

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

AARAYON JOHNSON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 89888-COA

**FILED**

**NOV 12 2025**

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY [Signature]  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Aarayon Johnson appeals from a judgment of conviction, entered pursuant to a jury verdict, of discharging a firearm from or within a structure or vehicle; nine counts of discharging a firearm at or into an occupied structure, vehicle, aircraft, or watercraft; and two counts of battery with the use of a deadly weapon resulting in substantial bodily harm. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

First, Johnson argues the district court abused its discretion by denying his motion to sever his and his codefendant N. Parros' joint trial. A district court's denial of a motion for severance is reviewed for an abuse of discretion. *Chartier v. State*, 124 Nev. 760, 764-65, 191 P.3d 1182, 1185 (2008). NRS 174.165(1) provides that a trial judge may sever a joint trial if "it appears that a defendant... is prejudiced by a joinder of... defendants... for trial together." Severance is appropriate "only if there is a serious risk that a joint trial would compromise a specific trial right of one of the defendants, or prevent the jury from making a reliable judgment about guilt or innocence." *Chartier*, 124 Nev. at 765, 191 P.3d at 1185 (quoting *Marshall v. State*, 118 Nev. 642, 647, 56 P.3d 376, 379 (2002)). "To establish that joinder was prejudicial requires more than simply

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showing that severance made acquittal more likely,” and reversal is warranted only if misjoinder “has a substantial and injurious effect on the verdict.” *Marshall*, 118 Nev. at 647, 56 P.3d at 379.

Johnson first contends his trial should have been severed from Parros’ trial because he was prejudiced by the inability to fully develop his defense that Parros alone had motive to commit the crimes. Johnson wanted to elicit testimony from one of the victims, A. Morris, that she had a prior relationship with Parros that ended when he went to prison “to help establish Parros’s feelings and sudden impulse to lash out at Morris, versus Johnson’s state of mind, as he did not know [the victims] at all.”

During its discussion of Johnson’s motion below, the district court did not rule that Johnson could not question Morris about her prior relationship with Parros but questioned why Johnson needed to elicit from Morris that Parros had gone to prison. Johnson’s counsel argued that the testimony, including the fact the relationship ended when Parros went to prison, was material and that she would elicit it for a nonpropensity purpose. Counsel added that she planned to ask Morris “some further questions that I am not going to disclose now, because it’s part of my defense” and that she intended “to make an argument with that piece of information in concert with other pieces of information I’m going to ask probably before I get to that question.” Counsel said she planned to ask Morris questions in order “to make an argument about Mr. Parros’s state of mind and what I believe happened, to then talk about my own client’s state of mind and what I believe happened.” Even though the district court made no ruling limiting Johnson’s ability to question Morris about her prior relationship with Parros, Johnson ultimately asked Morris no such questions. In light of these circumstances, Johnson fails to demonstrate the

joint trial denied him the ability to fully develop his defense. Therefore, we conclude he is not entitled to relief based on this claim.

Johnson next contends his trial should have been severed from Parros' trial because he was prejudiced by Morris' testimony that she did not initially tell police she knew Parros because she was scared; had a child; and knew "some of the same people," and was scared for her life and her son's life. Johnson appears to argue he was prejudiced because Morris' testimony painted him as one of those persons Morris feared because he and Parros knew each other. Morris testified that she did not know Johnson. Johnson fails to demonstrate that the jury was unable to compartmentalize the challenged testimony against Parros only or that the testimony compromised a specific trial right or prevented the jury from making a reliable judgment about Johnson's guilt or innocence. Therefore, we conclude he is not entitled to relief based on this claim.

Finally, Johnson contends his trial should have been severed from Parros' trial because he and Parros had mutually exclusive defenses as Johnson's defense was that he was merely present while Parros' defense was that he was the shooter but lacked the specific intent to kill. Johnson raised this claim for the first time in his reply brief.<sup>1</sup> Thus, we decline to consider it. *See LaChance v. State*, 130 Nev. 263, 277 n.7, 321 P.3d 919, 929 n.7 (2014); *see also* NRAP 28(c) (stating a reply brief is "limited to answering any new matter set forth in the opposing brief").

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<sup>1</sup>In his opening brief, Johnson recounts his pretrial argument before the district court that he and Parros had mutually exclusive defenses because Johnson represented his defense was that he was merely present and Parros was the shooter while Parros represented his defense was that the shots did not come from the car Johnson and Parros were in. However, Johnson does not identify this as a basis for reversal in his opening brief.

Second, Johnson argues the district court abused its discretion by allowing the State to admit text messages Johnson sent to another man ("Yella" or "King Yella"), wherein Johnson stated that an unknown declarant told Johnson a hit had been authorized on Yella. Johnson contends that, despite the State's pretrial offer of proof regarding its intended use of the text messages, it ultimately used them for the truth of the matter asserted during its closing argument. Johnson also contends that, if the text messages were not used for their truth, they were not relevant and their probative value was substantially outweighed by the danger of unfair prejudice because they implicated "gang authorization for violence." Generally, all relevant evidence is admissible. NRS 48.025(1). Relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence." NRS 48.015. However, relevant evidence "is not admissible if its probative value is substantially outweighed by the danger of unfair prejudice." NRS 48.035(1). And hearsay is "a statement offered in evidence to prove the truth of the matter asserted." NRS 51.035.

Prior to trial, the State orally moved to admit text messages wherein Johnson wrote to Yella, "he said it's a green light on your head;" and "[h]e was fittin' to call some guys but he not gonna do it because of us, LOL."<sup>2</sup> Johnson objected on hearsay and relevancy grounds. The prosecutor argued that the "he" referred to in the text messages was one of the victims, L. Chaney. The prosecutor represented that he did not "think

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<sup>2</sup>Johnson did not provide the text messages on appeal for our consideration. Their content is approximated here based on the record before this court.

anyone ever told Mr. Johnson that there was a green light on Yella.” For this reason, the prosecutor argued the statements were not being offered for the truth of the matter asserted but rather to show Johnson was keeping an eye on Chaney and reporting his whereabouts to Yella.<sup>3</sup> The prosecutor further represented that surveillance footage supported his conclusion that Chaney was the “he” referred to in the text messages and that Johnson was surveilling Chaney’s whereabouts. The district court ruled that it would allow the State to use the text messages in its opening statement. Johnson did not object to the admission of the text messages during trial or their use during closing argument.

First, we are not convinced that Johnson preserved this issue for our review. Generally, we review the admission of evidence for an abuse of discretion. *McLellan v. State*, 124 Nev. 263, 269, 182 P.3d 106, 110 (2008). Here, however, the issue was not briefed before trial. Further, the district court’s ruling was limited to opening statements, and the district court did not make a definitive ruling regarding the admission or use of the text messages during any phase of the trial. And Johnson did not contemporaneously object to the admission of the text messages during trial or closing argument. Thus, the entirety of Johnson’s claim is potentially waived and subject to plain error review. See *Richmond v. State*, 118 Nev. 924, 932, 59 P.3d 1249, 1254 (2002) (providing that a pretrial motion preserves an issue for appeal, so long as “[the] objection has been fully briefed, the district court has thoroughly explored the objection during a hearing on a pretrial motion, and the district court has made a definitive

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<sup>3</sup>The State also admitted text messages wherein Johnson relayed to Yella a man’s whereabouts: “He a dummy, he by the door right now;” “He in the valet right now.”

ruling”); *Riddle v. State*, 96 Nev. 589, 591, 613 P.2d 1031, 1033 (1980) (providing that one must make a “contemporaneous objection” in order to preserve an issue for appeal); *see also Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48-49 (2018) (reviewing unpreserved claims for plain error).

But even reviewing for an abuse of discretion, Johnson fails to demonstrate he is entitled to relief. Johnson did not include the text messages or the surveillance video footage in the record on appeal. *See* NRAP 10(a) (stating that “[t]he district court record consists of the papers and exhibits filed in the district court”); NRAP 10(b)(1) (providing that the parties shall include in an appendix “the portions of the district court record to be used on appeal”); *see also* NRAP 10(b)(2) (stating that “[i]f exhibits cannot be copied to be included in the appendix the parties may request transmittal of the original exhibits”). And because it is the appellant’s burden to ensure that a proper appellate record is prepared, *see Greene v. State*, 96 Nev. 555, 558, 612 P.2d 686, 688 (1980), we necessarily presume that the missing evidence supports the district court’s decision to admit the text messages, *cf. Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007).

Further, Johnson’s statements to Yella related to the purported hit authorization were not offered by the State to prove the truth of the statements but merely to demonstrate Johnson’s decision to surveil Chaney, a man whose vehicle was shot at just minutes after the statements were made. *See Wallach v. State*, 106 Nev. 470, 473, 796 P.2d 224, 227 (1990) (“A statement merely offered to show that the statement was made and the listener was affected by the statement, and which is not offered to show the truth of the matter asserted, is admissible as non-hearsay.”). And because Johnson argued during his opening statement that he was merely present

and did not participate in the crimes, the text messages were relevant to establish Johnson's participation in the crimes. Finally, because the State did not argue or demonstrate the statements related to a hit on Yella were true, they were not unduly prejudicial for evoking gang activity. For these reasons, Johnson fails to demonstrate the district court abused its discretion by admitting the text messages. Therefore, we conclude he is not entitled to relief based on this claim.

Third, Johnson argues the district court plainly erred in instructing the jury. Because Johnson did not object to the challenged jury instructions below (instructions nos. 14, 15, and 19), we review for plain error. *See Jeremias*, 134 Nev. at 50, 412 P.3d at 48-49. To demonstrate plain error, an appellant must show there was an error, the error is plain or clear under current law from a casual inspection of the record, and the error affected the appellant's substantial rights. *Id.* at 50, 412 P.3d at 48. Conceding the challenged instructions were accurate statements of the law, Johnson nonetheless argues that, when read as a whole, these instructions improperly allowed the jury to convict him of general intent crimes without finding he had the intent to commit any criminal act. Johnson cites no legal authority to show that these instructions, even when read in concert, were improper. *See Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (stating that an appellant has a duty to present legal authority in support of their arguments). Moreover, instruction no. 15 (regarding conspiracy) and instruction no. 19 (regarding aiding and abetting) both plainly stated that "[g]eneral intent crimes are those that require the intent to do that which the law prohibits." For these reasons, Johnson fails to demonstrate the district court plainly erred by giving these jury instructions. Therefore, we conclude he is not entitled to relief based on this claim.

Finally, Johnson argues the district court erred by failing to remove and replace a juror that refused to deliberate. Johnson did not seek removal and replacement of the juror, and thus we review for plain error. *See Jeremias*, 134 Nev. at 50, 412 P.3d at 48-49. During deliberations, the district court received a note from the foreperson representing that one of the jurors was asking to be excused from jury duty. Concerned that this juror was impeding deliberations, the district court brought the foreperson in and asked about the situation. The foreperson represented that, while the juror was participating at times and "check[ing] out" at times, he was not impeding deliberations. Johnson thus fails to demonstrate the district court plainly erred by failing to remove and replace the juror. Therefore, we conclude he is not entitled to relief based on this claim. For these reasons, we

ORDER the judgment of conviction AFFIRMED.

  
Bulla, C.J.

  
Gibbons, J.

  
Westbrook, J.

cc: Hon. Michelle Leavitt, District Judge  
Attorney General/Carson City  
Clark County District Attorney  
Wright Marsh & Levy  
Eighth District Court Clerk