IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MICHAEL SAMUEL SOLID,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 85189-COA

ORDER OF AFFIRMANCE

Michael Samuel Solid appeals from a second amended judgment of conviction, pursuant to a jury verdict, of conspiracy to commit robbery, robbery, and first-degree murder with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Carli Lynn Kierny, Judge.

In May 2013, 15-year-old M.A. was holding his iPad while walking on the sidewalk with a friend when Jacob Dismont ran up from behind them and "snatched" the iPad from M.A.'s hands.[1] After Dismont took the iPad, he ran across the street and entered the front passenger door of a waiting Ford Explorer SUV, which Solid was driving. M.A. chased Dismont to the SUV and leaned into the passenger side window, attempting to take his iPad back from Dismont, when Solid rapidly accelerated and drove away, dragging M.A. outside the vehicle for approximately 90 feet. Unable to keep up with the SUV as it gained speed, M.A. fell against the side of the SUV and went under it. Solid ran over M.A. and continued to drive away. When first responders arrived on the scene, M.A. did not have a pulse, and paramedics observed tire marks across his abdomen and face. He was pronounced deceased later that evening.

[1]We recount the facts only as necessary for our disposition.

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Solid subsequently contacted his acquaintance Matthew Nicholas and offered to give Nicholas the iPad as collateral for an $80 loan. Solid told Nicholas about stealing the iPad, but did not mention dragging or running over M.A. When Nicholas saw a news broadcast about the iPad theft and M.A.'s death that included a surveillance photo of Solid, he gave the iPad to someone else. Following an unrelated drug raid at Nicholas's residence, Nicholas offered information about the location of the stolen iPad to homicide detectives, and the detectives were able to recover it shortly thereafter.

Solid was also identified by two of his neighbors after seeing a story about the incident on the news. He was arrested a few days later, and search warrants were executed at Solid's and Dismont's residences. While executing the search warrants, police recovered and impounded cell phones that they believed belonged to Solid and Dismont as well as the SUV that Solid had been driving. Following his arrest, Solid waived his *Miranda*[2] rights and participated in a recorded interview.

Solid was charged with one count each of conspiracy to commit robbery, robbery, and first-degree murder with the use of a deadly weapon, pursuant to the felony murder rule. He was convicted following a jury trial, but the judgment of conviction was overturned on direct appeal. *Solid v. State*, No. 71809, 2018 WL 3000514 (Nev. June 8, 2018) (Order of Reversal and Remand). Following remand, Solid was charged with the same offenses via a second amended information. Prior to the retrial, the State filed a motion to admit the prior testimony of any witness who had previously testified subject to cross-examination. The motion did not identify specific witnesses that were unavailable, but the State thereafter filed an ex parte

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

application for an order requiring a material witness to post bail, requesting that the district court order Nicholas to post bail in the amount of $10,000 or be taken into custody to ensure his appearance at the upcoming jury trial. In its application, the State included an affidavit from a criminal investigator with the Clark County District Attorney's Office. The affidavit detailed four separate unsuccessful attempts to contact and subpoena Nicholas at his confirmed residence. On each occasion, the investigator left subpoenas and contact information, and each time the investigator returned to Nicholas's residence, the documents were no longer where he had left them. However, based on his inability to make contact or subpoena Nicholas directly, the investigator affirmed that it was his "unequivocal belief" that Nicholas received and was aware of a subpoena to appear, but "despite this awareness, will not appear, as directed by the Court." The district court granted the State's ex parte application and ordered Nicholas to post $10,000 bail or be committed to custody. However, when Solid's jury trial began in May 2022, Nicholas had not posted bail, had not been arrested, and did not appear for trial.

Solid's jury trial spanned seven days. Gacory Exum, M.A.'s friend who was present during the robbery, testified that he met up with M.A. after school and they went to a Chevron convenience store for snacks. From there, they were walking back to M.A.'s house when the robbery occurred. Exum further testified that after Dismont took the iPad from M.A., M.A. chased Dismont across the street to the waiting SUV and "was holding onto the side of the [passenger] window" trying to retrieve his iPad when the SUV accelerated.

Three other eyewitnesses to the robbery also testified. The first eyewitness was Alejandro Romo, who was standing on the sidewalk promoting a nearby business when the robbery occurred. Romo testified

that when M.A. chased Dismont across the street to the waiting SUV, M.A. "put his hand inside the window of the car" and eventually fell as the SUV accelerated. The second eyewitness, Rebecca Shanahan, watched the robbery from inside her vehicle. Shanahan similarly testified that M.A. "was hanging out of the passenger side window" when the SUV "floored it" with M.A. still holding on. She stated that M.A. "was just dangling out of the window, and he ran along beside the car as they sped off," and "as the car gained speed, [M.A.'s] legs started to drag." When M.A. eventually fell, "he spun around and then hit his head on the corner of the car, and the car just kept going." Shanahan called 9-1-1 at 4:12 p.m. The third eyewitness, Christina Bullard, was also in her vehicle during the robbery. Bullard testified that when the SUV began to drive away, M.A. "was stuck in the door" and that, even after the SUV rolled over him, it did not slow down.

The State next presented two of Solid's neighbors who identified him after watching a news broadcast. The neighbors provided Solid's known phone number, ending in 7494, to LVMPD homicide detectives.

The next witness to testify was Ryan Burke, an FBI special agent with the FBI Cellular Analyst Survey Team. Special Agent Burke generated call detail records for the cell phones recovered from Solid's and Dismont's residences. He testified that the cell phone with the number ending in 7494, attributed to Solid, was registered to Karyn Licari, who lived at the same residence as Solid. The cell phone with the number ending in 5700, attributed to Dismont, was registered to his father, Richard, and the two men also lived together. Special Agent Burke testified that in his experience, it was common "for a person to be using the phone of a member of their household consistently as though it was their phone, even though the phone is not registered in their name." He further stated that the two phones were both in the vicinity of the robbery until 4:11 p.m., and the phone

logs showed a voice call from the 5700 number to the 7494 number from 4:09 p.m. to 4:11 p.m.—exactly one minute before Shanahan witnessed the robbery and called 9-1-1.

Following Special Agent Burke's testimony, LMVPD homicide detective Joel Kishner testified that the SUV Solid drove during the robbery was registered to Dismont and his father. When Detective Kishner impounded the SUV, it also had a license plate affixed to the rear that was registered to Licari at the address she shared with Solid.

Nicholas's testimony from Solid's first trial was read into the record without drawing any objection. Nicholas had told detectives that Solid called him and came over to his house on the evening of the robbery. According to Nicholas, Solid told him, "I think I'm going to be on the news later" because of the robbery, but Solid never mentioned dragging or running over M.A. with the SUV.

After Nicholas's prior testimony was read into the record, the parties addressed the admission of call detail records from the 7494 phone number attributed to Solid, and the 5700 phone number attributed to Dismont. While Solid did not object to the admission of his own call records, he objected to Dismont's call records as hearsay. Notably, when objecting to Dismont's call records, Solid acknowledged that the 5700 phone number belonged to Dismont, and he only objected on the basis that the records contained incriminating hearsay conversations between Dismont and unrelated third parties.[3] The district court overruled Solid's hearsay objection and admitted the call detail records for both phones.

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[3]Dismont's phone included text messages from other persons about how to disguise a vehicle as well as a text message that said, "[y]ou're going to need to tell your dad" about what occurred, presumably referencing the robbery.

The next witness was Bradley Berghuis, an LVMPD digital forensics examiner, who testified that Solid's phone had 176 calls, of which 134 were deleted, and 127 text messages, of which 77 were deleted. During Berghuis' testimony, a single text message from Solid's phone was read into the record.[4] A witness named Jody Faust, who lived with both Jacob Dismont and his father, subsequently testified that Dismont used the 5700 phone number.

The last witness for the State was Tate Sanborn, the lead LVMPD homicide detective investigating M.A.'s death. During Detective Sanborn's testimony, the State played surveillance video taken from the Chevron where M.A. and Exum, as well as Solid and Dismont, were present a few minutes before the robbery. The footage showed that as M.A. (who was holding his iPad) left the Chevron convenience store, Solid walked inside and paid one dollar for gas. M.A. and Exum exited the store and went to the right. When Solid walked out of the store and back to the SUV, the surveillance footage depicted him looking toward the right. Dismont was also outside and looking toward the right, and Detective Sanborn testified that the footage showed "some sort of exchange between the two." Dismont then headed in the direction of M.A. and Exum. Shortly thereafter, Solid drove the SUV out of the Chevron gas station and into the left turn lane of the next intersection, where he waited until Dismont entered the passenger seat after taking M.A.'s iPad.

Detective Sanborn also testified about his post-arrest interview with Solid. After Solid waived his *Miranda* rights, he told Detective Sanborn

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[4]The following was read into the record: "Passion saying you telling the whole club. Are you trying to go to jail and get your house token (as said) and my daughter token (as said) away from me? WTF? Keep your big mouth shut. WTF? You idiot. . . . Are you kidding me? How stupid can you be?"

that he was only walking in the area after a fight with his girlfriend. Solid claimed that he went into the gas station to buy a dollar's worth of gas after "a black gentleman in a white SUV" had broken down and asked him for spare change. Solid denied any involvement with either the robbery or M.A.'s death. The prosecutor asked Detective Sanborn, "[a]nd is it fair to say that you even offer him the out of saying, hey, man, tell me that you just, you know, you didn't know what was going to happen. You weren't involved. You didn't want this to happen. You offered him that out; isn't that true?" Solid did not object to the question, and Detective Sanborn answered that he did give Solid an opportunity to tell the truth, but Solid continued to maintain throughout his interview that he had no involvement in the case.

Following Detective Sanborn's testimony, the State rested, and Solid took the stand in his own defense. Solid testified that the cell phone with the 7494 number was not his phone; instead, he claimed it belonged to his girlfriend, Brianna. Solid stated that on the day of the robbery, he and Brianna met up with Dismont, and they all went to the Chevron gas station to panhandle for gas money. After paying one dollar for gas, Dismont called "Brianna['s]" phone and asked Solid to pick him up across the street. Solid testified that after leaving the Chevron gas station, he waited in the left-hand turn lane to make a U-turn and pick up Dismont when Dismont suddenly entered the passenger side door and repeatedly shouted "go." Solid stated that he heard banging on the passenger side window and Brianna also began shouting "go," which caused him to panic and rapidly accelerate. Solid said that he was unaware that Dismont had just stolen an iPad and that he did not see M.A. outside the SUV because the passenger window was rolled up.

Solid initially testified that on the evening of the robbery, he, Brianna, and Dismont all went to see Nicholas, and Dismont left the iPad

with Nicholas. However, shortly thereafter Solid claimed that he did not see or contact Nicholas at all that night because Dismont dropped him off and went to see Nicholas alone. Solid further testified that he did not realize he ran over M.A. until a family member saw it on the news several days later, and that Solid was on his way to turn himself in when he was arrested. When asked about the recorded interview with Detective Sanborn, Solid admitted that he "fabricated the whole story" because Dismont had sent him threatening text messages through Brianna's phone.

This caused M.A.'s father, who was in the courtroom, to shout, "Why did you erase those?" in reference to the threatening texts. Solid moved for a mistrial, and the State responded that a mistrial was not warranted because they were intending to ask the very same question on cross-examination. The district court denied Solid's motion for a mistrial but provided a curative instruction to the jury to disregard the outburst, and M.A.'s father was removed from the courtroom. Solid's testimony resumed, and he denied deleting any text messages or having knowledge of the single text message that had been read into the record. He also testified that he had his own cell phone but could not remember the number. However, he acknowledged that Dismont would sometimes call Brianna's phone number to contact him.

After the defense rested, the State recalled Detective Sanborn. Detective Sanborn testified that only one phone was recovered from Solid's residence, which had the 7494 number, and nothing on that phone indicated that Solid had a different phone. Detective Sanborn also testified that there were no threatening text messages on the 7494 phone.

The jury found Solid guilty on all three counts, and the district court sentenced Solid to an aggregate term of 30-76 years in prison. On appeal, Solid raises six issues. He contends that (1) the district court abused

its discretion when it denied his request for a mistrial following the outburst from M.A.'s father, (2) the district court erred when it admitted Solid's and Dismont's call records because the records were not properly authenticated, (3) the State committed prosecutorial misconduct when it commented on Solid's post-arrest silence, (4) the introduction of Matthew Nicholas's prior testimony was inadmissible and prejudicial and amounted to plain error, (5) there was insufficient evidence that Solid used a deadly weapon, and (6) cumulative error warrants reversal.

The district court did not abuse its discretion in denying Solid's motion for a mistrial

Solid argues that the district court abused its discretion when it denied his request for a mistrial following an outburst from M.A.'s father during Solid's testimony. The district court acknowledged that the outburst was prejudicial and "[v]ery close" to necessitating a mistrial, but ultimately concluded that a curative instruction would be sufficient given that the State was intending to ask the same question on cross-examination.

"A defendant's request for a mistrial may be granted for any number of reasons where some prejudice occurs that prevents the defendant from receiving a fair trial." *Rudin v. State*, 120 Nev. 121, 144, 86 P.3d 572, 587 (2004). However, the decision to deny a mistrial will not be reversed on appeal absent a clear abuse of discretion. *Ledbetter v. State*, 122 Nev. 252, 264, 129 P.3d 671, 680 (2006).

Here, while the outburst from M.A.'s father was clearly prejudicial, it was followed with an immediate curative instruction. "The remark was isolated" and "any prejudice flowing from it was adequately cured by the district court." *Id.* at 265, 129 P.3d at 680; *see also Smith v. State*, No. 78604, 2021 WL 1964041, at *1 (Nev. May 14, 2021) (Order of Affirmance) (concluding that the district court did not abuse its discretion in

denying the defendant's request for a mistrial after the victim's father moved toward the defense table and stated, "you shot my daughter," during jury selection). Though Solid summarily asserts that the district court's curative instruction was insufficient, he fails to cogently argue why the court's instruction to disregard the outburst was insufficient to cure any prejudice, particularly given that jurors are presumed to follow the instructions they are given. *See Leonard v. State*, 117 Nev. 53, 66, 17 P.3d 397, 405 (2001) (stating generally that a jury is presumed to follow its instructions); *see also Allen v. State*, 99 Nev. 485, 490, 665 P.2d 238, 241 (1983) (providing that the appellant must show "that the inadvertent statement was so prejudicial as to be unsusceptible to neutralizing by an admonition to the jury"). Therefore, we conclude that the district court did not abuse its discretion in denying Solid's request for a mistrial.

The district court did not plainly err in admitting Solid's and Dismont's call detail records

Solid contends that the district court erred when it admitted the call detail records, including phone logs and text messages, for Solid's and Dismont's cell phones because neither set of records were properly authenticated under *Rodriguez v. State*, 128 Nev. 155, 273 P.3d 845 (2012).

Ordinarily, this court reviews the district court's decision to admit evidence, including call detail records, for an abuse of discretion. *Id.* at 160, 273 P.3d at 848 (citing *Ramet v. State*, 125 Nev. 195, 198, 209 P.3d 268, 269 (2009)). However, Solid acknowledges that he failed to object to the admission of his own call detail records, and therefore that claim is reviewed for plain error. *Green v. State*, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003) (explaining that unpreserved issues on appeal may be reviewed for plain error). Solid asserts that he properly objected to the admission of Dismont's call detail records at trial, but that the district court "did not at all consider

the authenticity issue." However, as the State correctly notes, Solid only objected to Dismont's call records as hearsay and did not argue that the records were not properly authenticated. To the contrary, during his hearsay objection, Solid conceded at trial that the cell phone with the 5700 number belonged to Dismont and that the text messages on that phone were between Dismont and other unknown third parties. Therefore, because Solid objected on different grounds below, his challenge to the authenticity of Dismont's call detail records is also reviewed for plain error. *See Grey v. State*, 124 Nev. 110, 120, 178 P.3d 154, 161 (2008) (recognizing that, in order to properly preserve an objection, a defendant must object at trial on the same grounds they assert on appeal). Plain error permits reversal only if there was an error, clear from the record, that affected the defendant's substantial rights, and the defendant shows actual prejudice or a miscarriage of justice. *Green*, 119 Nev. at 545, 80 P.3d at 95.

The Nevada Supreme Court directly addressed the issue of text message authentication and authorship in *Rodriguez*. "[T]ext messages are subject to the same authentication requirements under NRS 52.015(1) as other documents, including proof of authorship." 128 Nev. at 156-57, 273 P.3d at 846.

> [W]hen there has been an objection to admissibility of a text message, *see* NRS 47.040(1)(a), the proponent of the evidence must explain the purpose for which the text message is being offered and provide sufficient direct or circumstantial corroborating evidence of authorship in order to authenticate the text message as a condition precedent to its admission, *see* NRS 52.015(1).

Id. at 162, 273 P.3d at 849. Evidence of authorship can include the content of the text messages themselves, and "cellular telephones are not always

exclusively used by the person to whom the phone number is assigned." *Id.* at 161, 273 P.3d at 849 (internal quotation marks omitted).

In this case, we conclude that the district court did not plainly err in admitting the call detail records.[5] As to the call detail records related to the 7494 phone number, two of Solid's neighbors provided detectives with that phone number and attributed it to Solid. The 7494 number also matched the phone number that called Nicholas after the robbery, and Nicholas told detectives that Solid had called him that evening. Though Solid testified that he did not use that phone and that it was his girlfriend's phone, Solid also acknowledged that Dismont would occasionally call the 7494 number to reach him. Solid further testified that the alleged threatening text messages from Dismont were sent to him at the 7494 number. Therefore, the district court did not err in admitting the call detail records for the 7494 number attributed to Solid.

In addition, Solid cannot establish actual prejudice from the admission of evidence relating to the 7494 phone number as required for plain error. *Green*, 119 Nev. at 545, 80 P.3d at 95. While Solid argues that the voice call placed a few minutes before the robbery from Dismont's phone to the 7494 number was used by the State to establish a conspiracy, Solid testified that Brianna answered the call and relayed to him the contents of

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[5]We note that *Rodriguez* does not clearly apply to Solid's claims. *Rodriguez*'s authentication requirements were premised on a proper objection, and no objection to authenticity was made in this case. 128 Nev. at 162, 273 P.3d at 849. In addition, while *Rodriguez* addresses authentication and authorship of text messages, it is not necessarily applicable to other cell phone records that do not require proof of authorship, such as voice call logs. Nonetheless, to determine whether the admission of these call detail records was plainly erroneous, we choose to assess Solid's authentication claims under the framework provided for in *Rodriguez*.

that call. Therefore, even if Solid did not receive the call directly, he had knowledge of its substance for purposes of establishing a conspiracy. Further, insofar as the State read a single text message from the 7494 number into the record, the text did not implicate Solid directly and Solid denied knowledge of it. Therefore, its admission did not cause actual prejudice, and Solid fails to demonstrate plain error.

As to the call detail records related to Dismont's phone, we note that the contents of that phone sufficiently established Dismont's ownership. *Rodriguez*, 128 Nev. at 161, 273 P.3d at 849. Though the 5700 phone number was registered to Dismont's father, Jody Faust attributed the 5700 number to Dismont. Further, several texts to the 5700 number included advice on how to change an SUV's appearance, and Solid testified that he was driving Dismont's SUV at the time of the robbery. One particular text message sent to the 5700 number stated, "[y]ou're going to need to tell your dad" about the robbery, which indicates the message was intended for Dismont, rather than his father. Finally, Special Agent Burke testified that both phones were in the vicinity at the time of the robbery, and Solid testified that Dismont, rather than his father, was with them in the SUV. Therefore, because the 5700 phone number was sufficiently authenticated as Dismont's phone, the district court did not plainly err in admitting Dismont's call detail records.

The prosecution did not improperly comment on Solid's post-arrest silence

Solid argues that the State committed prosecutorial misconduct when it elicited testimony about his post-arrest silence. Specifically, Solid contends that when the State asked Detective Sanborn if he gave Solid an "out" to tell the truth during his post-arrest interview, Detective Sanborn commented on Solid's post-arrest silence by telling the jury that Solid did not avail himself of that opportunity. The State responds that it could not

have commented on Solid's post-arrest silence because Solid waived his right to remain silent and voluntarily spoke with Detective Sanborn.[6] At trial, Solid also admitted that he fabricated the story to Detective Sanborn because of purported threats from Dismont.

"It is well settled that the prosecution is forbidden at trial to comment upon an accused's election to remain silent following his arrest and after he has been advised of his rights . . . ." *Gaxiola v. State*, 121 Nev. 638, 655, 119 P.3d 1225, 1237 (2005) (internal quotation marks omitted). However, this prohibition does not apply to questioning "that merely inquires into prior inconsistent statements. Such questioning makes no unfair use of silence because a defendant who voluntarily speaks after receiving *Miranda* warnings has not been induced to remain silent. As to the subject matter of his statements, the defendant has not remained silent at all." *Anderson v. Charles*, 447 U.S. 404, 408 (1980). Thus, we conclude that because Solid waived his right to remain silent, the State did not improperly comment on his post-arrest silence, and Solid is not entitled to relief.

The district court did not plainly err in admitting Nicholas's prior testimony

Solid argues that the district court plainly erred when it admitted, without objection, Nicholas's testimony from Solid's first trial. He contends that the State did not timely file a motion to admit Nicholas's prior testimony, and so "the record is devoid of any evidence, or even argument, that Mr. Nicholas was unavailable for" Solid's trial. The State responds that it filed a motion to admit the prior testimony of any witness who was unavailable that had previously testified and also filed its ex parte

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[6]Solid does not argue that his *Miranda* waiver was involuntary or that his statements during the interview were inadmissible.

application that detailed the unsuccessful attempts to subpoena Nicholas specifically.

NRS 51.325 provides that

> Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of another proceeding, is not inadmissible under the hearsay rule if:
>
> 1. The declarant is unavailable as a witness; and
>
> 2. If the proceeding was different, the party against whom the former testimony is offered was a party or is in privity with one of the former parties and the issues are substantially the same.

An "unavailable witness" is defined in NRS 51.055(1)(b), which provides that a declarant is unavailable if the declarant is "[p]ersistent in refusing to testify despite an order of the judge to do so." *See also State v. Eighth Judicial Dist. Court (Baker)*, 134 Nev. 104, 106, 412 P.3d 18, 21 (2018) (providing that prior testimony from a witness unavailable at trial is admissible if the defendant had a prior opportunity to cross-examine that witness).[7]

Pursuant to the affidavit in the State's ex parte application, Nicholas qualified as an unavailable witness pursuant to NRS 51.055(1)(b). The State's criminal investigator testified via affidavit that he went to Nicholas's confirmed address but was unable to make contact or subpoena Nicholas on at least four separate occasions. The investigator left subpoenas at Nicholas's residence, and on each occasion that the investigator returned, the subpoenas were no longer where he had left them. Based on these

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[7]The parties do not dispute that Nicholas testified at a prior proceeding and was subject to cross-examination.

unsuccessful efforts, the investigator surmised that Nicholas was aware of the subpoena but would not appear as directed by the court. Therefore, we conclude that there was sufficient evidence in the record that Nicholas was unavailable, and the district court did not plainly err in admitting his prior testimony.

There was sufficient evidence that Solid used the vehicle as a deadly weapon

Solid argues that there was insufficient evidence that he used a deadly weapon because he had no intent to purposefully use the SUV to impose or threaten harm. Solid cites to *Buschauer v. State* to support his contention that the deadly weapon enhancement cannot apply to "unintentional crime[s]." 106 Nev. 890, 895-96, 804 P.2d 1046, 1049-50 (1990). The State responds that a vehicle meets the statutory definition of a deadly weapon under NRS 193.165(6)(b), and that based on the testimony of several eyewitnesses, Solid intentionally ran over M.A. with the SUV.

When determining whether a jury verdict was based on sufficient evidence, this court will inquire "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." *Origel-Candido v. State,* 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998) (emphasis and internal quotations marks omitted). "[I]t is the function of the jury, not the appellate court, to weigh the evidence and pass upon the credibility of the witness." *Walker v. State*, 91 Nev. 724, 726, 542 P.2d 438, 439 (1975).

A deadly weapon is "[a]ny weapon, device, instrument, material or substance which, under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing substantial bodily harm or death." NRS 193.165(6)(b). A vehicle may be a deadly weapon depending on the manner in which it is used. *See Bustamante v.*

Evans, 140 F. App'x 655, 656 (9th Cir. 2005) (holding that a defendant used his vehicle as a deadly weapon by driving it at a police car); *Gray v. State*, No. 61987, 2014 WL 4922871, at *2 (Nev. Dec. 30, 2014) (Order of Affirmance) (concluding "there was sufficient evidence that Gray used his vehicle as a deadly weapon").

In this case, there was substantial evidence that Solid drove the SUV in a manner that was "readily capable of causing substantial bodily harm or death." NRS 193.165(6)(b). No less than four eyewitnesses, including Exum, Romo, Shanahan, and Bullard, each testified that Solid accelerated the SUV with M.A. still leaning inside or hanging from the passenger window. As a result, Solid dragged M.A. for 90 feet until M.A. eventually let go as the SUV gained speed, causing him to fall under the vehicle.

While Solid testified that he was unaware of M.A.'s presence and drove away in a panic, the jury was not required to credit Solid's testimony. *See Walker*, 91 Nev. at 726, 542 P.2d at 439. The four eyewitnesses provided sufficient evidence that, by rapidly accelerating with M.A. still leaning into the vehicle, Solid used the SUV as a deadly weapon.

Further, Solid's reliance on *Buschauer* is unpersuasive. *Buschauer* held that a deadly weapon enhancement does not apply to unintentional crimes, such as involuntary manslaughter, because the deadly weapon "must be used in conscious furtherance of a criminal objective." 106 Nev. at 895, 804 P.2d at 1049. Here, the jury found Solid guilty of robbery and conspiracy to commit robbery. Thus, Solid used the vehicle in conscious furtherance of a criminal objective–the robbery–and M.A.'s death was not the result of an "unintentional crime." *Id.* Therefore, we conclude that Solid's contention is without merit.

Solid is not entitled to relief based on cumulative error

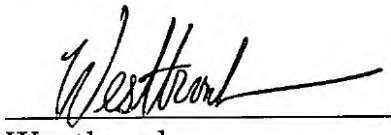
Finally, Solid argues that cumulative error warrants reversal. However, because Solid fails to identify any reversible error, there are no errors to cumulate, and Solid is not entitled to relief. *See Chaparro v. State*, 137 Nev. 665, 673-74, 497 P.3d 1187, 1195 (2021) ("Because we have rejected Chaparro's assignments of error, we conclude that his allegation of cumulative error lacks merit.").

Accordingly, we

ORDER the judgment of conviction AFFIRMED.[8]

_____, C.J.
Gibbons

_____, J.
Bulla



_____, J.
Westbrook

cc: Hon. Carli Lynn Kierny, District Judge
Legal Resource Group
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

[8]Insofar as Solid has raised any other arguments that are not specifically addressed in this decision, we have considered the same and conclude that they do not present a basis for relief.