

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

OSCAR CAMPOS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 85473-COA

FILED

JAN 19 2024

ORDER OF AFFIRMANCE BY 
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
DEPUTY CLERK

Oscar Campos appeals from a judgment of conviction, entered pursuant to a jury verdict, of one count of battery constituting domestic violence; three counts of battery with use of a deadly weapon constituting domestic violence; one count of assault with use of a deadly weapon; one count of first-degree kidnapping with use of a deadly weapon resulting in substantial bodily harm; one count of battery resulting in substantial bodily harm constituting domestic violence; one count of robbery with use of a deadly weapon; one count of attempted murder with use of a deadly weapon; forty-five counts of battery with use of a deadly weapon resulting in substantial bodily harm constituting domestic violence; and one count of possession of a controlled substance. Eighth Judicial District Court, Clark County; Carli Lynn Kierny, Judge.

Campos abducted his wife, Marcia Hunley, from an apartment in Las Vegas in 2018.¹ Hunley was on probation at the time. Over the next several days, Campos beat and sexually assaulted Hunley, burned her with a heated knife 40 times, and shot her several times. Campos then drove Hunley from Las Vegas to his parents' house in Scenic, Arizona, and threatened to kill her. Eventually, Campos left his parents' house with

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

Hunley, who was in and out of consciousness. Campos later dropped Hunley off near her sister's house, and the sister took Hunley to the hospital where she remained for more than a week.

Upon her discharge from the hospital, unknown assailants threatened Hunley. Because the threats made her feel unsafe, Hunley violated her probation so that she would be taken back into custody. While in jail, she signed an affidavit presented to her by an investigator for Campos's defense attorney wherein she recanted her identification of Campos as the assailant in the injuries leading to her hospital stay. The affidavit stated that Hunley lied because she was upset about Campos's infidelity and identified a man named "Snoopy" and two other men, people Hunley stole \$60,000 from, as her actual assailants. At trial, Campos used the affidavit to impeach Hunley's testimony that Campos was the assailant.

After a ten-day trial the jury found Campos guilty of 55 total counts, including one count of battery constituting domestic violence; three counts of battery with use of a deadly weapon constituting domestic violence; one count of assault with use of a deadly weapon; one count of first degree kidnapping with use of a deadly weapon resulting in substantial bodily harm; one count of battery resulting in substantial bodily harm constituting domestic violence; one count of robbery with use of a deadly weapon; one count of attempted murder with use of a deadly weapon; forty-five counts of battery with use of a deadly weapon resulting in substantial bodily harm constituting domestic violence; and one count of possession of a controlled substance. The district court sentenced Campos to an aggregate total of life with the possibility of parole after 40 years.

Campos raises five errors for our consideration on appeal. First, Campos argues that the State committed prosecutorial misconduct by

eliciting irrelevant and unfairly prejudicial testimony concerning Campos's infidelity, participation in robberies, selling drugs, and connection to drug cartels. Second, Campos argues the district court erred by failing to hold a hearing on the admissibility of prior bad act evidence concerning Campos's infidelity, participation in robberies, selling drugs, and connection to drug cartels, and failing to issue a limiting instruction as to the scope of the bad act evidence. Third, Campos argues that the district court violated his right against double jeopardy because he was convicted of 40 separate counts of battery with use of a deadly weapon resulting in substantial bodily harm constituting domestic violence for each time he burned Hunley with the knife. Fourth, Campos argues that the testimony of one of the State's expert witnesses was irrelevant and that the expert improperly vouched for Hunley. Fifth, Campos argues that Hunley's Facebook messages contained inadmissible hearsay and violated his Sixth Amendment right to confront witnesses against him because he did not have the opportunity to cross-examine the other person in the conversation. As the State argues, Campos failed to preserve any of these issues below and does not cogently argue for plain error review on appeal.

When a criminal defendant raises an issue on appeal that was not raised before the district court and therefore preserved, this court may review for plain error. *See* NRS 178.602 ("Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court."); *Valdez v. State*, 124 Nev. 1172, 1190, 196 P.3d 465, 477 (2008). "Under that standard, an 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" *Valdez*, 124 Nev. at 1190, 196 P.3d at 477. "[A] plain error affects a defendant's substantial

rights when it causes actual prejudice or a miscarriage of justice (defined as a ‘grossly unfair’ outcome).” *Jeremias v. State*, 134 Nev. 46, 50-51, 412 P.3d 43, 49 (2018).

Importantly, the defendant bears the burden of demonstrating plain error. *See Miller v. State*, 121 Nev. 92, 99, 110 P.3d 53, 58 (2005). In this case, Campos failed to address the plain error standard in his opening brief, and only summarily discusses it in his reply brief. *See LaChance v. State*, 130 Nev. 263, 277 n.7, 321 P.3d 919, 929 n.7 (2014) (explaining that we need not consider an issue raised for the first time on appeal in an appellant’s reply brief); NRAP 28(c). Because Campos forfeited plain error review in his opening brief, we decline to exercise our discretion to engage in plain error review, including his contentions of prosecutorial misconduct, double jeopardy, irrelevant expert testimony, witness vouching, inadmissible hearsay testimony, and confrontation clause violations. *See Jeremias*, 134 Nev. at 50, 412 P.3d at 48; *Mollett v. State*, No. 84017-COA, 2022 WL 17592184, at *1 (Nev. Ct. App. Dec. 12, 2022) (Order of Affirmance) (declining to review a forfeited error for plain error because the defendant failed to argue plain error in his briefing on appeal). Even if we were to consider Campos’s claims under plain error review, he fails to satisfy the requirements to support such review in that he fails to explain why those errors are plain and how they prejudiced his substantial rights. *See Jeremias*, 134 Nev. at 50, 412 P.3d at 48; *Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987)

We recognize, however, that the failure to issue a limiting instruction when the State presents evidence of prior bad acts is not subject to plain error review because the prosecutor has “the duty to request that the jury be instructed on the limited use of prior bad act evidence,” and, if

the prosecutor fails to request such an instruction, “the district court should raise the issue *sua sponte*.” See *Tavares v. State*, 117 Nev. 725, 731, 30 P.3d 1128, 1132 (2001). A district court’s failure to issue such an instruction will be considered harmless unless the “error ‘had substantial and injurious effect or influence in determining the jury’s verdict.’” *Id.* at 732, 30 P.3d at 1132 (quoting *Kotteakos v. United States*, 328 U.S. 750, 776 (1946)).

Here, we cannot say that any alleged failure on the part of the district court to issue limiting instructions had a substantial and injurious influence on the jury verdict. First, as to the drug cartel and gang affiliation evidence, the record suggests that the parties stipulated to the admission of such evidence and the district court provided a limiting instruction as to that evidence.² We therefore reject Campos’s argument to the contrary. Second, as to the district court’s failure to issue a limiting instruction following the admission of evidence regarding Campos’s infidelity, the record also fails to support that such failure had a substantial and injurious influence on the jury verdict. Because the evidence was elicited for the purpose of demonstrating its minimal effect on Hunley and because Campos’s infidelity, as discussed in Hunley’s recantation letter, was central to Campos’s theory of defense, we are not persuaded as to its injurious

²The court instructed the jury as follows:

[T]hroughout this trial, you will hear references to gangs and/or gang subculture. You are not to use this information to infer that any witness or defendant is a person of bad character or a person who commits crime. This information, if believed by you, is to be used solely for the purpose of understanding gang subculture in the context of this case and the relationships between the parties.

influence. Third, we cannot conclude that the district court's failure to issue a limiting instruction following Hunley's oblique mention that Campos "sold drugs [and] robbed people" for a living, potentially elicited in relation to the gang affiliation and culture, had a substantial and injurious effect or influence on the jury's verdict in this case because Campos had already elicited testimony from Hunley discussing Campos's participation in a prior robbery and because the court had already given a limiting instruction on gang culture. Accordingly, we

ORDER the judgment of conviction AFFIRMED.³


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Carli Lynn Kierny, District Judge
Law Office of Betsy Allen
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

³Insofar as Campos raises other arguments that are not specifically addressed herein, we have considered the same and conclude that they do not present a basis for relief.