IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSEPH LAGUNA, A/K/A JOEY
LAGUNA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 71939

ORDER OF AFFIRMANCE

Joseph Laguna appeals from a judgment of conviction entered pursuant to a jury verdict finding him guilty of conspiracy to commit robbery, burglary while in possession of a deadly weapon, home invasion while in possession of a deadly weapon, two counts of attempt robbery with a deadly weapon, second degree murder with a deadly weapon, and attempt murder with a deadly weapon. Eighth Judicial District Court, Clark County; Carolyn Ellsworth, Judge.

Laguna was involved in a fatal shooting that occurred when he and several accomplices attempted to rob a home. At trial, the State presented substantial evidence, including testimony from two accomplices and from various other persons, among them cell phone expert Detective Christopher Gandy and homicide detectives Tod Williams and Barry Jensen. The State also presented records of the defendants' cell phone locations during the relevant period, photographs, statements given to detectives, and forensic reports. The jury convicted Laguna following a 19 day trial.[1]

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[1] We do not recount the facts except as necessary to our disposition.

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On appeal, Laguna argues that a reversal is warranted because the district court erred by (1) allowing improper expert testimony, and (2) allowing inadmissible hearsay testimony. As a result, Laguna argues that (3) the conviction cannot stand because it is insufficiently supported by uncorroborated accomplice testimony. We disagree.

Laguna first contends Detective Gandy's expert testimony was improper because he was limited to testifying as a lay witness and his testimony pinpointing cell phone locations exceeded this scope.[2] Laguna notes that prior to trial the State failed to provide to him with the evidence upon which Detective Gandy testified. We generally review the district court's decision to admit testimony for an abuse of discretion, *Brant v. State*, 130 Nev. ___, ___, 340 P.3d 576, 579 (2014), but will review for plain error if the defendant failed to object to the alleged error below. *See Green v State*, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003). If the State intends to offer expert testimony, the State must provide opposing counsel with notice of the witness and the proposed testimony. *Burnside v. State*, 131 Nev. ___, ___, 352 P.3d 627, 637 (2015); *see also* NRS 174.234(2). Failure to endorse a witness will be procedural error but will not warrant reversal unless the error prejudiced the defendant. *Jones v. State*, 113 Nev. 454, 473, 937 P.2d 55, 67 (1997).

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[2]To the extent Laguna raises arguments for the first time in his reply brief, those arguments are improper and we need not consider them. *See* NRAP 28(e)(2) (providing that reply briefs "must be limited to answering any new matter set forth in the opposing brief"); *Elvik v. State*, 114 Nev. 883, 888, 965 P.2d 281, 284 (1998) (explaining that arguments made for the first time in a reply brief prevent the respondent from responding to appellant's contentions with specificity).

Laguna's arguments are belied by the record. The State noticed Detective Gandy as an expert who would testify to "how cellular phones work, how phones interact with towers, and the interpretation of that information." Nothing in the record suggests Detective Gandy was not qualified to offer that testimony, or that his testimony at trial exceeded the scope of that disclosure.[3] Further, defense counsel did not argue at trial that Detective Gandy was limited to offering lay testimony. The objections in the record on which Laguna now relies regarded allegedly undisclosed trial exhibits summarizing the data, and arguments against allowing Detective Gandy to draw certain conclusions based on that data. However, defense counsel eventually conceded they had received all of the data upon which Detective Gandy relied, and NRS 52.275(1) allows a party to compile and summarize the "contents of voluminous writings . . . which cannot conveniently be examined in court" so long as the originals are made available to the opposing party, as was the case here. We therefore conclude Laguna fails to show any error warranting reversal.

Laguna next argues the district court improperly allowed hearsay evidence by admitting Detective Williams' testimony of Amanda Mendoza's statements regarding the app she used to locate accomplice Jorge Mendoza's phone. Defense counsel did not object to this testimony below,[4] and we therefore review for plain error. *Rimer v. State*, 131 Nev.

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[3]The record before us shows that the State presented Detective Gandy as an expert witness, that he set forth his qualifications in support of his expertise, and that defense counsel did not contest Detective Gandy's qualifications.

[4]Below, defense counsel did not object to the several instances where Detective Williams stated that Amanda had shown him a location on her iPhone app. Instead, defense counsel objected to the information on the app

___, ___, 351 P.3d 697, 715 (2015) (holding that to prevail under a plain error review a defendant must show both that the error is apparent from a casual inspection of the record and that the error was prejudicial, affecting the defendant's substantial rights). We conclude Laguna has failed to show plain error in this instance, because even assuming, *arguendo*, this is hearsay apparent from a casual inspection of the record, Laguna has not shown how this evidence prejudiced his case in light of the substantial evidence placing him at the scene of the crime, including the accomplices' testimonies and the cell phone records.[5]

Finally, we consider Laguna's contention that the verdict is unsupported by admissible evidence. In particular, Laguna contends the accomplice testimony was inadmissible because it was uncorroborated. Under NRS 175.291(1), a conviction based on accomplice testimony will not stand unless the accomplice's testimony is corroborated by other evidence that independently connects the defendant to the crime. *See also Evans v. State*, 113 Nev. 885, 892, 944 P.2d 253, 257 (1997) (addressing the corroborative evidence requirement). Here, the cellphone records

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itself, contending this information constituted hearsay. However, as the district court found, this was not hearsay because the information on the app was not an assertion. *See* NRS 51.035; NRS 51.045.

[5]We reject Laguna's argument that Detective Jensen's testimony also warrants reversal. To the extent that testimony included inadmissible hearsay within hearsay, we note any hearsay was occasioned by defense counsel's questioning during cross-examination. Therefore, it was invited error and we will not reverse. *See Pearson v. Pearson*, 110 Nev. 293, 297, 871 P.2d 343, 345 (1994) ("The doctrine of 'invited error' embodies the principle that a party will not be heard to complain on appeal of errors which he himself induced or provoked the court or the opposite party to commit.").

independently connect Laguna to the crime showing that Laguna was in constant association with his accomplices on the day of the crime, and also placed Laguna's phone at the crime scene. *See Cheatham v. State*, 104 Nev. 500, 505, 761 P.2d 419, 422 (1988) (holding that accomplice testimony was sufficiently corroborated where evidence showed constant association of the accomplices throughout the day of the offense). In addition, the cell phone records corroborate the accomplices' account of the timeline of events. Therefore, there was sufficient corroborating evidence to sustain Laguna's convictions. Accordingly, we

ORDER the judgment of the district court AFFIRMED.
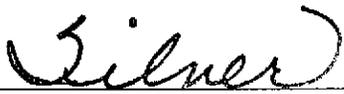
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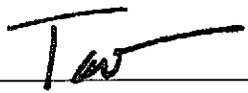
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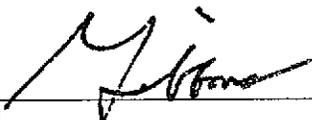
_____, J.
Gibbons

cc: Hon. Carolyn Ellsworth, District Judge
     Sandra L. Stewart
     Attorney General/Carson City
     Clark County District Attorney
     Eighth District Court Clerk