IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAVID CRAIG MORTON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 83884-COA

ORDER OF AFFIRMANCE

David Craig Morton appeals from a judgment of conviction, pursuant to a jury verdict, of open murder in the second degree with the use of a deadly weapon and discharging a firearm from within or from a structure. Sixth Judicial District Court, Humboldt County; Richard A. Wagner, Judge.

In August 2009, Morton and his wife Cynthia Morton consumed alcohol before getting into an argument.[1] Cynthia left the living room where they were arguing and went into the bathroom of the house. According to Morton, he decided to kill himself. He grabbed the loaded rifle kept by the front door of the residence and followed Cynthia to the bathroom, intending to frighten Cynthia and show her that he was serious about killing himself. Then as Morton turned to exit the bathroom, the rifle fired, striking Cynthia in the abdomen.

The couple's son, Robert Morton, age 21, was in the basement when he heard his mother cry for help, so he ran upstairs. Once he entered the hallway leading to the bathroom, he saw Morton, naked, in the doorway holding the rifle and his mother bleeding on the floor. Robert wrestled the gun away from Morton, returned to the basement, and called 9-1-1.

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

Once the police arrived, they observed Robert leading Morton away from a neighbor's yard and toward the police cars. Morton was taken into custody, and Cynthia was transported to the hospital.

According to the police detective, while in custody, Morton spontaneously stated, "I can't believe I shot her. I'm going to prison for a very long time. . . . I should have done it right the first time." Morton was read his *Miranda*[2] rights, which he waived. Also, the detective testified that during his post-waiver interview with the police, Morton said, "I just lost it and got the gun" and "I can't believe I shot her." While talking with Morton, the police noticed an odor of alcohol but saw no other signs of intoxication. Morton agreed to take a breathalyzer test, which showed he had a blood alcohol content of .276 percent.

Cynthia was later flown to Renown Medical Center where she died a month later from sepsis and multiple organ failure as a result of the gunshot wounds.

Morton was charged with open murder with the use of a deadly weapon and discharging a firearm from within or from a structure. Shortly before trial, the district court granted the State's motion to introduce Morton's post-arrest statements to the police. The case proceeded to trial.

During trial, Robert Morton testified about what he had witnessed. During cross-examination by Morton, Robert also testified that he had heard that Morton had punched Cynthia on a prior occasion. Morton objected to Robert's testimony on hearsay grounds, and the objection was sustained. However, no limiting instruction was requested nor given to the jury during this exchange.

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[2]*Miranda v. Arizona*, 384 U.S. 436 (1966).

To support the State's case, the State sought to introduce numerous photographs taken at the crime scene and at the hospital. Morton objected to six of those photographs due to their graphic nature. The district court sustained the objection in part and allowed only two of the objected to photographs to be admitted, along with 333 other photographs that Morton did not object to. The State also introduced Morton's admissions and partial confession that he made to the police the night of the shooting.

During cross-examination of the State's pathologist, the district court interrupted defense counsel and stated that the line of questioning was not appropriate for the witness. Morton's counsel and the district court began to discuss the definition of homicide in front of the jury. Morton did not object to this discussion, nor did he move for a mistrial. At the close of trial, the jury convicted Morton of second-degree murder with the use of a deadly weapon and discharging a firearm from within or from a structure.

Before and during Morton's sentencing hearing, the district court stated Morton would not be allowed to maintain his innocence in light of the jury verdict. Morton did not object, and he expressed remorse for his actions at the hearing. To determine a proper sentence, the district court reviewed the presentence investigation report (PSI), the defense sentencing memorandum, heard argument by both Morton and the State, and an unsworn oral victim impact statement from the victim's father. The district court sentenced Morton to 120 to 300 months in prison for the charge of second-degree murder with a consecutive sentence of 96 to 240 months for the use of a deadly weapon. Morton was also sentenced to serve 72 to 180 months concurrent with the previous sentence for discharging a firearm

from within or from a structure.[3] Morton was granted this belated appeal pursuant to NRAP 4(c) after the district court found "that he lost his direct appellate rights due to counsel's error."[4]

On appeal, Morton raises eight issues: (1) whether the State presented sufficient evidence to convict him of second-degree murder; (2) whether the district court abused its discretion during the settling of jury instructions; (3) whether the district court erred by admitting bad act evidence; (4) whether the district court erred by not suppressing inculpatory statements he made to investigating officers; (5) whether the district court abused its discretion by overruling his objection to the admission of graphic photographic evidence; (6) whether the district court denied him a fair trial by denigrating defense counsel in front of the jury; (7) whether the district court abused its discretion at sentencing; and (8) whether the cumulative effect of trial errors violated his due process right to a fair trial and require the reversal of his conviction. We address each argument in turn.

There was sufficient evidence to convict Morton

Morton argues that there was insufficient evidence to convict him of second-degree murder because the investigating officer believed the shooting was not intentional, the defense expert testified that the antique rifle used by Morton often accidentally discharged, and Morton testified that he was drunk and unfamiliar with guns when the shooting occurred. We disagree.

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[3]The district court sentenced Morton to concurrent and consecutive prison terms totaling 18-45 years in the aggregate.

[4]We cite to the current version of the Nevada Revised Statutes throughout this order because any revisions since 2009 do not change the substance of the law as applicable herein.

In reviewing a challenge to the sufficiency of evidence supporting a criminal conviction, this court considers "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *McNair v. State*, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) (emphasis omitted)). "The established rule is that it is the jury's function, not that of the court, to assess the weight of the evidence and determine the credibility of witnesses." *Id.* (citing *Walker v. State*, 91 Nev. 724, 726, 542 P.2d 438, 438-39 (1975)). This court will not disturb a verdict supported by substantial evidence. *Id.*

Morton's first argument fails because it concerns only the weight and credibility given to conflicting testimony. *See Bolden v. State*, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981). The investigating detective testified that Morton spontaneously admitted to shooting Cynthia with a rifle, but the detective was not convinced the shooting was a clear intentional shooting. The detective's testimony does weigh against a jury finding Morton guilty of an intentional premeditated shooting for first-degree murder, but it does not undermine the conviction for second-degree murder, which does not require proof of premeditation or a specific intent to kill. *See* NRS 200.010 (defining murder); NRS 200.020(1) (stating that express malice is the deliberate intention to kill); NRS 200.020(2) (stating that implied malice exists if no considerable provocation appears or the circumstances show an abandoned and malignant heart); NRS 200.030(1)(a) (providing that first-degree murder is any willful, deliberate, and premeditated killing); NRS 200.030(2) (second-degree murder "is all other kinds of murder"). Furthermore, Morton's argument asks this court to weigh the detective's testimony against

the other testimony presented at trial, a task reserved for the jury. *See Bolden*, 97 Nev. at 73, 624 P.2d at 20.

Regarding Morton's next two arguments, testimony during trial from both firearm experts showed that some pressure must be applied to the rifle's trigger for it to fire, and Morton's rifle was fired, even though he claimed he did not have his finger on the trigger. Further, while it was undisputed that Morton was intoxicated when he shot Cynthia, his claim to have little general knowledge of firearms was disputed by testimony from his son Chad Morton. At trial, Chad testified that Morton had taught him to always act as if a weapon is loaded and to never have a finger on the trigger unless you intend to shoot. The task of weighing competing testimony is reserved for the jury, and this court will not invade the province of the jury. *See id.*

The State presented evidence demonstrating that Morton followed Cynthia into the bathroom with a loaded rifle. Additionally, the State presented Morton's pre-*Miranda* admissions in which the detective testified that Morton stated, "I can't believe I shot her. I'm going to prison for a very long time." Accordingly, we conclude that the State provided sufficient evidence to convict Morton of second-degree murder.

The district court did not abuse its discretion when instructing the jury

Morton contends that the jury was not properly instructed on the lesser-included offense of voluntary manslaughter and the State's burden of proof. Morton did not object to the jury instructions during trial, the record on appeal does not contain his proposed jury instructions, and the State counters that Morton did not offer his own manslaughter instruction.

Because Morton did not object below, he is not entitled to relief absent a demonstration of plain error. *See Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48-49 (2018). To demonstrate plain error, an appellant must

show there was an error, the error was plain or clear, and the error affected appellant's substantial rights. *Id.* at 50, 412 P.3d at 48.

Morton failed to argue the plain error standard, so this court need not consider Morton's forfeited argument. *See id.*; *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). Additionally, even if we considered it, we see no abuse of discretion in the instructions given to the jury. *Crawford v. State*, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005) ("The district court has broad discretion to settle jury instructions, and this court reviews the district court's decision for an abuse of that discretion or judicial error."). Furthermore, "[a]n abuse of discretion occurs if the district court's decision is arbitrary or capricious or if it exceeds the bounds of law or reason." *Id.* (internal quotation marks omitted). We discern no judicial error or abuse of discretion because the district court accurately instructed the jury.

The district court did not err by admitting bad act evidence

Morton argues that the district court erred because it allowed bad act evidence describing Morton committing prior physical violence against Cynthia and did not give a limiting instruction.[5] The State responds that Morton invited the error by eliciting the testimony on cross-examination.

We note that the trial testimony Morton now complains about was elicited by his own counsel during cross-examination. "[A] party will

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[5]Morton also argues that the jury improperly heard evidence of his alcohol abuse issues. Morton provides no relevant authority to support this argument, so we need not consider it on appeal, *see Maresca*, 103 Nev. at 673, 748 P.2d at 6, nor that it affected his substantial rights. *See* NRS 178.598 ("Any error, defect, irregularity, or variance which does not affect substantial rights shall be disregarded.").

not be heard to complain on appeal of errors which he himself induced or provoked the court or the opposite party to commit." *LaChance v. State*, 130 Nev. 263, 276, 321 P.3d 919, 928 (2014) (citing *Pearson v. Pearson*, 110 Nev. 293, 297, 871 P.2d 343, 345 (1994)) (citation and internal quotation marks omitted). Under the invited error doctrine, this court does not have to further examine the merits of his argument. *Id.*; *see also Carter v. State*, 121 Nev. 759, 769, 121 P.3d 592, 599 (2005) (holding that the defense elicited the bad act testimony and was estopped from raising any objection on appeal).

Additionally, Morton did not object on the grounds the testimony was prior bad act evidence, nor did he ask for a limiting instruction. Therefore, he has waived this argument. *See McCullogh v. State*, 99 Nev. 72, 74, 657 P.2d 1157, 1158 (1983) (explaining that "the failure to object to asserted errors at trial will bar review of an issue on appeal").

Regardless, the district court sustained Morton's hearsay objection to the testimony that he previously punched Cynthia and the court later instructed the jury to disregard any testimony to which an objection was sustained. We presume the jury follows the court's instructions. *McNamara v. State*, 132 Nev. 606, 622, 377 P.3d 106, 117 (2016). Accordingly, we find no error.

The district court did not err by failing to suppress the inculpatory statements Morton made to investigating officers

Morton contends that his inculpatory statements made to the police should have been suppressed because he was too intoxicated to waive his *Miranda* rights. The State argues that Morton failed to file a motion to

suppress and failed to argue that the exclusion of his partial confession would have changed the result of the trial.[6]

We note that Morton did not file a motion to suppress below, nor does he challenge the introduction of the spontaneous admissions he made to the detective before he was advised of his *Miranda* rights.

"[A] trial court's custody and voluntariness determinations present mixed questions of law and fact subject to [the appellate court's] de novo review." *Rosky v. State*, 121 Nev. 184, 190, 111 P.3d 690, 694 (2005). "The district court's purely historical factual findings pertaining to the 'scene-and action-setting' circumstances surrounding an interrogation is entitled to deference and will be reviewed for clear error." *Id.* However, we review de novo "the district court's ultimate determination of whether a person was in custody and whether a statement was voluntary." *Id.*

An appellate court is not well-suited to make factual determinations. *See Ryan's Express Transp. Servs., Inc. v. Amador Stage Lines, Inc.*, 128 Nev. 289, 299, 279 P.3d 166, 172 (2012). Additionally, this court presumes that facts missing from the record support the district court's ruling. *See Riggins v. State*, 107 Nev. 178, 182, 808 P.2d 535, 538 (1991) ("It is the responsibility of the objecting party to see that the record on appeal before the reviewing court contains the material to which they take exception. If such material is not contained in the record on appeal, the missing portions of the record are presumed to support the district court's decision, notwithstanding an appellant's bare allegations to the contrary."),

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[6]While Morton did not file a motion to suppress evidence, he did file an opposition to the State's motion in limine to admit Morton's admissions and partial confession, but not until five days before trial commenced. A motion to suppress evidence must be made at least ten days before trial. NRS 174.125(1)-(2).

rev'd on other grounds, 504 U.S. 127 (1992). Therefore, we presume the testimony relied upon by the district court supports the district court's finding that the admissions and partial confession were voluntary.

Morton claims that he was not able to voluntarily waive his constitutional right against self-incrimination because he was too intoxicated; however, he provides no authority to support this specific contention. This court need not consider an appellant's argument that is not cogently argued or lacks the support of relevant authority. *Maresca*, 103 Nev. at 673, 748 P.2d at 6. Furthermore, this court is unable to evaluate this argument to determine the existence of error because Morton has failed to provide the district court order granting the State's motion in limine or the hearing transcript. *See* NRAP 28(a)(10)(A); NRAP 30(b)(2)-(3) (providing that appellant is required to provide all pretrial orders in his or her appendix); *Jacobs v. State*, 91 Nev. 155, 158, 532 P.2d 1034, 1036 (1975) (stating that the appellant has the responsibility to provide materials necessary to review the district court's decisions). We note the detective testified at trial that Morton did not appear overly intoxicated or unable to understand what he was doing or saying. *See, e.g., Tucker v. State*, 92 Nev. 486, 488, 553 P.2d 951, 952 (1976) (concluding a confession was admissible when officers testified that the defendant's speech was not impaired, he was able to walk in a straight line, his complexion was not flushed, and he indicated he knew what he was doing).

Regardless, with the record available to this court, the admission of the post-*Miranda* statements was harmless beyond a reasonable doubt in light of the record as a whole including the pre-*Miranda* admissions in which the detective testified that Morton spontaneously stated, "I can't believe I shot her. I'm going to prison for a very long time." *See Tavares v. State*, 117 Nev. 725, 732 n.14, 30 P.3d 1128, 1132 n.14 (2001)

("[W]e ask whether it is 'clear beyond a reasonable doubt that a rational jury would have found the defendant guilty absent the error.'" (quoting *Neder v. United States*, 527 U.S. 1, 18 (1999))), *holding modified on other grounds by Mclellan v. State*, 124 Nev. 263, 182 P.3d 106 (2008). Accordingly, we conclude that the district court did not err by granting the State's motion to admit Morton's inculpatory statements.

The district court did not abuse its discretion by admitting photographic evidence

Morton argues that the district court erred by admitting graphic photographic evidence of the victim and cumulative photographic evidence of the crime scene. We disagree.

"We will not disturb a district court's decision to admit photographic evidence unless the district court abused its discretion." *West v. State*, 119 Nev. 410, 420, 75 P.3d 808, 815 (2003) (footnote omitted). The district court is required "to act as a gatekeeper by assessing the need for the evidence on a case-by-case basis and excluding it when the benefit it adds is substantially outweighed by the unfair harm it might cause." *Harris v. State*, 134 Nev. 877, 880, 432 P.3d 207, 211 (2018).

The *Harris* court considered if the district court "meaningfully culled the photographs" challenged by the defense in determining whether there was an abuse of discretion. *Id.* at 882, 432 P.3d at 212. In Morton's case, the district court carefully reviewed the challenged graphic photographs of Cynthia's injuries and seemingly found them to be relevant, probative, and not unfairly prejudicial, and only allowed two to be entered into evidence. *See* NRS 48.035(1)-(2). Thus, we conclude that the district court did not abuse its discretion in admitting the two photographs of the victim.

Morton did not object to the other photographs that were entered into evidence at trial. Because Morton did not object below, he is not entitled to relief absent a demonstration of plain error. *See Jeremias*, 134 Nev. at 50, 412 P.3d at 48-49. To demonstrate plain error, an appellant must show there was an error, the error was plain or clear, and the error affected appellant's substantial rights. *Id.* at 50, 412 P.3d at 48.

Morton failed to argue the existence of plain error, so we will not consider his forfeited argument. *See id.* We also note that Morton provided no cogent argument in support of his claim. *See Maresca*, 103 Nev. at 673, 748 P.2d at 6. Accordingly, we conclude that there was no abuse of discretion.

The district court did not deny Morton a fair trial by denigrating defense counsel in front of the jury

Morton contends that the district court exhibited bias by denigrating defense counsel in front of the jury and, therefore, a mistrial should have been granted.

At the outset, we note that Morton did not object below or move for a mistrial and therefore he is not entitled to relief absent a demonstration of plain error. *See Jeremias*, 134 Nev. at 50, 412 P.3d at 48-49. To demonstrate plain error, an appellant must show there was an error, the error was plain or clear, and the error affected appellant's substantial rights. *Id.* at 50, 412 P.3d at 48. Plain error "affects a defendant's substantial rights when it causes actual prejudice or a miscarriage of justice." *Id.* at 51, 412 P.3d at 49. Additionally, "[j]udicial misconduct must be preserved for appellate review" and the failure to object to "misconduct will generally preclude review." *Oade v. State*, 114 Nev. 619, 621-22, 960 P.2d 336, 338 (1998).

This court will typically only engage in plain error review when the appellant argues plain error on appeal. *See Jeremias*, 134 Nev. at 50, 412 P.3d at 48. Here, Morton does not argue that the district court's alleged misconduct or error was plain from the record or how it affected his substantial rights. *Id.* Thus, this court will not consider Morton's forfeited argument. Additionally, Morton fails to show there was judicial misconduct, error, or plain error. Further, he does not demonstrate an adverse effect on his substantial rights in that he only makes conclusory statements that the incident prevented the jury from reaching a verdict of manslaughter. However, the district court corrected any potential misstatement of law and accurately instructed the jury, including to disregard any thought that the court favored one party over the other. Accordingly, we conclude that no reversible error occurred.[7]

The district court did not abuse its discretion at sentencing

Morton argues that the district court abused its discretion at the sentencing hearing in five ways.

First, Morton contends that he was improperly denied the opportunity to maintain his innocence during the sentencing proceeding. Because Morton did not object below, he is not entitled to relief absent a demonstration of plain error. *See Jeremias*, 134 Nev. at 50, 412 P.3d at 48-49. To demonstrate plain error, an appellant must show there was an error,

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[7]We need not address Morton's cumulative error claim because we do not find any of the alleged trial errors to be errors. *See Pascua v. State*, 122 Nev. 1001, 1008 n.16, 145 P.3d 1031, 1035 n.16 (2006) (noting "insignificant or nonexistent" errors do not warrant cumulative error review); *see also United States v. Rivera*, 900 F.2d 1462, 1471 (10th Cir. 1990) ("[C]umulative-error analysis should evaluate only the effect of matters determined to be error, not the cumulative effect of non-errors.").

the error was plain or clear, and the error affected appellant's substantial rights. *Id.* at 50, 412 P.3d at 48.

As previously explained, this court will typically only engage in plain error review when the appellant argues plain error on appeal. Here, Morton does not argue that the court's alleged error was plain. Thus, this court will not consider Morton's forfeited argument. *See id.* Additionally, Morton did express remorse for his actions, and the district court did not hold it against him to the extent that Morton maintained his innocence. Accordingly, we conclude that there was no reversible error.

Second, Morton argues that the district court failed to strike portions of the PSI that contained "toxic wording."

A defendant has "the right to object to factual errors in the PSI, so long as he or she objects before sentencing." *Sasser v. State*, 130 Nev. 387, 394, 324 P.3d 1221, 1226 (2014). Morton cites no authority to support the contention that "toxic wording" in a PSI is reversible error. This court need not consider an argument that is not cogently argued or lacks the support of relevant authority. *See Maresca*, 103 Nev. at 673, 748 P.2d at 6. Additionally, "it is imperative that a defendant contest his PSI at the time of sentencing" and "any objections must be resolved prior to sentencing." *Stockmeier v. State, Bd. of Parole Comm'rs*, 127 Nev. 243, 250, 255 P.3d 209, 213, 214 (2011). Morton had no objection or requested correction to the PSI besides his general disagreement with the purported toxic wording. Accordingly, we conclude that Morton has not demonstrated an error occurred.

Third, Morton contends that the district court erred by allowing an unsworn witness to give a victim impact statement.

We employ harmless-error analysis to the erroneous admission of victim impact statements. *Cf. Lane v. State*, 110 Nev. 1156, 1166, 881

P.2d 1358, 1365 (1994), *vacated in part on other grounds*, 114 Nev. 299, 956 P.2d 88 (1998). When a victim impact statement is presented orally in the courtroom and it addresses "the facts of the crime, the impact on the victim, and the need for restitution[,]" the witness "must be sworn before testifying." *Bushauer v. State*, 106 Nev. 890, 893, 804 P.2d 1046, 1048 (1990).

"Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded." NRS 178.598. The record does not show that the district court relied upon the victim impact statement when imposing the sentence nor does Morton argue that the court relied upon this statement. Additionally, "[t]he district court is capable of listening to the victim's feelings without being subjected to an overwhelming influence by the victim in making its sentencing decision." *Randell v. State*, 109 Nev. 5, 8, 846 P.2d 278, 280 (1993). And if the victim impact statement is presented in writing, it generally need not be under oath. *See Bushauer*, 106 Nev. at 893, 804 P.2d at 1048 (recognizing that the exact same statement could be presented in writing and therefore not subject to challenge for the lack of an oath). Accordingly, we conclude that the error was harmless and do not disturb the sentence.

Fourth, Morton argues that the district court erred and improperly relied on suspect evidence.

The standard of review for a district court's sentencing decision is abuse of discretion. *Chavez v. State*, 125 Nev. 328, 348, 213 P.3d 476, 490 (2009). "An abuse of discretion occurs if the district court's decision is arbitrary or capricious or if it exceeds the bounds of law or reason." *Crawford*, 121 Nev. at 748, 121 P.3d at 585 (internal quotation marks omitted). "So long as the record does not demonstrate prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence, this court will refrain from

interfering with the sentence imposed." *Silks v. State*, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

Morton bases his argument on the police reports entered into evidence during the sentencing proceedings but cites no authority to support this argument. This court does not need to consider an argument that lacks the support of relevant authority. *See Maresca*, 103 Nev. at 673, 748 P.2d at 6. Additionally, police reports have been found not to be "impalpable or highly suspect evidence." *Gomez v. State*, 130 Nev. 404, 407, 324 P.3d 1126, 1228 (2014) (concluding that multiple field interview cards and incident reports were more than a bald assertion and could be relied upon in sentencing (internal quotation marks omitted)). Accordingly, we discern no abuse of discretion.

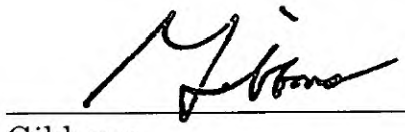
Fifth, Morton, contends that the district court imposed an excessive sentence.

The district court has wide discretion in its sentencing decision. *See Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987). Generally, this court will not interfere with a sentence imposed by the district court that falls within the parameters of relevant sentencing statutes. *See Cameron v. State*, 114 Nev. 1281, 1283, 968 P.2d 1169, 1171 (1998). Regardless of its severity, "[a] sentence within the statutory limits is not 'cruel and unusual punishment unless the statute fixing punishment is unconstitutional or the sentence is so unreasonably disproportionate to the offense as to shock the conscience.'" *Blume v. State*, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting *Culverson v. State*, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)); *see also Harmelin v. Michigan*, 501 U.S. 957, 1000-01 (1991) (plurality opinion) (explaining the Eighth Amendment does not require strict proportionality between crime and sentence; it forbids only an extreme sentence that is grossly disproportionate to the crime).

The sentence of 120 to 300 months for second-degree murder with a consecutive prison term of 96 to 240 months for the deadly weapon enhancement is within the parameters provided by the relevant statutes. *See* NRS 200.030(5)(b); NRS 193.165(2). The concurrent sentence of 72 to 180 months for discharging a firearm from within or from a structure is also within the parameter provided by the relevant statute. *See* NRS 202.287(1)(b). Morton does not allege that these statutes are unconstitutional, nor do we find that the sentence was grossly disproportionate to the crimes. Accordingly, we conclude there was no abuse of discretion in the sentence imposed.

Accordingly, we

ORDER the judgment of conviction AFFIRMED.[8]



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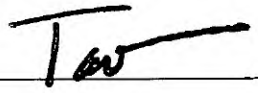

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cc: Hon. Michael Montero, District Judge
Karla K. Butko
Attorney General/Carson City
Humboldt County District Attorney
Humboldt County Clerk

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[8]Insofar as the parties have raised any other arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.