FILED
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ELIZABETH A. BROWN
CLERK OF SUPREME COURT

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL ANTHONY LAND, JR., Appellant, vs. THE STATE OF NEVADA, Respondent.	No. 90816

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury trial, of first-degree murder with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Hon. Michelle Leavitt, Judge.

In 2018, law enforcement responded to a call and discovered a woman, later identified as Bailey Short, shot to death in a dead-end alley adjacent to a resort complex. The investigation led police to suspect appellant Michael Anthony Land. After trial, the jury found Land guilty of murder with the use of a deadly weapon. After being sentenced to 28 years to life and ordered to pay $3,937.48 in restitution, the district court granted Land's motion for a new trial based on newly discovered evidence. *See Land v. State*, No. 84251, 2023 WL 3674746, *1 (Nev. May 25, 2023) (Order Dismissing Appeal). Land was again found guilty after the retrial and the district court imposed the same sentence. Land raises six issues.

Fair cross section

Land argues that the district court erred in denying his fair-cross-section challenge. A criminal defendant is entitled to "a venire selected from a fair cross section of the community . . . ." *Williams v. State*, 121 Nev. 934, 939, 125 P.3d 627, 631 (2005). To show a prima facie violation of that right, the proponent must demonstrate that (1) the allegedly underrepresented group is distinctive in the community, (2) the group is not fairly and reasonably

represented "in relation to the number of such persons in the community," and (3) the "underrepresentation is due to systematic exclusion of the group in the jury-selection process." *Id.* at 940, 125 P.3d at 631 (internal quotation marks and emphases omitted).

Here, Land objected to the venire on the novel grounds that African American men should be recognized as a distinct group for purposes of the first fair-cross-section prong. Even crediting that African American men are a distinct group, Land fails to satisfy the second (underrepresentation) prong. In particular, Land used national criminal justice statistics, which do not adequately demonstrate the representative percentage of African American prospective jurors for a trial in Clark County. *See id.* at 938-40, 125 P.3d at 630-31. Thus, Land failed to substantiate African American men were underrepresented in the relevant community. *Morgan v. State*, 134 Nev. 200, 208, 416 P.3d 212, 222 (2018) (providing that an appellant's failure to show underrepresentation "proves fatal" and "analysis of the third prong is unnecessary"). Therefore, we conclude the district court did not err in denying his challenge. *See Valentine v. State*, 135 Nev. 463, 465, 454 P.3d 709, 714 (2019) (recognizing that the defendant bears the burden of demonstrating a prima facie violation of the right to a fair cross section).

Substitute coroner testimony

Land argues that allowing testimony from a substitute coroner, Dr. Lisa Gavin, violated his right to confront witnesses. In *Matadamas-Serrano v. State*, 142 Nev., Adv. Op. 20, 584 P.3d 793, 803 (2026), this court recognized that "if the record shows the expert's opinion is meaningfully independent and not based on testimonial hearsay, it will not violate the Confrontation Clause even where the expert may have reviewed another expert's report in preparation for trial." This court reviews "de novo whether a defendant's Confrontation Clause rights were violated." *Id.* at 802.

Here, Dr. Gavin testified that she conducted an independent review of the relevant material. To do so, she reviewed the autopsy and toxicology reports, photographs, and x-rays. Based on the photographs, Dr. Gavin determined Short was shot in the back of the head and the neck, and she suffered related internal injuries. Dr. Gavin testified she reached an independent medical conclusion that Short died from gunshot wounds and the manner of death was homicide.

Land asserts the district court did not make a ruling that Dr. Gavin could only testify to her own opinions based on the autopsy photos, and Dr. Gavin's opinion depended entirely on the original autopsy report. The record shows otherwise. First, in denying the motion to exclude, the district court clarified that Dr. Gavin can rely on the autopsy photographs. *See id.* at 804 (discerning no Confrontation Clause violation where "the district court instructed that the substitute coroner could testify to her own 'opinions based on the autopsy photos,' which were admitted into evidence and are nontestimonial"). And second, Dr. Gavin testified that reports can contain errors, and she utilizes the photographs to reach an independent opinion based on objective factors. In fact, Land concedes that Dr. Gavin did not utilize the autopsy report or attribute her conclusions to the report. Thus, Land has not demonstrated the district court allowed Dr. Gavin to be "merely a conduit for another analyst's testimonial statements." *Id.* at 803. Given *Matadamas-Serrano*, we conclude no relief is warranted on this ground.

Evidentiary rulings

Land argues the district court erred in multiple evidentiary rulings. This court reviews the decision to admit or exclude evidence for an abuse of discretion. *Chavez v. State*, 125 Nev. 328, 339, 213 P.3d 476, 484 (2009). First, Land argues the district court erred in excluding Facebook messages between Short and Salas that discussed drug use and Short's plan to

meet another person at the Tahiti Village on the night of her murder. We disagree for two reasons. First, Land does not explain how he could have impeached Salas given that Salas did not testify at the second trial. *See Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (explaining the court may disregard claims lacking cogent argument and relevant support). Second, the evidence was cumulative because the transcript of Salas' prior testimony, that the parties agreed to admit, included that Short was going to see a friend (Land) *and* had a "date." Thus, Land has not shown relief is warranted because even if the district court erred in excluding the evidence, such error was harmless. *See* NRS 178.598 (defining harmless error).

Next, Land argues the district court erred in precluding evidence about the contents of the victim's purse. The State objected when Land asked a crime scene analyst whether drug paraphernalia was found in the victim's purse. Land argued the evidence was relevant to the victim's involvement with drugs and prostitution. The district court sustained the relevance objection but permitted Land to revisit the subject if it became relevant based on additional testimony. Problematically, Land does not allege that he revisited the subject as the district court offered. Moreover, the jurors received evidence showing the victim had drugs in her system when she died. Thus, Land was not prevented from introducing relevant evidence.

Next, Land argues the district court erred in admitting Land's statement that he was mad enough to kill the person who burgled his residence. Land contends the statement was irrelevant because no other evidence proved the victim was involved in the burglary. But Land omits that the State presented text messages from Land's phone after the victim's death, which indicated Land believed another person was involved with the burglary. For example, while discussing Short's death, Land messaged someone about

the existence of another person yet to be punished for the burglary. The State theorized that the person that was punished for the burglary was Short. Therefore, the statement was relevant motive evidence. *See White v. State*, 52 Nev. 235, 285 P. 503 (1930) ("Any evidence that tends to show that the defendant had a motive for killing the deceased is always relevant as rendering more probable the inference that he did kill [the deceased]."). As a result, Land has not shown relief is warranted.

Finally, Land argues the district court erred in overruling a speculation objection to the State's question to a witness about why his wife would delete a text message. After reviewing the record, we agree that the prosecutor's question improperly called for speculation, but this argument lacks merit because Land introduced the subject by asking the witness if his wife deleted things on her phone. *See Pearson v. Pearson*, 110 Nev. 293, 297, 871 P.2d 343, 345 (1994) (recognizing an appellant is not entitled to relief if they "induced or provoked" the error in the trial court). Therefore, no relief is warranted on this ground.

Prosecutorial misconduct

Land argues the prosecution engaged in three instances of misconduct during trial. Reviewing claims of prosecutorial misconduct requires a determination of whether the prosecutor's conduct was improper and, if so, whether the conduct warrants reversal. *Valdez v. State*, 124 Nev. 1172, 1188, 196 P.3d 465, 476 (2008). Because Land did not object below, this court reviews the alleged misconduct for plain error. *See id.* at 1190, 196 P.3d. at 477 ("[A]n error that is plain from a review of the record does not require reversal unless the defendant demonstrates that the error affected his or her substantial rights, by causing actual prejudice or a miscarriage of justice." (citation modified)).

First, Land contends that the prosecutor improperly inflamed the passions of the jurors by describing graphic autopsy photographs. Although the admission of graphic photographs may be erroneous, *see Harris v. State*, 134 Nev. 877, 882, 432 P.3d 207, 212 (2018), any alleged error in the *description* of photographs is not plain, *see Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48 (2018); *cf. Doyle v. State*, 116 Nev. 148, 161, 995 P.2d 465, 473 (2000) (concluding "no error resulted from the projection display of autopsy photographs").

Second, Land contends the prosecutor improperly inflamed the passions of the jurors by referring to Land killing Short as "an execution" and putting "someone down like a dog." "[T]he prosecutor may argue inferences from the evidence and offer conclusions on contested issues." *Miller v. State*, 121 Nev. 92, 100, 110 P.3d 53, 59 (2005) (citation modified).

The prosecutor's statement here that the killing was "an execution" is argument based on the nature of the killing and is certainly relevant to their position that the killing was first degree murder. But equating the victim to an animal is inappropriate. While we disapprove of the dehumanization of the victim by the prosecutor, overall, reviewing for plain error, we find none. *Parker v. State*, 109 Nev. 383, 392, 849 P.2d 1062, 1068 (1993) ("Statements by the prosecutor, in argument, indicative of his or her opinion, belief, or knowledge as to the guilt of the accused, when made as a deduction or a conclusion from evidence introduced in the trial, are permissible and unobjectionable." (citation modified)); *see also State v. Warmus*, 967 N.E.2d 1223, 1234 (Ohio Ct. App. 2011) (finding that a gunshot wound to the back of the head, fired at close proximity was accurately described as "an execution-style shooting").

Finally, Land contends the State disparaged the defense during closing argument. This court has been "critical of the prosecution for disparaging legitimate defense tactics." *Barron v. State*, 105 Nev. 767, 780, 783 P.2d 444, 452 (1989). Although the prosecutor's word choice was indecorous, including referring to the theory of defense as "ridiculous," the comments were largely directed at the evidence, and thus it does not amount to plain error. *See Miller*, 121 Nev. at 100. 110 P.3d at 59 ("A prosecutor may argue inferences from the evidence and offer conclusions on contested issues." (citation modified)); *see also Byars v. State*, 130 Nev. 848, 865, 336 P.3d 939, 950-51 (2014) (considering statements alleged to be prosecutorial misconduct in context). Therefore, no relief is warranted on this ground.

Sentencing

Land asserts that the district court erred in imposing the sentence for the deadly weapon enhancement and imposing restitution. Despite receiving the same sentence after the first trial, Land did not object below to the sentence imposed after the retrial. Thus, we review for plain error. *See Mendoza-Lobos v. State*, 125 Nev. 634, 644, 218 P.3d 501, 507 (2009). First, Land argues the district court's failure to make findings about the deadly-weapon enhancement constitutes plain error warranting reversal. Although this court requires courts to "articulate findings regarding each of the enumerated factors for the deadly weapon enhancement," no relief is warranted if the defendant cannot show prejudice or a miscarriage of justice. *Id.* at 644, 218 P.3d at 508. Nothing in the record here suggests the lack of specific findings affected the sentence, particularly because Land received the same sentence after the first trial. *See id.* at 644, 218 P.3d at 508 (discerning no plain error where the record did not indicate the "failure to make certain findings on the record had any bearing on the district court's sentencing decision").

Second, Land argues the district court erred in ordering restitution because the amount was not supported by competent evidence. Relying on *Nied v. State*, 138 Nev. 275, 277, 509 P.3d 36, 40 (2022), Land contends the district court improperly determined the amount of restitution based on the presentence-investigation recommendation. Because Land did not object or offer competing evidence, he has not demonstrated error "clear under current law from a casual inspection of the record." *Jeremias*, 134 Nev. at 50, 412 P.3d at 48. Therefore, Land has not shown any relief is warranted on his sentencing claims. *See Nied*, 138 Nev. at 277, 509 P.3d at 40 (requiring the State "to present evidence at sentencing to prove the amount of restitution" when the defendant challenges the amount "recommended in the presentence report").

Cumulative error

Land argues the cumulative effect of the alleged errors warrants relief. Our review of Land's assignments of error show two errors based on the overruled speculation objection and based on the prosecutor's reference to putting "someone down like a dog." Both errors are harmless individually and in combination, and we conclude no relief is warranted given the substantial evidence supporting the guilty verdict. *See Valdez*, 124 Nev. at 1195, 196 P.3d at 481. Accordingly, we

ORDER the judgment of conviction AFFIRMED.

Stiglich. J.

Cadish. J.

Lee. J.

cc: Attorney General/Carson City
Clark County District Attorney
Special Public Defender
Hon. Michelle Leavitt, District Judge
The Eighth Judicial District Court of the State of Nevada, in and for the County of Clark, District Court Clerk