

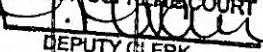
IN THE SUPREME COURT OF THE STATE OF NEVADA

LADONN LEE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 85784

FILED

FEB 13 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of murder with the use of a deadly weapon. Second Judicial District Court, Washoe County; Scott N. Freeman, Judge.

Appellant Ladonn Lee was convicted of one count of murder with the use of a deadly weapon following the fatal shooting of Taylor Dickins. The day of the shooting, Lee and Dickins had arranged to meet so Lee could purchase drugs from Dickins. When Dickins arrived at the meeting spot, he texted Lee's phone number. A few minutes later, a distinctive BMW arrived. Two men exited the car. One of the men fired a gun into the driver's side window of Dickins's car. Dickins's body was discovered in his car a few hours later. The BMW was also discovered a short while later. The BMW was recognizable due to a unique sticker in place of a license plate and a missing piece of black molding. Lee had recently purchased the BMW and police recovered Lee's fingerprints and DNA from the car. In addition to the evidence regarding the BMW, an associate identified Lee as the shooter. At trial, the State also presented jail phone calls where Lee alluded to his participation in the murder.

The jury found Lee guilty. During sentencing, the State presented testimony that Lee was suspected of another murder in California. The district court sentenced Lee to life without the possibility

of parole, as well as a consecutive prison term of 8-20 years for the use of a deadly weapon. Lee now appeals.

Lee fails to present evidentiary errors to justify reversal

Lee presents 14 allegations of evidentiary error by the district court. While Lee objected to these alleged errors below on various grounds, on appeal, he has changed the bases for his objections. On appeal, Lee groups all alleged evidentiary errors for review under NRS 48.035(1)'s undue prejudice standard. A party "cannot change her theory underlying an assignment of error on appeal." *Ford v. Warden, Nevada Women's Corr. Ctr.*, 111 Nev. 872, 884, 901 P.2d 123, 130 (1995). Even if we consider the merits of Lee's evidentiary arguments, following *Ford*, we find no relief warranted. *See Mclellan v. State*, 124 Nev. 263, 267, 182 P.3d 106, 109 (2008) (directing appellate courts to review evidentiary decisions, generally, for an abuse of discretion).

First, as to Lee's claim that the district court improperly allowed the State to examine witnesses with leading questions, we conclude that Lee fails to allege extraordinary circumstances warranting reversal. *See Barcus v. State*, 92 Nev. 289, 291, 550 P.2d 411, 412 (1976) (providing that "[w]hether leading questions should be allowed is a matter mostly within the discretion of the trial court, and any abuse of the rules regarding them is not ordinarily a ground for reversal" (internal quotation marks omitted)). Two of the instances raised—namely, the State's leading question to Caleb Lundgren about the car used and the leading questions to Detective Millsap about the search of Dickins's phone—were in the sound discretion of the district court to allow. As to the remaining instance, the State, of its own accord, corrected itself by asking a nonleading question after the objection, rendering any potential error harmless. *See NRS*

178.598 (errors that do not affect a defendant’s “substantial rights shall be disregarded”).

Second, Lee claims the State was twice permitted to ask questions on redirect that exceeded the scope of Lee’s cross-examination. Both claims lack merit. The State’s questioning of Detective Jeffrey Boyd regarding the amount of time spent on this case did not exceed the scope of Lee’s cross-examination. During cross-examination, Lee asked Detective Boyd a series of questions about the number of Lee’s phone calls listened to as part of the investigation. Similarly, the State’s question to Lundgren about how he ended up at the scene of the crime did not exceed the scope of cross-examination. On cross, Lee asked Lundgren multiple questions including, “[d]o you remember talking to Detective Boyd on the day that Taylor Dickins died?” and “you were at the alley between the lup and the Kwok’s Bistro, right?” Lee inquired about the area, regardless of Lundgren’s answers to the questions. As a result, the State’s questions on redirect did not exceed the scope of cross-examination.

Third, Lee challenges the admissibility of testimony from three witnesses. Lee argues the district court allowed irrelevant and nonresponsive testimony regarding searching Dickins’s car from Kaleb Thomas, the man who first discovered Dickins’s body. Given the low standard required for relevance, we cannot say the district court abused its discretion in allowing Thomas’s testimony in response to the State’s questions about the initial search. *See* NRS 48.015 (defining relevant evidence as “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence”); *see e.g., Chaparro v. State*, 137 Nev. 665, 672-73, 497 P.3d 1187, 1194-95 (2021) (finding inconclusive

DNA results relevant to show the jury the thoroughness of law enforcement's investigation). Likewise, the district court did not abuse its discretion in allowing Detective Jeffrey Boyd to testify to the fact of the Peppermill's cooperation with law enforcement. Further, the district court did not abuse its discretion in allowing the State to cross-examine Hunter Wilson regarding her opinion of Dickins. *See Bushnell v. State*, 95 Nev. 570, 573, 599 P.2d 1038, 1040 (1979) ("The only proper restriction [to cross-examinations into bias] should be those inquiries which are repetitive, irrelevant, vague, speculative, or designed merely to harass, annoy or humiliate the witness.").

Fourth, we conclude the district court did not abuse its discretion in admitting a jail phone call, including a portion that referenced Lee's custodial status. Jail calls can be admissible evidence. *See Fields v. State*, 125 Nev. 785, 796-97, 220 P.3d 709, 717 (2009). Here, the district court's decision to admit the portion referencing Lee's incarceration was in response to Lee opening the door to his custodial status. While we discourage the admission of evidence regarding the defendant's custodial status and recognize under different circumstances this could amount to reversible error, we cannot say under the particular facts that the district court's chosen remedy in allowing the phone call's introduction exceeded its discretion. Regardless, because Lee opened the door to custodial status, the admission did not affect Lee's substantial rights. *See NRS 178.598*.

Lastly, we conclude Lee's additional alleged evidentiary errors are facially without merit or unsupported by persuasive authority. *See Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) ("It is appellant's responsibility to present relevant authority and cogent argument; issues not

so presented need not be addressed by this court.”). We decline to address the remaining evidentiary claims.

There was no prosecutorial misconduct

Lee also argues the State improperly introduced new evidence during closing argument when the prosecutor stated that “[Dickins] left friends and family without him anymore.” The district court overruled Lee’s objection to the statement. While Lee groups this argument in with other evidentiary claims, the alleged error is one of prosecutorial misconduct. When considering claims of nonconstitutional prosecutorial misconduct, this court first determines if the conduct was improper and, second, if improper, “whether the improper conduct warrants reversal.” *Valdez v. State*, 124 Nev. 1172, 1188, 196 P.3d 465, 476 (2008). Here, the State’s comments were not improper. While prosecutors may not attempt to inflame the jury, the State may draw reasonable inferences from evidence presented at trial during their closing arguments. *See Bridges v. State*, 116 Nev. 752, 762, 6 P.3d 1000, 1008 (2000) (“The State was free to comment on the evidence . . . and invite the jury to draw such reasonable inferences.”). Given Dickins’s death, the State’s comments here were supported by the evidence presented to the jury and not unduly inflammatory. Therefore, we conclude that no error occurred.

Sufficient evidence exists to support Lee’s conviction

Lee argues insufficient evidence supported his conviction because “if the jury did not hear all of the improperly presented prejudicial evidence, the jury could not have supported a conviction of guilty.” First, we note the substantive argument presented reads as one of cumulative error, despite Lee’s failure to clearly make a claim of cumulative error until his reply brief. *See* NRAP 28(c) (prohibiting arguments from being made

for the first time in appellant's reply brief). As we concluded there was no error, multiple errors do not exist to cumulate, and relief for cumulative error is not available in this case. *See Mulder v. State*, 116 Nev. 1, 16-17, 992 P.2d 845, 854-55 (2000).

If the argument was in fact meant to challenge the sufficiency of the evidence supporting the verdict, review likewise reveals no error. *See Mitchell v. State*, 105 Nev. 735, 737, 782 P.2d 1340, 1342 (1989) ("This court will not disturb a judgment of conviction in a criminal case on the basis of insufficiency of the evidence so long as the jury verdict is supported by substantial evidence."). More than substantial evidence supports the jury's verdict. Video and phone evidence indicate Lee and Dickins met the night of the killing. Physical evidence ties Lee to the BMW used in the murder. Lee was identified as the shooter. Lee lied to police about his presence in Reno. After his arrest, in jail phone calls Lee discussed details of the murder that were not yet public. Taken together, substantial evidence supports Lee's conviction.

The district court did not abuse its discretion at sentencing

Lastly, Lee challenges the district court's sentencing decision, asserting it improperly considered that Lee may have committed another homicide in California. Although both parties asserted that the proper standard of review for this matter was abuse of discretion, failure to object to testimony during sentencing waives the issue of admission of that testimony for appellate review absent a showing of plain error. *See McConnell v. State*, 120 Nev. 1043, 1060-61, 102 P.3d 606, 619 (2004) (reviewing defendant's challenge to testimony offered during the penalty phase about his involvement in a prior crime for plain error because defendant did not object to the testimony below). We will therefore interfere

with the imposed sentence only if the record plainly demonstrates substantial “prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence.” *Silks v. State*, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

No plain error exists in the district court’s decision to hear the contested testimony. The district court enjoys wide discretion to hear evidence at sentencing, including the discretion to hear evidence of other uncharged acts. *See Chavez v. State*, 125 Nev. 328, 348, 213 P.3d 476, 490 (2009); *Ferris v. State*, 100 Nev. 162, 163, 677 P.2d 1066, 1066-67 (1984) (noting information pertaining to prior uncharged acts was not impalpable or highly suspect because the information was “based upon reliable information given to police officers by one of the victims”); *see also Gomez v. State*, 130 Nev. 404, 407, 324 P.3d 1226, 1228-29 (2014) (concluding several police incident reports that noted defendant’s gang affiliation were not “impalpable or highly suspect evidence”). In the capital context, we have likewise affirmed the use of prior uncharged homicides in sentencing. *See Crump v. State*, 102 Nev. 158, 161, 716 P.2d 1387, 1388-89 (1986) (affirming the proper use of evidence of a prior unconvicted homicide because the “testimony was neither dubious, tenuous, nor of questionable probative value”).

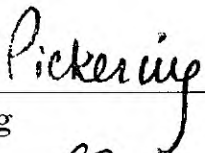
The highly analogous facts and close temporal proximity render the California investigation highly relevant: in both cases, Lee arranged to meet with the deceased shortly before their death for a drug deal. Both victims were found shot dead in their driver’s seat and forensic evidence placed Lee in proximity to both crimes. Lee does not allege there is anything untrue in the State’s evidence. The State’s evidence does not rise to the level of “highly suspect” or “impalpable” and the district court is equipped

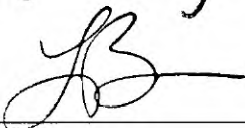
to appropriately weigh it. Thus, we conclude the district court did not plainly err by considering evidence of the alleged California crime and affording it “a little bit of weight” when sentencing Lee.

Finally, Lee contends the district court did not sufficiently consider his mitigating evidence. The record on appeal demonstrates the court did consider that evidence. To the extent Lee also challenges the length of the sentence, we determine the district court did not abuse its discretion in sentencing. *See Chavez*, 125 Nev. at 348, 213 P.3d at 490 (stating that sentencing decisions are reviewed for abuse of discretion). The facts of Dickins’s murder alone could justify a sentence of life without parole, absent any consideration of the alleged California crime. *See Harte v. State*, 132 Nev. 410, 415, 373 P.3d 98, 102 (2016) (“Life without the possibility of parole is readily available as a sentence for a conviction of first-degree murder.”); *see also* NRS 200.030(4)(b)(1). Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Cadish


_____, J.
Pickering


_____, J.
Bell

cc: Hon. Scott N. Freeman, District Judge
Washoe County Alternate Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe County District Court Clerk