

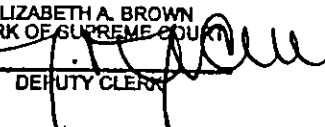
IN THE SUPREME COURT OF THE STATE OF NEVADA

DARRYL DION HENDERSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 89370

FILED

DEC 11 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 battery with the use of a deadly weapon resulting in substantial bodily harm, three counts of assault with a deadly weapon, and three counts of discharging a firearm at or into an occupied vehicle. Eighth Judicial District Court, Clark County; Nadia Krall, Judge.

Appellant Darryl Henderson was convicted after he fired a handgun multiple times at another vehicle, injuring one of the passengers. Henderson raises three issues on appeal. Because Henderson did not object to any of the alleged errors, we review for plain error. *Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48 (2018). To demonstrate plain error, Henderson must show “(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 [his] substantial rights.” *Id.*

Impeachment evidence

Henderson argues the district court erroneously precluded Henderson’s right to impeach a witness with a recorded jail call. See NRS 50.085(3) (allowing for the admission of “[s]pecific instances of the conduct

of a witness, for the purpose of attacking or supporting the witness's credibility"). But Henderson never tried to introduce the jail call. As a result, the district court never ruled on the admissibility of the contents of the jail call or propriety of cross-examination. Because the district court made no ruling, there is no potential error to evaluate. *See Martinorellan v. State*, 131 Nev. 43, 49, 343 P.3d 590, 593 (2015) ("To amount to plain error, the error must be so unmistakable that it is apparent from a casual inspection of the record." (internal quotation marks omitted)).

Prosecutorial misconduct

Henderson alleges several unpreserved instances of prosecutorial misconduct. First, Henderson asserts the State improperly implied that three witnesses were intimidated by Henderson. *Cf. Rippo v. State*, 113 Nev. 1239, 1252, 946 P.2d 1017, 1026 (1997) (holding "[t]he prosecution's intimations of witness intimidation by a defendant are reversible error unless the prosecutor also presents substantial credible evidence that the defendant was the source of the intimidation"). Although the witnesses stated they did not want to be in court, none of the testimony elicited by the State suggested that Henderson intimidated the witnesses. Therefore, Henderson has not demonstrated plain error. *See Martinorellan*, 131 Nev. at 49, 343 P.3d at 593.

Next, Henderson asserts the State introduced improper statements from police officers about out-of-court statements heard over the radio. We disagree because these statements were introduced to explain the officer's subsequent actions, not for the statements' truth. *See Wallach v. State*, 106 Nev. 470, 473, 796 P.2d 224, 227 (1990) (allowing out-of-court statements to explain an investigator's subsequent action because the statements are not offered for their truth). Thus, we discern no error.

Henderson also contends the State permitted a detective to vouch for other witnesses when the detective stated there were no major discrepancies between other witnesses' descriptions of Henderson. We are unpersuaded this constitutes improper vouching. *See Perez v. State*, 129 Nev. 850, 861-62, 313 P.3d 862, 870 (2013) (describing vouching as offering a specific opinion on the veracity of another witness). Rather, the detective merely explained that any discrepancies in witnesses' descriptions of Henderson did not affect the detective's investigation, which is not vouching. Accordingly, Henderson has not demonstrated plain error.

Henderson next argues the State introduced two hearsay statements from a detective. First, that a witness told the detective Henderson's nickname. Second, that other officers told Henderson he was not under arrest when speaking to him, which the detective heard on bodycam footage. Henderson has not shown this testimony affected his substantial rights. Another officer testified to detaining but not arresting Henderson, and Henderson's nickname was relevant only to the identification of a single text message, the veracity of which went uncontested. Therefore, Henderson fails to demonstrate plain error affecting his substantial rights. *See Martinorellan*, 131 Nev. at 49, 343 P.3d at 593 (explaining, under plain error, "the defendant must demonstrate that the error affected his or her substantial rights, by causing actual prejudice or a miscarriage of justice" (internal quotation marks and alterations omitted)).

Next, Henderson alleges the State improperly allowed a police officer to refer to Henderson's mugshot from a prior arrest, which amounted to improper other act testimony. *See* NRS 48.045(2) (prohibiting introduction of other acts to prove a defendant's character). But the State

did not intentionally elicit testimony that the officer had access to Henderson's mugshot and quickly redirected the testimony, even without an objection. Because significant evidence supported Henderson's convictions, including numerous eyewitness accounts and video and forensic evidence, we conclude the passing reference to Henderson's prior arrest did not affect his substantial rights. *See Martinorellan*, 131 Nev. at 49, 343 P.3d at 593.

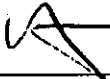
Next, Henderson alleges the prosecutor committed misconduct during rebuttal argument. Henderson argues the prosecutor improperly opined about a witness's credibility by stating "I submit to you if any of you really believe he was asleep in the back of the car, then that's not good because that man was not being forthright with that." Henderson also asserts the prosecutor interjected his personal beliefs when stating he would not have changed his license plate if someone else committed a crime in his car.


These comments were based on the evidence admitted at trial, and because substantial evidence supported Henderson's conviction, we conclude any misconduct does not warrant reversal. *See Rowland v. State*, 118 Nev. 31, 38, 39 P.3d 114, 118-19 (2002) (recognizing that prosecutorial misconduct only warrants reversal if it undermines confidence in the conviction in light of the totality of the evidence). The other challenged statements did not prejudice Henderson, as they either pertained solely to his codefendant or were permissible explanations of the evidence, and we conclude no relief is warranted on this ground.

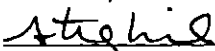
Cumulative error

Lastly, we reject Henderson's claim that cumulative error deprived him of a fair trial. *See Valdez v. State*, 124 Nev. 1172, 1195, 196

P.3d 465, 481 (2008) (defining cumulative error). Accordingly, we,
ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Herndon


_____, J.
Bell


_____, J.
Stiglich

cc: Hon. Nadia Krall, District Judge
Adras & Altig Attorneys at Law
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk