence which you feel are justified in the light of common experience, keeping in mind that such inferences should not be based on speculation or guess.

Galvin argues that this instruction improperly suggested that jurors could consider facts outside of what the State presented at trial. We disagree. The instruction limits the jury to only consider the evidence presented in the case but also instructs the jury that it can apply common sense in evaluating the evidence. The jury was additionally instructed not to conduct outside research or investigation, thus limiting any potential juror misconduct and properly instructing the jury as to its duty. Accordingly, the district court did not abuse its discretion in providing jury instruction 11.

Jury instruction 7

Jury instruction 7, which instructs on the consideration of witness testimony, reads in part: "[T]wo people may see the same event but remember it differently. You may consider these differences, but do not decide that testimony is untrue just because it differs from other testimony."[2] Galvin argues that this language instructs "the jury that they cannot disregard inconsistent testimony between witnesses" and "tells them to ignore the duty to disregard testimony that they do not believe," which makes the instruction misleading and contradicts other instructions.

We disagree. This instruction properly instructed the jury that it was the ultimate judge of the weight and worth of the evidence. *See Milligan v. State*, 101 Nev. 627, 635, 708 P.2d 289, 294 (1985) (concluding that a jury instruction was not given in error when it properly instructed the jurors they were the ultimate judge of the weight and worth of the

[2]This jury instruction is the standard Credibility of Witnesses instruction approved by the Ninth Circuit Court of Appeals. *See* United States Courts for the Ninth Circuit, Manual of Model Criminal Jury Instructions: 6.9 Credibility of Witnesses (last visited Feb. 6, 2025), https://www.ce9.uscourts.gov/jury-instructions/node/888.

evidence). Accordingly, the instruction was not inaccurate or misleading, and the district court did not abuse its discretion in giving this instruction to the jury.

Jury instruction 17

Jury instruction 17 reads, in part, "if the evidence in the case convinces you beyond a reasonable doubt of the guilt of Mr. Galvin, you should so find, even though you may believe one or more persons are also guilty." Galvin argues that this instruction was not relevant because the guilt of another person was not an issue present in the case. During trial, however, there was testimony from the officers that they were responding to reports of a shooting when they encountered Galvin, though the State specifically stated that Galvin was not a person of interest in that incident. Further, DNA evidence found on the firearm did not belong to Galvin. Because there was evidence presented that could indicate more than one person handled the firearm and the instruction was not confusing to the jury, the district court did not abuse its discretion by instructing the jury that only the guilt of Galvin was to be considered.

The district court did not abuse its discretion by admitting officer body-camera footage

Galvin argues that the district court abused its discretion by allowing Officer Gonzalez's body-camera footage to be admitted because it bolstered Officer Bernal's testimony and was an improper comment on Galvin's presumption of innocence. In the footage, Gonzalez is heard stating "[t]here's a reason we stopped you. We don't just stop random people." Galvin argues that the admission of this body-cam footage "invited" the jury to consider Galvin's seizure and arrest as evidence of his guilt. Further, Galvin argues that because the only direct evidence in this case

came from Officer Bernal's testimony, Gonzalez's body-cam footage was "significantly prejudicial as there was not substantial evidence of guilt."

Under NRS 48.035, relevant evidence must be excluded if its prejudicial effect substantially outweighs its probative value. The decision to admit or exclude evidence is within the district court's sound discretion. *Daly v. State*, 99 Nev. 564, 567, 665 P.2d 798, 801 (1983); NRS 48.035(1) However, "failure to object precludes appellate review of the matter unless it rises to the level of plain error." *Anderson v. State*, 121 Nev. 511, 516, 118 P.3d 184, 187 (2005); NRS 178.602. A criminal defendant enjoys a presumption of innocence and the court "must carefully guard against dilution of the principle that guilt is to be established by probative evidence and beyond a reasonable doubt." *Estelle v. Williams*, 425 U.S. 501, 503 (1976).

Galvin did not object to the admission of the body-cam footage at trial as undermining his presumption of innocence. Rather, he objected on the basis that the footage bolstered the testimony of the officers. Accordingly, we review the district court's decision to admit the footage for plain error. Galvin fails to show any error plain from the record because the probative value of allowing the jury to personally perceive the officer's investigation through the body-cam footage outweighs any potential prejudicial effect of the statement. Further, Galvin provides no cogent argument as to why Officer Gonzalez's body-cam footage was inadmissible because it bolstered the testimony of Officer Bernal. *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."). Accordingly, the district court did not plainly err in admitting Officer Gonzalez's body-cam footage.

The State produced sufficient evidence of a "firearm"

Galvin argues that the State failed to present any evidence that the gun recovered was a "firearm" under Nevada law. He asserts that the testimony provided by Officers Bernal and Gonzalez did not show the "alleged firearm" was designed to have a "projectile expelled through the barrel by the force of any explosion or other form of combustion," as required by NRS 202.253(3).

In considering whether insufficient evidence supports a conviction, this court views the evidence in the light most favorable to the State to determine whether "*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)). NRS 202.360(1) provides that "[a] person shall not own or have in his or her possession or under his or her custody or control any firearm if the person . . . [h]as been convicted of a felony." The term "firearm" as used in this statute "includes any firearm that is loaded or unloaded and operable or inoperable." NRS 202.360(4). A firearm is defined as "any device designed to be used as a weapon from which a projectile may be expelled through the barrel by the force of any explosion or other form of combustion." NRS 202.253(3).

Galvin's argument that there was no evidence presented to establish that the item recovered was a firearm is belied by the record. The State presented evidence through two officers with many years of firearms training along with photographs of the item recovered to establish that the item was in fact a 9-millimeter firearm. Accordingly, the State provided sufficient evidence for any rational trier of fact to have found, beyond a reasonable doubt, that the item recovered was a firearm under NRS 202.360.

Cumulative error does not warrant reversal

Finally, Galvin argues that his conviction should be reversed due to the cumulative effect of errors below. Because we discern only one error, which we conclude was harmless, there is nothing to cumulate. *See Lipsitz v. State*, 135 Nev. 131, 140 n.2, 442 P.3d 138, 145 n.2 (2019) (concluding that there were no errors to cumulate when the court found only one error). Therefore, we conclude that Galvin's contention is without merit. Accordingly, we

ORDER the judgment of conviction AFFIRMED.

Pickering, J.
Pickering

Cadish, J.
Cadish

Lee, J.
Lee

cc: Hon. Eric Johnson, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk