IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LONNIE TERRELL HAWKINS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 90189-COA

ORDER OF AFFIRMANCE

Lonnie Terrell Hawkins appeals from a judgment of conviction, entered pursuant to a jury verdict, of sexual assault, second-degree kidnapping, coercion with physical force or the immediate threat of physical force, false imprisonment, and possession of a schedule I or II controlled substance less than 14 grams, first or second offense. Second Judicial District Court, Washoe County; Barry L. Breslow, Judge.

The trial testimony below established that the victim, B.A., was addicted to drugs and unhoused. Hawkins befriended B.A. and used methamphetamine with her. On the day of the incident, Hawkins was driving B.A. around in his red Lincoln Navigator when he insisted that she repay him for the drugs he had purchased for her by having sex with him. B.A. testified[1] that she did not want to have sex with Hawkins but felt forced to acquiesce to his demand. When the intercourse became painful, B.A. told Hawkins to stop, but he refused. After they were done having sex, Hawkins refused to allow B.A. to exit the vehicle, refused to let her put her clothes

[1]This testimony was taken from B.A.'s preliminary hearing testimony, the use of which will be discussed below.

back on, pulled her hair, insisted that she now "belonged" to him, and threatened violence if she attempted to leave. Additionally, Hawkins told B.A. that he was going to take her to Las Vegas to engage in prostitution.

Although B.A. was transient, she maintained contact with her mother, S.P. On the evening of the incident, S.P. began looking for B.A. because she had been out of contact for a few days. Using a location sharing feature on Snapchat, S.P. traced B.A.'s location to a warehouse area. S.P. travelled to the warehouse area with a family friend and eventually located a red Lincoln Navigator parked between two large trucks with its engine running. Upon approaching the vehicle, they saw a partially clothed man later identified as Hawkins move from the back seat area of the Navigator to the driver's seat. In the back seat area of the Navigator, S.P. was able to see a woman's bare leg, with a distinctive scar that she recognized as belonging to B.A., sticking out from under a pile of clothes. When S.P. demanded that Hawkins let B.A. out of the vehicle, Hawkins insisted the woman was not B.A. but was his wife and locked the doors. S.P. and the family friend attempted to block the Navigator, but Hawkins drove away. For several hours after that encounter, B.A. sent sporadic text messages to S.P. asking for help getting away from Hawkins.

Law enforcement eventually found the Navigator in a shopping center parking lot in the early morning hours of the next day. Officers removed B.A. from the vehicle, transported her for medical care and questioning, and arrested Hawkins. During the encounter, officers observed a small plastic bag containing a crystalline substance in the driver's side door panel which tested as presumptively positive for methamphetamine. Officers recovered additional suspected drugs and women's clothing consistent with sex trade attire during a search of the

vehicle. After a five-day trial, the jury found Hawkins guilty of sexual assault, second-degree kidnapping, coercion with physical force or the immediate threat of physical force, false imprisonment, and possession of a schedule I or II controlled substance less than 14 grams, first or second offense. Subsequently, the district court imposed an aggregate prison sentence of life with the possibility of parole after fifteen years. Hawkins appeals, challenging his convictions and sentence.

First, Hawkins claims the district court abused its discretion by allowing an implicitly biased juror to be empaneled. Hawkins asserts that, because the juror stated that she had been sexually abused as a child, the district court should have exercised its discretion to excuse her. During voir dire, Juror No. 7 stated that she had been sexually abused when she was a child. In responding to questions from Hawkins and the State, Juror No. 7 stated that the abuse had occurred several years ago, that she had received therapy, and that she would be able to be fair and impartial.

Hawkins did not move to challenge Juror No. 7 for cause. The failure to preserve an error, even one that can be considered structural, forfeits the right to assert it on appeal. *See Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48 (2018). Thus, before this court will consider correcting a forfeited error, an appellant must demonstrate: "(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." *Id.* "[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. Hawkins does not argue plain error on appeal. Specifically, Hawkins does not argue or demonstrate that any error is "clear under current law from a casual

inspection of the record." *Id.* at 50, 412 P.3d at 48. We thus conclude he has forfeited this claim, and we decline to review it on appeal. *See id.* at 52, 412 P.3d at 49 ("[T]he decision whether to correct a forfeited error is discretionary."); *see also Miller v. State*, 121 Nev. 92, 99, 110 P.3d 53, 58 (2005) (stating it is the appellant's burden to demonstrate plain error); *State v. Eighth Jud. Dist. Ct. (Doane)*, 138 Nev. 896, 900, 521 P.3d 1215, 1221 (2022) (recognizing the Nevada appellate courts "follow the principle of party presentation" and thus "rely on the parties to frame the issues for decisions and assign to courts the role of neutral arbiter of matters the parties present" (quoting *Greenlaw v. United States*, 554 U.S. 237, 243 (2008))); *Senjab v. Alhulaibi*, 137 Nev. 632, 633-34, 497 P.3d 618, 619 (2021) ("We will not supply an argument on a party's behalf but review only the issues the parties present.").

Second, Hawkins claims the district court erred by granting the State's motion to admit a video recording of B.A.'s preliminary hearing testimony because the State failed to exercise reasonable diligence to secure B.A. for trial. Hawkins did not object to the admission of B.A.'s preliminary hearing testimony below, and he does not argue on appeal that the admission of her testimony constitutes plain error. Specifically, he does not argue or demonstrate that the alleged error is clear under current law from a casual inspection of the record and that the error affected his substantial rights. *Jeremias*, 134 Nev. at 50, 412 P.3d at 48. We thus conclude he has forfeited this claim, and we decline to review it on appeal.[2] *Id.* at 52, 412

[2]Further, the record demonstrates the State undertook substantial efforts to secure B.A.'s presence for trial, including obtaining a material witness warrant, conducting surveillance at multiple locations B.A. was reported to frequent, speaking to acquaintances of B.A., and issuing a be-

P.3d at 49; *see also Miller,* 121 Nev. at 99, 110 P.3d at 58; *Doane,* 138 Nev. at 900, 521 P.3d at 1221; *Senjab,* 137 Nev. at 633-34, 497 P.3d at 619.

Third, Hawkins claims the district court abused its discretion in admitting the video recording of B.A.'s preliminary hearing testimony because Hawkins appeared on the video several times in jail garb with his hands and legs shackled. Hawkins did not raise this objection below, so this claim is subject to plain error review. *See Martinorellan v. State*, 131 Nev. 43, 48, 343 P.3d 590, 593 (2015) (stating "all unpreserved errors are to be reviewed for plain error without regard as to whether they are of constitutional dimension").

"The presumption of innocence, although not articulated in the Constitution, is a basic component of a fair trial under our system of criminal justice." *Estelle v. Williams*, 425 U.S. 501, 503 (1976). For example, "an accused who is compelled to wear identifiable prison clothing at his trial by a jury is denied due process [and] equal protection of the laws." *Id.* at 502, 512-13. However, "the failure to make an objection to the court as to being tried in [jail garb], for whatever reason, is sufficient to negate the presence of compulsion necessary to establish a constitutional violation." *Id.* at 512-13.

Hawkins' failure to object to the jury seeing the video recording of B.A.'s preliminary hearing testimony is fatal to his claim. Furthermore, we are unable to assess this claim because Hawkins did not include a copy of the video recording on appeal. *See McConnell v. State*, 125 Nev. 243, 256 n.13, 212 P.3d 307, 316 n.13 (2009) ("The burden is on the appellant to

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on-the-lookout notice to local law enforcement agencies. Thus, even if we were to review this claim for plain error, Hawkins has not demonstrated relief is warranted.

provide this court with an adequate record enabling this court to review assignments of error."); *see also Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) ("When an appellant fails to include necessary documentation in the record, we necessarily presume that the missing portion supports the district court's decision."). We therefore conclude that Hawkins is not entitled to relief on this claim.

Fourth, Hawkins asserts his conviction for the possession charge identified above should be reversed because the district court plainly abused its discretion by allowing one of the officers who assisted with searching Hawkins' vehicle to testify that the small bag containing a crystalline substance observable in the driver's side door panel appeared to contain methamphetamine. The officer testified that, upon approaching Hawkins' vehicle, he saw the bag of crystalline substance in the driver's side door panel and that, "[o]ver my last five, five and a half years of being a police officer, I've seen a lot of methamphetamine, and it looked just like that." The prosecutor then confirmed with the officer that his belief was based on his training and experience. Hawkins did not object to this testimony, so this claim is subject to plain error review. *Jeremias*, 134 Nev. at 50, 412 P.3d at 48.

We conclude Hawkins has not shown error plain from the record affecting his substantial rights. Although Hawkins argues the district court plainly abused its discretion in allowing the testimony notwithstanding the lack of objection, he does not cite any authority demonstrating the testimony was clearly inadmissible. Further, Hawkins fails to demonstrate his substantial rights were affected by the admission of this testimony. This is particularly so given that Hawkins acknowledged in his trial testimony that he had possessed and used methamphetamine

and subsequently exhorted the jury to find him guilty of the possession charge in his closing argument. We therefore conclude Hawkins is not entitled to relief on this claim.

Fifth, Hawkins claims the aggregate prison sentence imposed by the district court amounts to cruel and unusual punishment. Regardless of its severity, "[a] sentence within the statutory limits is not 'cruel and unusual punishment unless the statute fixing punishment is unconstitutional or the sentence is so unreasonably disproportionate to the offense as to shock the conscience.'" *Blume v. State*, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting *Culverson v. State*, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)); *see also Harmelin v. Michigan*, 501 U.S. 957, 1000-01 (1991) (plurality opinion) (explaining the Eighth Amendment does not require strict proportionality between crime and sentence; it forbids only an extreme sentence that is grossly disproportionate to the crime).

The sentence imposed by the district court is within the parameters provided by the relevant statutes, *see* NRS 200.310(2), NRS 200.366, NRS 200.460(2), NRS 207.190, and NRS 453.336(2)(a), and Hawkins does not allege that those statutes are unconstitutional. We conclude the sentence imposed is not grossly disproportionate to the crimes for which Hawkins was convicted and does not constitute cruel and unusual punishment. We therefore conclude Hawkins is not entitled to relief on this claim.

Finally, Hawkins argues that the cumulative effect of the aforementioned errors warrants relief. Hawkins has not demonstrated any errors to cumulate. Therefore, he is not entitled to relief on this claim. *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). For these reasons, we

ORDER the judgment of conviction AFFIRMED.

_____, C.J.
Bulla

_____, J.
Gibbons

_____, J.
Westbrook

cc: Hon. Barry L. Breslow, District Judge
Ristenpart Law
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk