FILED
11/09/2026
ELIZABETH A. BROWN
CLERK OF SUPREME COURT

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSEPH MICHAEL WILLIS, Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 90942-COA

ORDER OF AFFIRMANCE

Joseph Michael Willis appeals from a judgment of conviction, entered pursuant to a jury verdict, of attempted burglary of a business, possession of implements adapted for the use or commission of a crime, and willful injury to or destruction of property having a value of $250 or more. Fourth Judicial District Court, Elko County; Hon. Mason E. Simons, Judge.

Willis leased two commercial properties from Bill and Debbie Bonetti—one at 433 South Fifth Street, and the other at 438 South Fifth Street, in downtown Elko—which he used to operate an automobile repair business. After Willis defaulted on the commercial lease agreements for those properties, the Bonettis obtained eviction orders from the Elko Township Justice Court. But instead of immediately evicting Willis, the Bonettis allowed Willis to continue renting the properties and making lease payments. A year later, Willis remained in default on the lease agreements so the Bonettis posted an eviction notice on the doors of the properties and locked him out.

Thereafter, Willis and the Bonettis negotiated an agreement where Willis would be allowed to continue leasing the properties and, in exchange, he would sign a confession of judgment that set out additional terms. The confession of judgment provided that Willis would make larger monthly payments, to include both current and past-due rent, and that in the event of a default, the Bonettis could lock him out without notice and sell any of his

tools that remained on the properties to satisfy his debt. Willis also agreed that the prior eviction orders remained valid and could be used as a basis to evict him in the event of a default.

For the next six months, the Bonettis maintained the keys to both properties and controlled Willis's access to them, even though the confession of judgment contained no language expressly permitting them to do so. Willis was still behind on his monthly payments in July 2023, and after a heated argument with him, the Bonettis decided to lock Willis out of both properties. However, when the Bonettis arrived at the 438 South Fifth Street property to post the eviction notice and lock him out, they discovered Willis's tools and equipment had been loaded onto a trailer as if to be taken away (the "July incident"). The Bonettis locked everything up, but when they returned the next day, they found Willis and all of his tools and equipment gone.

Although the Bonettis filed the civil confession of judgment in the Fourth Judicial District Court and served Willis with it, Willis did not seek to have the confession of judgment vacated. Nor did Willis file a verified complaint for reentry to regain possession of the commercial premises pursuant to NRS 118C.210. Instead, Willis moved his repair business to a different location in town.

A month later someone tampered with a lock on the back gate to the 433 South Fifth Street property (the "August incident"), so the Bonettis installed surveillance cameras. A few days later, in September 2023, Willis was captured on surveillance video at 5:00 a.m. on a Saturday morning, using bolt cutters to damage an eyebolt that secured the gate to that property (the "September incident"). In connection with the September incident, the State charged Willis with attempted burglary of a business, possession of

implements adapted for the use or commission of a crime, and willful injury to or destruction of property having a value of $250 or more.

At trial, Willis sought to attack the validity and enforceability of the confession of judgment, citing the fact that the Bonettis' attorney who signed and notarized the document, Robert Salyer, did so with a notary stamp that indicated his appointment had expired 12 days earlier. He also sought to argue that the Bonettis' withholding of keys to the properties frustrated his ability to make the required monthly payments. The district court precluded Willis from presenting this evidence or making these arguments, finding that he should have civilly challenged the confession of judgment and lockout prior to attempting to reenter the property. Willis also objected to the presentation of evidence of the July and August incidents as uncharged prior bad acts. The court admitted the July incident under the res gestae doctrine, determined the August incident was not a bad act, and gave no limiting instructions for either incident. Willis ultimately conceded his identity—that he was the person captured on the surveillance video with bolt cutters damaging the eyebolt at 433 South Fifth Street—but denied attempting to burglarize the business within and disputed the Bonettis' evidence of the value of repairs to the damaged eyebolt. Willis was convicted of all three crimes and now appeals.

The district court's admission of the July and August incidents without conducting a Tinch *analysis or giving a* Tavares *limiting instruction was not reversible error*

Willis first contends the district court abused its discretion by improperly admitting evidence of the July and August incidents as res gestae evidence under NRS 48.035(3). Willis argues that the incidents were inadmissible other acts evidence under NRS 48.045(2) and that the court erred

by failing to undertake a *Tinch*[1] analysis or give a *Tavares*[2] limiting instruction. The State responds that the July incident was admissible under the res gestae doctrine to explain an element of the offense of attempted burglary, but even if not, that it was admissible under NRS 48.045(2) for the relevant nonpropensity purposes of establishing motive, intent, absence of mistake or accident, and identity. As for the August incident, the State responds that Willis was never implicated in an attempted break-in on that date; rather, the evidence was admitted to explain why the Bonettis put up surveillance cameras.

This court reviews the admission of other acts evidence for an abuse of discretion, *Mclellan v. State*, 124 Nev. 263, 267, 182 P.3d 106, 109 (2008), and will reverse and remand for a new trial if the erroneous admission of that evidence was not harmless, *Carr v. State*, 96 Nev. 238, 240, 607 P.2d 114, 116 (1980); *see also Alfaro v. State*, 139 Nev 216, 228, 534 P.3d 138, 150-51 (2023) (applying harmless error review to improperly admitted res gestae evidence). An error is harmless if it did not have a "substantial and injurious effect or influence in determining the jury's verdict." *Tavares v. State*, 117 Nev. 725, 732, 30 P.3d 1128, 1132 (2001) (quoting *Kotteakos v. United States*, 328 U.S. 750, 776 (1946)).

Other acts evidence under NRS 48.045(2) and NRS 48.035(3) implicates prior misconduct by the defendant or collateral offenses for which the defendant could have been charged. *See Salgado v. State*, 114 Nev. 1039, 1042, 968 P.2d 324, 326 (1998). Although other acts evidence is inadmissible

---

[1]*Tinch v. State*, 113 Nev. 1170, 1175-76, 946 P.2d 1061, 1064-65 (1997), *holding modified by Bigpond v. State*, 128 Nev. 108, 117, 270 P.3d 1244, 1250 (2012).

[2]*Tavares v. State*, 117 Nev. 725, 733, 30 P.3d 1128, 1133 (2001).

"to prove the character of a person in order to show that the person acted in conformity therewith," NRS 48.045(2), it may be admitted as res gestae evidence under NRS 48.035(3), or for relevant nonpropensity purposes under NRS 48.045(2).

Nevada's res gestae statute provides an "extremely narrow" basis to admit other acts evidence. *Weber v. State*, 121 Nev. 554, 574, 119 P.3d 107, 121 (2005), *overruled on other grounds by Farmer v. State*, 133 Nev. 693, 698, 405 P.3d 114, 120 (2017). Specifically, NRS 48.035(3) allows for admission of "[e]vidence of another act or crime which is so closely related to" a charged crime "that an ordinary witness cannot describe the act in controversy or the crime charged without referring to the other act or crime." Other acts evidence is only admissible under NRS 48.035(3) when it is part of "the same 'transaction'—the same temporal and physical circumstances—as the charged act[s]." *Alfaro*, 139 Nev. at 227, 534 P.3d at 149-50. It is not enough that the other act helps "explain" or provides "context" to understand a charged crime; instead, it must be "*nearly impossible* for the witness to describe the crime without referring to the uncharged act." *Id.* at 227, 534 P.3d at 150.

Alternatively, to admit other acts evidence under NRS 48.045(2), the State must establish at a hearing outside the jury's presence that "(1) the [other] bad act is relevant to the crime charged and for a purpose other than proving the defendant's propensity, (2) the act is proven by clear and convincing evidence, and (3) the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice." *Bigpond v. State*, 128 Nev. 108, 117, 270 P.3d 1244, 1250 (2012). If admitted, the State must "request that the jury be instructed on the limited use of [other] bad act evidence." *Tavares*, 117 Nev. at 731, 30 P.3d at 1132. The court should give this *Tavares* limiting instruction "both at the time evidence of the uncharged

bad act is admitted and in the trial court's final charged to the jury." *Id.* at 733, 30 P.3d at 1133.

The July incident

While we agree with Willis that the July incident was inadmissible under the res gestae statute, any error in admitting that evidence without a limiting instruction was harmless. Evidence that Willis's tools had been loaded onto a trailer, as if to be taken, in July was not part of "the same 'transaction'—the same temporal and physical circumstances"—as the attempted break-in in September for which he was charged. *Alfaro*, 139 Nev. at 227, 534 P.3d at 149-50. Although the district court found that "the story of this alleged offense [could not] be adequately explained" without referencing Willis's "alleged attempts to remove the tools" in July, this was an improper basis for admitting that evidence. *See id.* at 227, 534 P.3d at 149 (stating that "[i]t is insufficient that the uncharged acts 'explain,' 'make sense of,' or 'provide a context for' the charged crimes" (quoting *Weber*, 121 Nev. at 574, 119 P.3d at 121)). The Bonettis easily described the September break-in attempt at the 433 South Fifth Street property without referencing the July incident, which occurred at the other property. *See id.* at 228, 534 P.3d at 150. Thus, the district court erred in admitting evidence of the July incident under the res gestae statute.

Nevertheless, an "otherwise erroneous admission of evidence" will be affirmed if the evidence "could have been admitted another way," *id.* at 228, 534 P.3d at 150 (citing *Ledbetter v. State*, 122 Nev. 252, 260, 129 P.3d 671, 677 (2006)), "or if the error was harmless such that it did not have 'a substantial and injurious effect or influence in determining the jury's verdict,'" *id.* (quoting *Tavares*, 117 Nev. at 732, 30 P.3d at 1132 (2001)). Willis argues that the district court could not have admitted the evidence pursuant to NRS 48.045(2), because—although it held an evidentiary hearing—it failed to undertake a

Tinch analysis or provide a *Tavares* instruction to limit the jury's consideration of that evidence. But as the supreme court recognized in *Diomampo v. State*, 124 Nev. 414, 430, 185 P.3d 1031, 1041 (2008), the failure to hold an evidentiary hearing and make the necessary findings "is not reversible error when the record is sufficient to establish that the evidence is admissible under [*Tinch*] or the trial result would have been the same had the trial court excluded the evidence." Here, the record is sufficient to establish that evidence of the July break-in and attempt to remove tools and equipment was admissible under the three-part *Tinch* test.

First, the July incident was relevant for nonpropensity purposes. In its pretrial motion, the State sought to admit this evidence, in part, "to demonstrate the motive and intent of Willis on September 2, 2023, to take items that had been left behind due to the confession of judgment where Willis put up as collateral the tools and that this was not a mistake or accident." Evidence that Willis had previously broken into the locked building at 483 South Fifth Street and removed tools and equipment that had been put up as collateral would help explain his motive and intent when he used bolt cutters to damage the eyebolt on the gate to the 433 South Fifth Street building less than two months later, suggesting that he was trying to get into the building to remove property he had left behind.

Second, based on the evidence presented at trial, including the timing and circumstances under which the tools went missing, clear and convincing evidence existed showing that Willis took his tools with him when he left. Willis had signed a confession of judgment which allowed the Bonettis

to sell any tools he left behind in the event of a default.[3] Several witnesses testified that the day before the Bonettis discovered Willis's tools and equipment loaded onto a trailer, Willis and Bill Bonetti had gotten into an argument, and it is undisputed that Willis was behind in his rent. At trial, Debbie Bonetti testified that she and Bill went to the property in July, saw a flatbed trailer loaded up with tools and equipment, and the next day the trailer and tools were all gone. Debbie did not see Willis (or the tools) on the property after the lockout. Finally, Willis's office manager, April Brown, testified that Willis restarted his auto repair business at a different location after the lockout. It is unclear how Willis could have done so without access to the tools of his trade. Under the circumstances, clear and convincing circumstantial evidence existed showing that Willis took his tools and equipment with him after the July lockout.

Third, the probative value of the July incident was not substantially outweighed by the danger of unfair prejudice. The only prejudice Willis articulates in connection with admitting this evidence is the inference "that because something suspicious happened at the Property, [Willis] *must have been the culprit on September 2.* The prejudice that followed was substantial, particularly in a case where intent, and unlawful entry were genuinely contested." (Emphasis added.) However, Willis's own witness, April Brown, identified him in the September 2 surveillance video. Willis conceded at trial that he damaged the eyebolt on the gate outside the 433 South Fifth Street building. And the State could permissibly use the prior bad act to establish Willis's intent and to demonstrate his motive for attempting to enter

[3]Willis does not argue on appeal that the confession of judgment was inadmissible; therefore, such argument has been forfeited. *See Palmieri v. Clark County*, 131 Nev. 1028, 1033 n.2, 367 P.3d 442, 446 n.2 (Ct. App. 2015) (providing that arguments not raised on appeal are deemed forfeited).

that property. *See* NRS 48.045(2) (stating that other acts evidence may be admissible to establish "proof of motive" and "intent"). Because this court can determine, from the record, that the July incident was admissible to establish motive and intent, it was not reversible error for the district court to admit that evidence without making *Tinch* findings.

Willis further argues that the absence of a *Tavares* limiting instruction had a substantial and injurious effect on the verdict because the jury was permitted to consider improperly admitted other act evidence for propensity purposes. Willis argues that the admission of the July incident led the jury to conclude that Willis had "a history of returning to the property or engaging in similar conduct," an inference forbidden by NRS 48.045(2).

Failure to give a limiting instruction is harmless if it did not have a "substantial and injurious effect or influence in determining the jury's verdict." *Tavares*, 117 Nev. at 732, 30 P.3d at 1132. In assessing "unfair prejudice," this court reviews the use to which the evidence was actually put—i.e., whether, having been admitted for a permissible limited purpose, the evidence was presented or argued at trial for its forbidden tendency to prove propensity. *See Rosky v. State*, 121 Nev. 184, 197-98, 111 P.3d 690, 699 (2005). The court also considers "the nature and quantity of the evidence supporting the defendant's conviction beyond the prior act evidence itself." *Ledbetter*, 122 Nev. at 262 n.16, 129 P.3d at 678-79 n.16.

Although the district court did not give a limiting instruction, the State complied with *Tavares* by repeatedly requesting such an instruction and did not use the evidence for a forbidden propensity purpose. The State only briefly referenced the July incident during its opening statement. And the State did not mention the July incident in closing arguments, but instead actually argued there was *no evidence Willis had been at the property since the*

lockout: "[a]ll the testimony is he hasn't been down there." The State even offered its own quasi-limiting instruction during its closing argument, telling jurors that the evidence it presented at trial was intended to "give you context of their relationship and why he might be going back [into] the building to get those tools that he lost because of his default . . . . It gives you context, motive, the reason he's getting in there. But that's it." Finally, after his own witness identified him in the surveillance video, Willis conceded at trial that he was responsible for damaging the eyebolt. Under these circumstances, Willis fails to show that the absence of a *Tavares* instruction had a substantial and injurious effect on the jury's verdict.

The August incident

Although Willis contends the August incident involved other acts evidence and that the district court improperly admitted that evidence under the res gestae doctrine, Willis mischaracterizes the court's ruling. The district court overruled Willis's propensity objection on the basis that the Bonettis had not implicated *anyone* in that break-in attempt. The court did not admit this evidence under the res gestae doctrine.

Here, because there was no implication that Willis tampered with the lock during the August incident, it was not other acts evidence. *See Salgado*, 114 Nev. at 1042-43, 968 P.2d at 326. The Bonettis testified that they did not know who had tampered with the lock in August, that Willis had vacated the properties in July, and that they had not seen him there since. Unlike the July incident, the August incident was not so closely related to the lockout to inferentially suggest it was Willis who tried to break the lock. Finally, the evidence was not offered to prove that Willis had a propensity to commit the crime charged; rather, it was introduced solely to explain why the

Bonettis put up surveillance cameras at the 433 South Fifth Street property.[4] Because evidence of the August incident was not other acts evidence, the court properly overruled Willis's propensity-based objection, and there was no need for the district court to undertake a *Tinch* analysis or offer a *Tavares* instruction.

The district court did not violate Willis's constitutional rights by excluding irrelevant evidence and instructing the jury that the confession of judgment and eviction orders were valid

Willis contends the district court violated his constitutional right to due process and to present a complete defense by declaring the confession of judgment and eviction orders valid as a matter of law and determining that a valid lockout occurred as a matter of law, while preventing him from litigating the validity of the confession of judgment, the prior orders, or the lockout process. The State responds by pointing out that Nevada law dictates how commercial lessees may challenge unlawful lockouts, and argues that Willis's failure to utilize that process prior to September 2023 precluded him from collaterally attacking that process in his criminal case.

At trial, Willis sought to defend against the attempted burglary charge by challenging the State's evidence that he lacked permission to enter the business structure located at 433 South Fifth Street in September 2023. His theory of defense was that "he could not 'unlawfully enter' [a] premises he still had a contractual right to occupy, and a landlord's unlawful self-help lockout could not convert [Willis] from tenant to burglar." To that end, he sought to introduce evidence that the confession of judgment was invalid because Robert Salyer's notary appointment had expired at the time he notarized Willis's verification. He also sought to present evidence that the

[4]Willis did not object that this purpose was irrelevant under NRS 48.015 below, and he does not argue its relevance on appeal.

Bonettis had breached the confession of judgment shortly after he signed it, by withholding keys to both commercial properties, limiting his access to those properties and preventing him from earning enough money through his business to stay current on his contractual payments. Under Willis's theory of defense, "[t]he July 15 lockout was therefore not an enforcement action under the [confession of judgment]; it was an unlawful self-help eviction." Willis contends that the district court denied him "due process and his constitutional right to present a complete defense" by preventing him from presenting this evidence at trial.

Under NRS 48.025(2), only relevant evidence is admissible. Evidence is relevant if it has "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. Whether to admit or exclude evidence is within the sound discretion of the district court, and this court reviews such decisions for an abuse of discretion or manifest error. *Thomas v. State*, 122 Nev. 1361, 1370, 148 P.3d 727, 734 (2006). However, the Constitution "guarantee[s] that a criminal defendant must have 'a meaningful opportunity to present a complete defense.'" *Coleman v. State*, 130 Nev. 229, 236, 321 P.3d 901, 906 (2014) (quoting *Holmes v. South Carolina*, 547 U.S. 319, 324 (2006)); *see also Hoagland v. State*, 126 Nev. 381, 386, 240 P.3d 1043, 1047 (2010) ("Due process requires that there be an opportunity to present every *available* defense." (quoting *Lindsey v. Normet*, 405 U.S. 56, 66 (1972) (emphasis added))). We review the exclusion of evidence affecting a defendant's constitutional rights to due process and to present a defense for harmless error, and such error is harmless only where we can determine beyond a reasonable doubt that it did not contribute to the verdict. *See Coleman*, 130 Nev. at 243, 321 P.3d at 911.

One possible defense to a burglary charge is to argue that the defendant did not "unlawfully enter[ ] or unlawfully remain[ ]" in the property at issue. NRS 205.060(1). In *State v. White*, the Nevada Supreme Court recognized that Nevada's burglary statute was "designed to protect a possessory or occupancy right in property" and held that a person could not burglarize their own home if they had "an absolute, unconditional right to enter the home." 130 Nev. 533, 538, 330 P.3d 482, 485 (2014). Although Willis wanted to attack the confession of judgment and lockout procedures to establish that he had a right to enter the 433 South Fifth Street property in September 2023, the district court correctly ruled that these defenses were unavailable under Nevada's laws governing confessions of judgment and commercial leases.

To the extent Willis sought to challenge the confession of judgment because Salyer's notary appointment had expired, that was not a basis for Willis to avoid his legal obligations under that document. The district court correctly recognized that Salyer's expired appointment rendered the verification "voidable," rather than void as Willis tried to argue below. *See* NRS 240.061(2) (stating "[a] notary public may not perform a notarial act if the notarial act is prohibited by NRS 240.001 to 240.169, inclusive" and that "[a] notarial act performed in violation of this subsection is *voidable*" (emphasis added)). Additionally, in *Coast to Coast Demolition & Crushing, Inc. v. Real Equity Pursuit, LLC*, the Nevada Supreme Court held that "a debtor cannot avoid an otherwise valid signed confession [of judgment] based on his failure to verify the statements he subscribed." 126 Nev. 97, 104, 226 P.3d 605, 609 (2010). Here, because Willis signed the confession of judgment himself, he was "estopped to question the validity of his own confessed judgment" on the basis that it was not properly verified by Salyer. *Id.* at 104, 226 P.3d at 610 (quoting

Pulley v. Pulley, 121 S.E.2d 876, 882 (N.C. 1961)). Any arguments about Salyer's expired notary appointment were therefore irrelevant and the district court did not err in excluding that evidence.

Although Willis wanted to present evidence that the Bonettis breached the confession of judgment by withholding the keys, in order to establish they unlawfully locked him out of the properties on July 15, 2023, the district court correctly ruled that this evidence was irrelevant under Nevada's law governing commercial leases. NRS Chapter 118C addresses relationships between landlords and tenants of commercial premises. NRS 118C.150. NRS 118C.200 sets forth the basic obligations of commercial landlords and the remedies available to a tenant in the event their landlord breaches those obligations. NRS 118C.200(3). If a landlord or their agent violates that section, the tenant may recover possession of the commercial premises or terminate the lease and recover limited damages. NRS 118C.200(5).

NRS 118C.210 describes the legal process a tenant must use to recover possession of commercial premises in the event of an unlawful lockout by a landlord. NRS 118C.210(1) ("If a landlord locks a tenant out of commercial premises that are subject to a rental agreement in violation of NRS 118C.200, the tenant may recover possession of the commercial premises *as provided in this section*." (emphasis added)). Specifically, the tenant

> *must file with the justice court of the township in which the commercial premises are located a verified complaint for reentry*, specifying the facts of the alleged unlawful lockout by the landlord or the landlord's agent. The tenant must also state orally under oath to the court the facts of the alleged unlawful lockout.

NRS 118C.210(2) (emphasis added).

Crucially, Willis does not dispute that the Bonettis posted eviction notices and locked him out of both commercial properties in July of 2023.

Under those circumstances—where Willis believed the Bonettis had unlawfully locked him out of the two commercial properties—NRS 118C.210 provided the exclusive legal remedy for Willis to recover possession of those properties. To put it another way, Willis could not recover legal possession of the premises unless and until he followed the procedure set forth in NRS 118C.210. Because he had not done so before damaging the eyebolt in September 2023, he was not legally entitled to enter the locked property on that date.

Willis could have raised his challenges to the lockout procedures had he simply filed a "verified complaint for reentry" in Elko Township Justice Court pursuant to NRS 118C.210. However, Willis never availed himself of that legal remedy. Willis did not civilly contest the lockout or the eviction in justice court. And although the Bonettis' attorney notified him that the confession of judgment had been filed in the Fourth Judicial District Court, Willis did not respond or file anything in the Fourth Judicial District Court challenging it. Instead, Willis vacated both properties and restarted his repair business at another location in town.

To the extent Willis contends that his due process rights were violated because he did not have sufficient time to civilly challenge the lockout process during the six-week period between the lockout and the September incident, he fails to acknowledge NRS 118C.210, let alone argue that the procedure set forth therein violated his rights under *Matthews v. Eldridge*, 424 U.S. 319, 335 (1976) (setting forth a three-part test to evaluate whether procedures are constitutionally sufficient to satisfy due process); *see also Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (explaining that this court need not consider an appellant's argument that is not cogently argued or lacks the support of relevant authority).

Although Willis also suggests that the district court should have *sua sponte* stayed his criminal case to give him an opportunity to civilly challenge the lockout and confession of judgment, he failed to request that relief below and does not argue plain error on appeal. Not only is that argument forfeited, *see Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48 (2018), but Willis cannot possibly establish his substantial rights were affected because, at the time of trial, it was too late to civilly challenge the lockout under NRS 118C.210. He should have done so *before* attempting to enter the property on September 2, 2023.

Although due process requires that a criminal defendant have the "opportunity to present every available defense," *Hoagland*, 126 Nev. at 386, 240 P.3d at 1047 (internal quotation marks omitted), a defendant does not have the right to present *unavailable* defenses, *see, e.g.*, *Ser v. State*, 141 Nev., Adv. Op. 57, 579 P.3d 559, 566 (2025) (concluding that a defendant was not legally entitled to make a citizen's arrest for a federal felony committed outside his presence, and therefore "it was not error for the district court to exclude evidence of [the] alleged felony, nor was it error to deny [the defendant] a jury instruction on citizen's arrest"). In this case, the district court correctly determined that Willis was not entitled to defend the charge of attempted burglary of a business by presenting irrelevant evidence to collaterally attack the eviction process.

Relatedly, Willis argues that the district court violated his constitutional rights by instructing the jury that the confession of judgment and orders of eviction were valid as a matter of law. Willis contends that this ruling "deprived the jury of the ability to decide whether [he] had any *license or privilege* to enter the property on September 2 and relieved the State of its burden on that essential element." The State disagrees.

This court reviews preserved jury instruction errors "for an abuse of discretion or judicial error" and reviews "whether a proffered instruction correctly states the law de novo." *Judd v. State*, 140 Nev. 190, 193, 547 P.3d 138, 141 (Ct. App. 2024) (citing *Nay v. State*, 123 Nev. 326, 330, 167 P.3d 430, 433 (2007)). Here, Willis signed the confession of judgment in which he agreed that the prior eviction orders would remain valid and could be used as a basis to evict him in the event of a default. Although Salyer's notary appointment had expired at the time he notarized the confession of judgment, that defect did not render the document void; instead, it was voidable. *See* NRS 240.061(2). However, Willis did not civilly challenge the confession of judgment or file a verified complaint for reentry under NRS 118C.210 before attempting to access the 433 South Fifth Street property on September 2, 2023. And because Willis signed the confession of judgment himself, he was "estopped to question the validity of his own confessed judgment" on the basis that it was not properly verified by Salyer. *Coast to Coast*, 126 Nev. at 104, 226 P.3d at 610 (internal quotation marks omitted). Under these facts and circumstances, the district court did not err by instructing the jury that the

confession of judgment and orders of eviction were valid as a matter of law.[5]

The evidence was sufficient to establish attempted burglary of a business and willful injury to or destruction of property having a value of $250 or more

Willis contends insufficient evidence supports his convictions for attempted burglary of a business and willful injury to or destruction of property having a value of $250 or more.[6] When reviewing a challenge to the sufficiency of the evidence, this court will review the evidence in the light most favorable to the prosecution and determine whether "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *accord Mitchell v. State*, 124 Nev. 807, 816, 192 P.3d 721, 727 (2008). Circumstantial evidence may be

---

[5]Willis does not cogently argue how the district court's reasoning for issuing this instruction violated Nevada's law on presumptions in criminal cases. *See Maresca*, 103 Nev. at 673, 748 P.2d at 6. A prohibited presumption "instructs the jury that 'it must infer the presumed facts if the State proves certain predicate facts.'" *Smith v. State*, 142 Nev., Adv. Op. 26, 587 P.3d 251, 262 (2026) (quoting *Thompson v. State*, 108 Nev. 749, 754, 838 P.2d 452, 455 (1992), *overruled on other grounds by Collman v. State*, 116 Nev. 687, 7 P.3d 426 (2000)). Willis does not identify any language in any jury instruction that contained a prohibited presumption.

We also disagree with Willis's contention that the district court violated his constitutional rights when it "repeatedly reversed course mid-trial" by allowing the State to introduce the July and August incidents and by "barring the defense from challenging the lockout after assuring counsel it could do so." As explained above, the July and August incidents were admissible and Willis's challenges to the lockout procedures were irrelevant and impermissible. Further, Willis cites no legal authority to support this argument. *See Maresca*, 103 Nev. at 673, 748 P.2d at 6.

[6]Willis does not challenge the sufficiency of evidence to support his conviction for possession of implements adapted for the use or commission of a crime and, indeed, such a challenge would fail as he conceded the elements of that crime during his closing argument.

sufficient to support a conviction. *Washington v. State*, 132 Nev. 655, 661, 376 P.3d 802, 807 (2016).

As to the crime of attempted burglary of a business, Willis initially contends the State failed to prove an attempt to burglarize the business structure at 433 South Fifth Street because there was no testimony to show he physically tried to enter *the building* inside the gate. A burglary of a business occurs when a person "unlawfully enters or unlawfully remains in any . . . [b]usiness structure with the intent to commit grand or petit larceny" or other enumerated crimes. NRS 205.060(1)(b). "To prove an attempt to commit a crime, the prosecution must establish (1) the intent to commit the crime; (2) performance of some act towards its commission; and (3) failure to consummate its commission." *Austin v. State*, 142 Nev., Adv. Op. 12, 587 P.3d 826, 831 (Ct. App. 2026) (quoting *Moffett v. State*, 96 Nev. 822, 824, 618 P.2d 1223, 1224 (1980)). Here, the gate leading to the business structure was locked. A rational juror could find that Willis's act of using bolt cutters to cut the eyebolt securing the gate leading to the business structure in the early morning hours was an act taken toward the commission of burglary of a business, regardless of whether he physically tried to enter the building within.

Willis next contends the State failed to prove his criminal intent to commit a "larceny or any felony" within the business structure because it offered no proof of "the existence or value" of any property therein.[7] "Intent need not be proved by positive or direct evidence, but may be inferred from the

[7]A person commits grand larceny if the person "[i]ntentionally steals, takes and carries away, leads away or drives away . . . [p]ersonal goods or property, with a value of $1,200 or more, owned by another person." NRS 205.220(1)(a). A person commits petit larceny if the person "[i]ntentionally steals, takes and carries away, leads away or drives away . . . [p]ersonal goods or property, with a value of less than $1,200, owned by another person." NRS 205.240(1)(a).

conduct of the parties and the other facts and circumstances disclosed by the evidence." *Id.* (quoting *Moore v. State*, 122 Nev. 27, 36, 126 P.3d 508, 513 (2006)). Here, the State presented evidence that the building at 433 South Fifth Street contained desks and one or two file cabinets, "three scissor lifts, maybe a couple of floor jacks, a tire machine, realignment rack . . . a couple of work benches and used motor oil and open containers of who knows what." Although the State did not present evidence of the value of these items, such proof was unnecessary—the value was either "less than $1,200" (petit larceny), NRS 205.240(1)(a), or "$1,200 or more" (grand larceny), NRS 205.220(1)(a). Regardless of value, the intentional stealing, taking, or carrying away of such property would constitute one those two types of larceny.

Further, a rational juror could have found that Willis specifically intended to steal, take, or carry away the Bonettis' personal goods or property when he damaged the eyebolt securing the gate to the 433 South Fifth Street property. The confession of judgment provided that, following a lockout, any of Willis's "personal property left in and around the Buildings may be sold with the proceeds applied against amounts owed to Bonetti[s]." Circumstantial evidence indicated that Willis had already taken his tools and equipment from the 438 South Fifth Street building at the time of the lockout, suggesting a motive and intent to return for any property he may have left at the 433 South Fifth Street building. The confession of judgment gave the Bonettis the right to "[a]ny personal property left in and around the Buildings." It does not matter whether any such property actually remained in the building, as long as evidence established Willis's specific intent to steal that property. *See Martinez v. State*, 140 Nev., Adv. Op. 70, 558 P.3d 346, 357 (2024) (stating "we have rejected impossibility defenses to attempt charges when the specific intent to commit the underlying offense exists").

Finally, to the extent Willis contends that the State failed to prove he was unauthorized to enter the building, he is incorrect. The State presented evidence that, after Willis fell behind in his rent, the Bonettis locked him out of the property, and he failed to file a verified complaint for reentry as required by NRS 118C.210(2). Without availing himself of this legal remedy, Willis could not recover possession of the commercial premises, and he was not authorized to enter those premises on September 2, 2023. *See* NRS 205.060(6)(d) (defining "unlawfully enters" to include entry "when the person is not licensed or privileged to do so"). Thus, Willis's arguments do not establish that his conviction for attempted burglary of a business was unsupported by sufficient evidence.

As to the crime of willful injury to or destruction of property having a value of $250 or more, Willis contends the district court failed to prove that the cost of the alleged damage exceeded $250. Initially, Willis relies on testimony from a responding police officer that the repair cost was "about $25" and argues "[t]he photographs support that assessment: the eyebolt was intact, just two notches on it, and nothing else was disturbed." Then, Willis argues that Bill's testimony about the repair cost "cannot be credited" because it was not limited to repairing damage where he "testified he made it 'burglar-proof.'" Willis further contends that the Bonettis improperly billed him "for an entirely new lock even though the original lock shown in the photographs was not damaged."

A person is guilty of willful destruction of property if he "willfully or maliciously destroy[s] or injure[s] any . . . personal property of another." NRS 206.310. The crime is a gross misdemeanor "[w]here the value of the loss is $250 or more but less than $5,000." NRS 193.155. When property is partially destroyed, as it was in this case, "the appropriate measure of damages

is the cost related to repair or restore the property," *Judd*, 140 Nev. at 199, 547 P.3d at 145 (quoting *Romero v. State*, 116 Nev. 344, 348, 996 P.2d 894, 897 (2000)), and the damage "must be directly tied to the offense, *id.* (citing *Romero*, 116 Nev. at 348, 996 P.2d at 897).

When the trial evidence is viewed in a light most favorable to the prosecution, a rational trier of fact could certainly have found the repair cost to be at least $250. As noted by Willis, the jury was presented with several photographs of the damaged eyebolt, showing how the gate was secured with a lock that connected the two eyebolts. Contrary to Willis's claim, the photographic evidence does not demonstrate the repair cost was limited to $25. The evidence showed that the eyebolts had been drilled into the fence and then welded into place. Any repairs would necessarily require the removal of the damaged eyebolt and the use of welding equipment to secure a new undamaged eyebolt in its place.

The State presented testimony from Bill and Debbie Bonetti as to the cost of those repairs. Bill, who runs a welding business, testified that he brought his welding equipment and grinder and cut off the eyebolts and "drill[ed] new holes in the eyebolts to make it burglar proof," which took him a couple of hours. Debbie testified that she prepared the invoice setting forth the cost of repairs, which was admitted into evidence. The invoice identified a total repair cost of $523.77, which included three hours of Bill's time (including travel time) at $150/hour ($450), a gasless mig wire ($20.34), eye bolts and washers ($10.61) and a lock ($42.82). Although Bill testified that he did not know what the fair market value of the repairs would be, Debbie testified that Bill is an expert welder and $150 per hour is "the standard charge for welders." Debbie also included in the invoice "the materials that it took to fix it."

Willis asks this court to disregard that evidence based on an officer's testimony that he wrote in his police report that the damage and replacement cost of the eyebolt was $25. However, the officer clarified that he believed that amount was based on what Bill told him a new eyebolt would cost, and it did not account for any welding or repair costs to install the new eyebolt. Insofar as Willis argues that the Bonettis unnecessarily charged him for a replacement lock when the lock was not broken, the cost of that lock was only $42.82. Even if that expense were removed, the evidence still establishes that the repairs cost $480.95—well above the $250 threshold required for the conviction. And although Willis contends that "Bill's claimed cost cannot be credited" because he testified his repairs "made it burglar-proof," Bill's statement does not establish that the repairs he made were unnecessary. Willis's arguments primarily ask this court to reweigh the evidence and evaluate witness credibility, which appellate courts are not permitted to do. *See McNair v. State*, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992) (stating "it is the jury's function, not that of the court, to assess the weight of the evidence and determine the credibility of witnesses"). Thus, Willis does not establish that his conviction for gross misdemeanor destruction of property was

unsupported by sufficient evidence.[8]

Accordingly, we

ORDER the judgment of conviction AFFIRMED.

Bulla, C.J.

Gibbons, J.

Westbrook, J.

cc: Hon. Mason E. Simons, District Judge
Hillewaert Law Firm
Attorney General/Carson City
Elko County District Attorney
Fourth District Court Clerk

[8]Willis did not object that the district court violated his right to testify and to due process by failing to address witness intimidation by Robert Salyer and he does not argue plain error on appeal; therefore, we decline to address that forfeited argument. *See Jeremias*, 134 Nev. at 52, 412 P.3d at 49 ("[T]he decision whether to correct a forfeited error is discretionary."). Because Willis identified only one error—admission of the July incident as res gestae without a limiting instruction, which we found harmless—he cannot establish cumulative error. *See Barlow v. State*, 138 Nev. 207, 221, 507 P.3d 1185, 1199 (2022) ("Because we discern only one error, there is nothing to cumulate.").

Insofar as Willis raises other arguments not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.