

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ALEJANDRO MANUEL SANCHEZ-  
SANCHEZ, A/K/A ALEJANDRO  
MANUEL SANCHEZSANCHEZ,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 70218

**FILED**

OCT 16 2017

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Alejandro Manuel Sanchez-Sanchez appeals from a judgment of conviction, pursuant to a jury verdict, of conspiracy to commit kidnapping, first degree kidnapping, conspiracy to commit burglary, burglary, conspiracy to commit extortion, extortion, child abuse and neglect, coercion, conspiracy to commit arson, and third degree arson. Eighth Judicial District Court, Clark County; J. Charles Thompson, Senior Judge.<sup>1</sup>

Alejandro was charged, along with his cousins Jose Sanchez-Perez and Mariano Sanchez-Sanchez, with kidnapping and abducting the 17-year-old daughter of Jose's former employer. The police tracked the victim to the apartment complex where Alejandro lived. There, they spoke with Alejandro, who confessed to the crime and directed them to the victim's location. A jury convicted Alejandro following a 15-day trial.<sup>2</sup>

On appeal, Alejandro argues reversal is required because the district court erred by concluding his confession was voluntary and the prosecutor engaged in misconduct during closing arguments. We disagree.

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<sup>1</sup>The Honorable Kerry Louise Earley presided over the trial.

<sup>2</sup>We do not recount the facts except as necessary to our disposition.

Where, as here, a defendant challenges the voluntariness of his confession and requests a hearing under *Jackson v. Denno*, 378 U.S. 368, 380 (1964), “the State must prove by a preponderance of the evidence that the defendant’s incriminatory statements are admissible.” *Gonzales v. State*, 131 Nev. \_\_\_, \_\_\_, 354 P.3d 654, 658 (Ct. App. 2015). A defendant’s confession offered after he receives the *Miranda* warnings is admissible if the defendant understood his rights and voluntarily, knowingly, and intentionally agreed to waive those rights. *Id.*

On appeal, the question of whether a confession is voluntary “present[s] mixed questions of law and fact subject to this court’s de novo review,” *Rosky v. State*, 121 Nev. 184, 190, 111 P.3d 690, 694 (2005), based on a totality of the circumstances test, *Allan v. State*, 118 Nev. 19, 24, 38 P.3d 175, 178 (2002), *overruled on other grounds by Rosky*, 121 Nev. at 190-91, 11 P.3d at 694. Factors relevant to our analysis include the defendant’s age, education, and intelligence; his knowledge of his rights; the length of his detention; the nature of the questioning; and the physical conditions under which the interrogation was conducted. *Passama v. State*, 103 Nev. 212, 214, 735 P.2d 321, 323 (1987). “The ultimate inquiry is whether the defendant’s will was overborne by the government’s actions.” *Gonzales*, 131 Nev. at \_\_\_, 354 P.3d at 658. We review de novo the district court’s determination that the defendant’s statement was voluntary. *Rosky*, 121 Nev. at 190, 111 P.3d at 694. But, even if the court erred, we will not reverse if the error was harmless. *Gonzales*, 131 Nev. at \_\_\_, 354 P.3d at 661.

Alejandro asserts the district court erroneously focused solely on his apparent understanding of English, instead of the totality of the circumstances, in determining his confession was voluntary. This argument is belied by the record. The district court held a *Jackson v. Denno* hearing and expressly considered the totality of the circumstances, including

Alejandro's background and situation, in addition to his interactions with detectives. Further, the facts support the district court's conclusion that Alejandro possessed sufficient English proficiency to understand the situation and his rights. When given the *Miranda* warnings, Alejandro responded in English that he understood his rights, and confessed almost immediately following those warnings. Alejandro never indicated he did not fully understand the questions, wanted an interpreter, or wished to converse in another language. Further, his answers were consistently responsive and even detailed. *Cf. Gonzales*, 131 Nev. at \_\_\_, 354 P.3d at 661-62 (upholding the district court's conclusion a confession was voluntary where there was conflicting evidence regarding whether the defendant understood English or fully comprehended the *Miranda* warnings). Under these facts, we conclude the district court did not err by determining the confession was voluntary and admissible.<sup>3</sup>

We next consider Alejandro's contention of prosecutorial misconduct. In particular, Alejandro asserts the prosecutor (1) improperly vouched for its witnesses by stating that to believe Alejandro the jury would have to conclude the officers "all lied under oath," (2) improperly argued Alejandro's confession was voluntary because it was truthful, and (3) improperly disclosed to the jury the court's finding that the confession was voluntary. Alejandro concedes he failed to object to these statements below.

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<sup>3</sup>We are unpersuaded by Alejandro's argument that our decision in *Gonzales* requires district courts to consider the six factors set forth in *United States v. Garibay*, 143 F.3d 534, 538 (9th Cir. 1998), when evaluating the confession of a non-native English speaker. In *Gonzales*, we explained that the *Garibay* factors may provide helpful guidance to district courts, but do not, alone, determine admissibility. *Gonzales*, 131 Nev. at \_\_\_, 354 P.3d at 660.

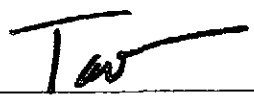
In addressing prosecutorial misconduct, we consider (1) whether the conduct was improper and (2) whether the improper conduct warrants reversal. *Valdez v. State*, 124 Nev. 1172, 1188, 196 P.3d 465, 476 (2008). If the defendant fails to object to improper misconduct at trial, we review for plain error. *Id.* at 1190, 196 P.3d at 477. “To amount to plain error, an error must be so unmistakable that it is apparent from a casual inspection of the record.” *Dieudonne v. State*, 127 Nev. 1, 5, 245 P.3d 1202, 1205 (2011); see also NRS 178.602 (“Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.”). But, under this standard, reversal is required only where the defendant demonstrates the error affected his “substantial rights, by causing ‘actual prejudice or miscarriage of justice.’” *Valdez*, 124 Nev. at 1190, 196 P.3d at 477 (quoting *Green v. State*, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003)).

The record belies Alejandro’s first two arguments. The State’s comments regarding the police officers did not place the prestige of the State behind its witnesses, and we note a prosecutor may comment on the credibility of witnesses based on the evidence presented. See *Evans v. State*, 117 Nev. 609, 630, 28 P.3d 498, 513 (2001) (holding that while a prosecutor may not vouch for a witness by “placing the prestige of the government behind the witness,” the prosecutor may “counter impeachment of its witnesses by presenting evidence supporting their credibility”), *overruled on other grounds by Lisle v. State*, 131 Nev. \_\_\_, \_\_\_, 351 P.3d 725, 732 n.5 (2015). Further, here the prosecutor argued the truth of Alejandro’s statements evinced guilt; this is distinctly different from arguing the confession was voluntary because it was true. See *Klein v. State*, 105 Nev. 880, 884, 784 P.2d 970, 973 (1989) (explaining it is proper for the prosecutor to argue the evidence presented to the jury and reasonable inferences drawn from that evidence).

We agree with Alejandro, however, as to his third argument that the prosecutor committed misconduct. During closing argument, the prosecutor told the jury that the court had concluded Alejandro's confession was voluntary. This was error. *See Dempsey v. State*, 355 A.2d 455, 461-63 (Md. 1976) (concluding that it is improper for the court or counsel to refer to the court's decision in the jury's presence; and holding such constitutes error). But given the overwhelming evidence against Alejandro, we conclude he fails to show the misconduct actually prejudiced his case or caused a miscarriage of justice entitling him to relief. *See Valdez*, 124 Nev. at 1190, 196 P.3d at 477; *cf. Dempsey*, 355 A.2d at 463 (reviewing a judge's error in disclosing his finding of voluntariness to the jury for harmless error). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Silver

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Gibbons

cc: Chief Judge, The Eighth Judicial District Court  
Hon. J. Charles Thompson, Senior Judge  
Lambrose Brown  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk