



IN THE SUPREME COURT OF THE STATE OF NEVADA

EDWARD CHARLES JONES, III,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 90538

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction for residential burglary with possession of a deadly weapon, first degree murder with use of a deadly weapon, and preventing or dissuading a witness from testifying or producing evidence. Eighth District Court Clerk; Hon. Michelle Leavitt, Judge.

Appellant Edward Jones was charged with Residential Burglary while in Possession of a Deadly Weapon, Murder with use of a Deadly Weapon, and Preventing or Dissuading a Witness from Testifying or Producing Evidence. On the night of the victim's murder, Jones, his girlfriend Chae Jones (Chae), and Jones's brother went to the victim's apartment. Jones, but not Chae or Jones's brother, was arrested. Chae and Jones remained in contact while Jones was at Clark County Detention Center. Chae testified that on one occasion, Jones pressed Chae to recant her statement to police and other times asked her not to testify. Jones also sent several letters to Chae discussing her testimony. These letters were seized from Jones and Chae's shared residence during a probationary search pursuant to the terms of Chae's probation.

Before the trial, Jones moved to sever the dissuading a witness charge from the murder and burglary charges. The district court denied the

motion, and the case proceeded to a single trial on all three counts. A jury convicted Jones of all three charges and Jones appeals his conviction. Jones raises ten issues on appeal including issues involving the admission or exclusion of evidence, accomplice testimony, sufficiency of the evidence, and prosecutorial misconduct. We conclude that there are no reversible errors and affirm Jones's judgment of conviction.

The district court did not abuse its discretion when denying Jones's motion to sever

Jones argues that the district court's failure to sever the dissuading a witness charge from the murder and burglary charges warrants reversal for four reasons: (1) the offenses were not based upon the same transaction, (2) there was no common scheme or plan, (3) the offenses were not connected, and (4) Jones was prejudiced by improper joinder. We hold that the district court did not abuse its discretion in permitting joinder of the charges because the offenses are connected together, as required under NRS 173.115(1)(b), and joinder was not manifestly prejudicial.

Decisions to join or sever charges are left to the discretion of the trial court and will not be reversed absent an abuse of discretion. *Amen v. State*, 106 Nev. 749, 756, 801 P.2d 1354, 1359 (1990). The district court did not abuse its discretion when declining to sever the dissuading a witness charge from the murder and burglary charges. Under NRS 173.115(1)(b), charges may be joined if the acts are "connected together," meaning if evidence of either crime would be admissible in a separate trial regarding the other crime under NRS 48.045(2). *Weber v. State*, 121 Nev. 554, 573, 119 P.3d 107, 120 (2005). Jones's counsel conceded that the charges were cross admissible at the hearing on the motion to sever, stating that "because the cases are connected and there is overlap, [the charges] were properly joined in the first

instance . . . the gist of the argument is . . . even if the initial joinder was proper, [] the jury is going to borrow evidence from one count in order to convict from the other.” Given this admission, we focus our review on whether joinder was unfairly prejudicial. *See Ford v. Warden, Nev. Women’s Corr. Ctr.*, 111 Nev. 872, 884, 901 P.2d 123, 130 (1995) (a defendant cannot change their theory underlying an assignment of error on appeal); *Weber*, 121 Nev. at 574-75, 119 P.3d at 121 (even if counts may be joined under NRS 173.115, severance may be necessary if joinder of the offenses would result in “unfair prejudice”).

We conclude that joinder was not unfairly prejudicial. For joinder to be unfairly prejudicial, “the defendant carries the heavy burden of showing an abuse of discretion by the district court.” *Weber*, 121 Nev. at 575, 119 P.3d at 121. Jones’s arguments regarding prejudice are largely conclusory and fail to establish how the State’s acts resulted in prejudice. There was considerable evidence linking Jones to the burglary and murder including testimony regarding Jones’s motive, phone records and surveillance footage placing Jones at the scene, and Chae’s testimony that Jones admitted to murdering the victim. Accordingly, the limiting instruction provided here was sufficient to guard against any potential prejudice. *Tabish v. State*, 119 Nev. 293, 304, 72 P.3d 584, 591 (“When some potential prejudice is present, it can usually be adequately addressed by a limiting instruction to the jury.”).

The district court did not abuse its discretion in excluding the probation report as evidence

Jones also argues that the district court abused its discretion when it denied his motion to admit a report written by Chae’s probation officer that details violations of Chae’s probation, including threats Chae made to her aunt referencing the murder. Jones asserts that Chae’s statements such as “I’m a serve you up and you aint gone see it coming just like that bitch ass [victim]”

speaks to Chae's credibility and supports the defense's theory that Chae was the killer. At trial, Chae was questioned about whether she made such statements to her aunt, and she denied doing so. Consequently, Jones sought to use the probation report to impeach Chae, but the district court found that the probation report was a collateral source and inadmissible hearsay which must be excluded. We agree with the district court and therefore conclude the district court did not abuse its discretion in excluding the report.

"Impeachment by use of extrinsic evidence is prohibited when collateral to the proceedings." *Lobato v. State*, 120 Nev. 512, 518, 96 P.3d 765, 770 (2004). Collateral facts are "outside the controversy, or are not directly connected with the principal matter or issue in dispute." *Id.* (internal quotation marks omitted). Extrinsic proof of a witness's prior inconsistent statement or prior bad acts is collateral unless the statement is material to the case at hand. *Id.* at 519, 96 P.3d at 770. Further, extrinsic evidence of a witness's motive to testify in a certain way—i.e., evidence of bias or prejudice—is never collateral. *Id.*

We conclude that the probation report is not material to the case at hand, nor is it evidence of Chae's motive to testify a certain way. *Id.* Chae's statements such as "you going to get got just like [the victim] did" and "you aint gone see it coming just like [the victim]" indicate that she has knowledge of the murder, not that she was the murderer. Whether Chae had knowledge of the murder is not the principal issue in dispute and is therefore collateral. *Cf. id.* at 519-20, 96 P.3d at 771. Further, Chae's statements do not support an inference that she was biased to testify a certain way.¹ Therefore, the district court did not abuse its discretion in excluding the probation report on this

¹We further note that exclusion of the report did not prevent Jones from supporting his theory of defense. Nothing in the record indicates that Jones attempted and was unable to call Chae's aunt to testify.

ground.

We further conclude that the probation report is inadmissible hearsay evidence. Hearsay is an out-of-court statement “offered in evidence to prove the truth of the matter asserted,” NRS 51.035, and is inadmissible unless within an exemption or exception, NRS 51.065. The hearsay within hearsay rule, which arises when an out-of-court statement itself contains another out-of-court statement, provides that each statement must independently satisfy a hearsay exception to be admissible. NRS 51.067.

The report, which contains Chae’s threatening statements to her aunt, constitutes hearsay within hearsay. Both were offered by Jones to prove the truth of the matter asserted: the probation report to prove that Chae made threatening statements to her aunt, and Chae’s statements themselves to prove the truth of the facts asserted in her threats. Accordingly, the report and the statements therein must each satisfy a hearsay exception to be admissible. Below, Jones argued that Chae’s statements were an exception to hearsay as statements against penal interest, but this exception is inapplicable as Chae was not an unavailable declarant, and in fact testified at trial. Because neither statement falls under a recognized exception, the probation report is barred by the hearsay rule. Therefore, the district court did not abuse its discretion in excluding the probation report based on inadmissible hearsay.

The district court did not abuse its discretion in admitting “bad act evidence”

Jones next argues that the district court abused its discretion in admitting two pieces of bad-act evidence: a photograph of Jones allegedly flashing a gang sign and testimony from Chae that Jones beat her the night of the murder. “This court reviews a district court’s decision to admit or exclude

[other] bad-act evidence under an abuse of discretion standard” and will only reverse if the district court’s decision is “manifestly incorrect.” *Flowers v. State*, 136 Nev. 1, 5, 456 P.3d 1037, 1043 (2020). Evidence of prior bad acts is presumptively inadmissible. *Hubbard v. State*, 134 Nev. 450, 454, 422 P.3d 1260, 1264 (2018). NRS 48.045(2) generally prohibits the use of evidence of “other crimes . . . to prove the character of a person in order to show that the person acted in conformity therewith.”

NRS 48.035(3) provides an “extremely narrow” basis for admissibility where a bad act or uncharged crime is so closely related to the controversy at hand that an ordinary witness cannot describe the controversy without referring to the other bad act or crime. *Alfaro v. State*, 139 Nev. 216, 226-27, 534 P.3d 138, 149-50 (2023). The uncharged act, the *res gestae* evidence, must do more than “provide context for” the charged crime, it must be part of the same transaction and “nearly impossible” for the witness to describe the crime at hand without referring to the uncharged act. *Id.* at 227, 534 P.3d at 149-50; see *Dutton v. State*, 94 Nev. 461, 464, 581 P.2d 856, 858 (1978) (stating that prior uncharged acts are admissible when an account of the full and accurate circumstances of the crime necessarily requires inclusion of the uncharged act).

We conclude that the district court did not abuse its discretion in admitting either piece of evidence. As to the photograph, the image at issue was not included in the appellate record, so we presume that the contents of the photograph support the district court’s decision that the photograph was not bad act evidence.² *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598,

²While the photograph was not included in the record, Jones alleges that the State “utilized a power point which contained a photograph of Mr. Jones where he was purportedly flashing a ‘Westside gang sign.’”

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 also conclude that the district court’s decision to admit Chae’s testimony that she felt forced to accompany Jones to the victim’s home because he beat her prior to demanding that they go was also not manifestly incorrect. *Flowers*, 136 Nev. 5, 456 P.3d at 1043. The State argued before the district judge that Chae could not be questioned about the night of the murder without raising that Jones had beaten Chae, because the fear Chae felt from the abuse is the alleged reason that Chae accompanied Jones to the victim’s residence that night. Because *res gestae* tends to occur contemporaneously to the charged act, and the abuse occurred just prior, the question of whether the abuse and murder are inextricably linked is a close call. However, we do not find this distinction so compelling as to warrant reversal. *See Rhymes v. State*, 121 Nev. 17, 22, 107 P.3d 1278, 1281 (2005) (concluding that district court’s admission of uncharged prior bad acts was not manifestly incorrect where the prior bad acts occurred close in time to the acts charged in the case). In any event, Chae’s testimony would likely have been admissible to prove Jones’s motive. *See* NRS 48.045(2) (“Evidence of other crimes, wrongs or acts is not admissible to prove the character of a person . . . it may, however, be admissible for other purposes, such as proof of motive[.]”). Chae testified that Jones beat her because he suspected that she was having an affair with the victim, which is circumstantial evidence of Jones’s motive to kill the victim. Accordingly, we conclude that the district court did not err in admitting Chae’s testimony because the act occurred close in time to the murder and is circumstantial evidence of Jones’s motive to kill the victim.

The district court did not err in denying Jones’s motion to suppress evidence

Jones next argues that the district court erred in denying his motion to suppress the letters that he wrote in prison asking Chae to not testify against him. Jones argues that the probationer exception to the warrant requirement did not apply because searching the home for evidence of a probation violation was a pretext for finding evidence to use against Jones. We disagree.

Suppression issues present mixed questions of law and fact. *Johnson v. State*, 118 Nev. 787, 794, 59 P.3d 450, 455 (2002). This Court reviews the legal questions de novo, while reviewing the trial court’s factual determinations for sufficient evidence. *Id.* “A search conducted without a search warrant issued upon probable cause is considered unreasonable and unconstitutional unless the search falls within a specific exception to the warrant requirement.” *State v. Taylor*, 114 Nev. 1071, 1078-79, 968 P.2d 315, 321 (1998). However, probationary searches are valid in the presence of an advance waiver of consent and “reasonable grounds” to believe that a probation violation has occurred. *Allan v. State*, 103 Nev. 512, 514, 746 P.2d 138, 140 (1987). In addition, a warrantless search is valid on consent of a third party who has actual authority to consent to the search. *Taylor*, 114 Nev. at 1079, 968 P.2d at 321.

We conclude that the search of Chae and Jones’s residence was a valid probationary search. Chae had authority to consent to the search as a co-lessee of the home, and did consent by signing the advance waiver.³ *See id.*; *Seim v. State*, 95 Nev. 89, 96, 590 P.2d 1152, 1156 (1979) (“When a defendant in order to obtain probation specifically agreed to permit at any time a warrantless search of his person, car and house, he has voluntarily waived

³A copy of the advanced waiver was not included in the record, but Jones does not challenge the validity of the waiver on appeal.

whatever claim of privacy he might otherwise have had.”) (citation modified); *Cf. United States v. Matlock*, 415 U.S. 164, 171 n.7 (1974) (limiting third-party consent authority to areas of mutual use and joint access “for most purposes”). While a probationary search may be invalid if used to help law enforcement “evade the Fourth Amendment’s usual warrant and probable cause requirements,” we conclude that the search was reasonable here in light of the strong evidence of a probation violation and public policy considerations. *See State v. Rincon*, 122 Nev. 1170, 1175, 147 P.3d 233, 236 (2006) (explaining that the Fourth Amendment’s reasonableness requirement “strikes a balance between the public interest and the individual’s right to personal security”) (internal quotation marks omitted). Although the police officer reporting the violation could have had an ulterior motive, the probation officer conducted the search, the probation officer had concrete evidence of a probation violation, and Chae had signed an advance waiver. Accordingly, here, we do not think that Chae’s interest in personal security outweighs the public’s interest in encouraging reporting of legitimate probation violations. *See id.* We therefore conclude that the district court did not err in denying Jones’s motion to suppress evidence.

Chae’s testimony was corroborated

Jones also seeks reversal of the verdict on the ground that Chae’s accomplice testimony was not corroborated as required by NRS 175.291(1). For the reasons stated below, we disagree.

As a threshold matter, there is no indication in the record that Chae was an accomplice. *See* NRS 175.291(2) (“An accomplice is one who is liable to prosecution for the identical offense charged against the defendant on trial in the cause in which the testimony of the accomplice is given.”). Jones

argues that Chae “undoubtedly qualifies” as an accomplice since she was present at the time the victim was killed and she had motive to kill the victim, given that the two previously had a close relationship that was severed once he stole money from her. But we have noted that a person is not an accomplice simply because he or she is present when the crime was committed. *Orfield v. State*, 105 Nev. 107, 109, 771 P.2d 148, 149 (1989). The State argues that Chae is not an accomplice, pointing to Chae’s testimony that she did not want to go with Jones to the victim’s apartment that night nor partake in his actions, which she assumed would be a fight, not a murder.

Assuming without deciding that Chae is an accomplice under NRS 175.291(2), her testimony is corroborated by other evidence. For a defendant to be convicted on accomplice testimony, the state must present other, independent evidence that tends to connect the defendant to the crime. *Heglemeier v. State*, 111 Nev. 1244, 1250, 903 P.2d 799, 803 (1995); NRS 175.291(1) (accomplice testimony must be corroborated by evidence “which in itself, and without the aid of the testimony of the accomplice, tends to connect the defendant with the commission of the offense; and the corroboration shall not be sufficient if it merely shows the commission of the offense or the circumstances thereof.”). Corroborating evidence need not itself be sufficient to establish guilt, rather “it will satisfy the statute if it merely tends to connect the accused to the offense.” *Heglemeier*, 111 Nev. at 1250, 903 P.2d at 803. Jones’s argument that Chae’s testimony was uncorroborated because there were no other witnesses who identified Jones, nor was there DNA or fingerprint evidence linking Jones to the crime is belied by the record. Video footage of the victim’s residence the night of the murder depicting Jones’s car and Jones’s cell phone records “in itself, and without the aid of the testimony of the accomplice, tends to connect the defendant with the commission of the

offense.” NRS 175.291(1). As other evidence corroborated Chae’s testimony, reversal on this ground is not warranted.

The admission of hearsay statements was not reversible error

Jones also argues that the district court erred in admitting hearsay statements in two instances: statements that Jones’s brother made to a detective and statements made by the victim’s sister. “A trial court’s evaluation of admissibility of evidence will not be reversed on appeal unless it is manifestly erroneous.” *Medina v. State*, 122 Nev. 346, 353, 143 P.3d 471, 476 (2006). For the reasons stated below, we conclude that the admission of the statements does not warrant reversal.

Introduction of Jones’s brother’s statements at trial is not reversible error

Jones argues that introduction of his brother’s statement to law enforcement that he (Jones’s brother) was at the scene of the shooting was both hearsay and violated the Confrontation Clause. The detective testified that Jones’s brother told the detective that he, the brother, was at the scene the night of the shooting. We conclude that the statement was not inadmissible hearsay and that even if the statement’s admission violated the Confrontation Clause, it was harmless error.

Jones’s brother’s statement was not hearsay as it was not offered for the truth of the matter asserted. See NRS 51.035 (“‘Hearsay’ means a statement offered in evidence to prove the truth of the matter asserted”). On cross-examination of the detective, Jones’s counsel questioned why the detective did not pull the brother’s phone records, implying that the police investigation was not thorough. Accordingly, the defense opened the door on re-direct for the detective to explain that he did not pull the brother’s phone location data because the brother had confirmed that he was at the scene the night of the shooting. Therefore, the statement was not offered for its truth,

but to rebut the implication that law enforcement did not investigate other suspects.

Further, because Jones's brother's statement was not hearsay, it cannot violate the Confrontation Clause. We have consistently held that the Confrontation Clause does not apply to nonhearsay statements. *See Harkins v. State*, 122 Nev. 974, 988, 143 P.3d 706, 715 (2006) (distinguishing between testimonial and nontestimonial statements and concluding that the admission of nontestimonial statements does not violate the Confrontation Clause); *see also State v. Quinteros*, No. 68691, 2016 WL 4245399 (Nev. July 28, 2016) (Order of Affirmance) (confirming that where a statement is both testimonial and offered to prove the truth of the matter asserted, the Confrontation Clause must be satisfied); *cf. Belcher v. State*, 136 Nev. 261, 275, 464 P.3d 1013, 1029 (2020) (holding that because testimony was not offered to prove the truth of the matter asserted, and because the Confrontation Clause does not bar the use of testimonial statements for purposes other than establishing the truth of the matter asserted, there was no confrontation violation).

Even if the admission of Jones's brother's statement violated the Confrontation Clause, the error was harmless. *See Crawford v. Washington*, 541 U.S. 36, 54 (2004) (stating that a statement's admission violates the Confrontation Clause of the U.S. Constitution if the statement is testimonial, the declarant is available, and the defendant did not have a prior opportunity to cross-examine the declarant); *Medina*, 122 Nev. at 355, 143 P.3d at 477 (stating that Confrontation Clause errors are subject to a harmless error analysis, and the error must be harmless beyond a reasonable doubt). In determining whether an error was harmless, we consider a host of factors, including the importance of the witness's testimony in the State's case, whether the testimony was cumulative, the presence or absence of corroborating evidence on material points, and the overall strength of the

prosecution's case. *Id.* The statement that Jones's brother was at the scene was relatively unimportant to the State's case, particularly where it was used only to briefly illustrate why the officer made an investigative choice. Further, the testimony was cumulative, given that the jury learned that Jones's brother was at the scene of the murder through Chae's testimony and would have known that a third individual was there from the surveillance footage. And the State had multiple sources pointing to Jones as the murderer, with this statement doing little to add to the case. Therefore, we conclude that admission of Jones's brother's statement was harmless beyond a reasonable doubt because the jury's verdict was unattributable to the error.

Admission of a statement made by the victim's sister was not plain error

At trial, the victim's sister testified on behalf of the State that a week before the victim was murdered, he said to his sister "[t]hat if anything was to happen to him, to look into Chae and [Jones]." Jones argues this statement was inadmissible hearsay and prejudicial. Because Jones failed to object to the statement at trial, we review its admission for plain error. *Valdez v. State*, 124 Nev. 1172, 1190, 196 P.3d 465, 477 (2008). Under this standard, an error does not require reversal unless the defendant demonstrates that the error was plain from the record and affected the defendant's substantial rights, i.e., caused "actual prejudice or a miscarriage of justice." *Id.*

The statement of the victim's sister was introduced for the truth of the matter and did not fall under a hearsay exception. The statement was therefore hearsay. But under *Valdez*, this error does not require reversal unless Jones establishes that admission of the sister's statement resulted in "a miscarriage of justice." 124 Nev. at 1190, 196 P.3d at 477. *See also Green v. State*, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003) ("[T]he burden is on the defendant to show actual prejudice or a miscarriage of justice."). Jones's

argument regarding prejudice is a single conclusory statement that the testimony “points to Chae and [Jones], [and] therefore [is] very prejudicial.” Given the ample amount of other evidence against Jones, we are not convinced that Jones suffered actual prejudice or that there was a miscarriage of justice arising from the statement’s admission. Therefore, we conclude that admission of the statement was not plain error.

The evidence was sufficient to convict Jones

Jones argues that the district court erred in denying his motion for judgment of acquittal because a rational trier of fact could not have found all of the elements to each offense for which Jones was charged. Jones contends that the only evidence at trial supporting his conviction derives from Chae’s “uncorroborated” testimony.

When this court reviews a jury verdict on appeal for sufficient evidence, the relevant inquiry “is whether after reviewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found essential elements of the crime beyond a reasonable doubt.” *Koza v. State*, 100 Nev. 245, 250, 681 P.2d 44, 47 (1984) (internal quotation marks omitted). In reviewing the evidence in the light most favorable to the prosecution, we conclude that any rational trier of fact could have found the elements of Jones’s charges beyond a reasonable doubt. At trial, in addition to Chae’s testimony, the jury was presented with the content of Jones’s letters and phone calls to Chae asking her to recant her story, cell phone records showing Jones was at the victim’s residence the night of the murder, video of individuals running from the victim’s residence, the fact that a vehicle that looked like the victim’s vehicle was at the victim’s residence the night of the murder, and witness testimony regarding motive. Accordingly, the evidence was sufficient to convict Jones.

The State did not commit reversible error when commenting on the defense's theory during rebuttal

Jones alleges that the State improperly commented on his silence at trial, thereby violating his due process rights. *See Morris v. State*, 112 Nev. 260, 263, 913 P.2d 1264, 1267 (1996) (“It is well settled that the prosecution is forbidden at trial to comment upon an accused’s election to remain silent following his arrest and after he has been advised of his rights as required by *Miranda v. Arizona*.”) (internal quotation marks omitted).

Jones contends that the prosecutor commented on his silence in the following statement:

[W]ith regard to the phone, the defense kind of insinuated that it was Chae Jones is [sic] the actual killer. We’ve heard a lot of theories in this case through the defendant's phone calls and through the letters, but we’ve never heard that it’s Chae. So this is new. This insinuation and this implication, the first time that you've heard about that is today in this courtroom by defense counsel. There has never even been an insinuation that it was Chae up until right now, so there is clearly no evidence.

Because Jones failed to object at trial, we review admission of the statement for plain error. *Gaxiola v. State*, 121 Nev. 638, 653, 119 P.3d 1225, 1236 (2005). We do not construe this statement as a comment on Jones’s decision not to testify, which is prohibited under the Due Process Clause, *Morris*, 112 Nev. at 263, 913 P.2d at 1267, but as a comment on the defense’s theory presented at closing. In its closing, the defense presented the idea that Chae, not Jones, was the murderer. On rebuttal, the State responded that “[t]here has never even been an insinuation that it was Chae,” which clearly addresses the defense’s presentation of the case at trial, rather than Jones’s silence. *Cf. Doyle*, 426 U.S. 610, 611 (1976) (holding that the state violated due process when seeking to impeach defendant at trial by asking defendant why he failed to tell

detectives certain details after receiving *Miranda* warnings). Accordingly, we conclude that Jones's due process rights were not violated.

There is no cumulative error

Finally, Jones argues that his conviction should be reversed due to cumulative error. Finding that the only error—admission of certain hearsay statements—was not prejudicial, we conclude that there are no errors to cumulate. *Carroll v. State*, 132 Nev. 269, 287, 371 P.3d 1023, 1035 (2016) (“One error is not cumulative error.”). We therefore

ORDER the judgment of the district court AFFIRMED.⁴



Stiglich, J.



Cadish, J.



Lee, J.

cc: Hon. Michelle Leavitt, District Judge
Ewing WN Enterprises LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

⁴We have considered the parties' other arguments not specifically addressed in this order and conclude they lack merit or do not otherwise alter our determination.