

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ALFREDO MORALES-SORIA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 89123-COA

FILED

AUG 12 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Alfredo Morales-Soria appeals from a judgment of conviction, entered pursuant to a jury verdict, of possessing, receiving, or transferring a stolen vehicle. Second Judicial District Court, Washoe County; Kathleen M. Drakulich, Judge.

First, Morales-Soria argues the district court allowed, over his objection, a police officer to improperly invade the jury's province by testifying that there were two different men depicted in surveillance videos presented at trial. In this case, a stolen vehicle was recovered at a residence. The police were able to recover surveillance videos from neighbors of that residence depicting the vehicle being driven into and parked in the driveway of the residence. After Morales-Soria asked the officer on cross-examination whether a woman depicted in several different videos was the same woman, the State asked the officer on redirect examination whether a man depicted in the videos was the same man in each of the videos. The officer testified that, based on his review of the videos, he did not believe the man depicted arriving with the stolen vehicle

was the same man seen in later videos. Counsel objected, arguing the officer's identification went to the "ultimate issue," which was an issue for the jury. The district court overruled Morales-Soria's objection.

On appeal, Morales-Soria argues the district court erred by denying his objection because the officer's identification was an opinion as to the ultimate issue of guilt. "A witness may not give a direct opinion on the defendant's guilt or innocence in a criminal case." *Collins v. State*, 133 Nev. 717, 724, 405 P.3d 657, 664 (2017). Further, "a lay witness may testify regarding the identity of a person depicted in a surveillance photograph if there is some basis for concluding that the witness is more likely to correctly identify the defendant from the photograph than is the jury." *Rossana v. State*, 113 Nev. 375, 380, 934 P.2d 1045, 1048 (1997) (internal quotation marks omitted).

Here, Morales-Soria opened the door to the State's questioning of the officer by asking identification questions regarding the woman depicted in the videos. *Cf. Cordova v. State*, 116 Nev. 664, 670, 6 P.3d 481, 485 (2000) (concluding in part that there was no error where an officer testified as to his opinion on the truthfulness of the defendant's confession because the defendant opened the door to the questioning by asking about the officer's experience regarding false confessions). Additionally, the police officer did not identify Morales-Soria as one of the persons in the videos at

this juncture in the trial.¹ Thus, the officer did not give a direct opinion on the defendant's guilt.²

Second, Morales-Soria argues the State committed prosecutorial misconduct by presenting an altered version of videos at closing.³ Morales-Soria did not object to the videos until after closing arguments. Thus, this claim is subject to plain error review. *See Rodriguez v. State*, 140 Nev., Adv. Op. 47, 551 P.3d 311, 315 (2024) (stating that an objection made after closing arguments precludes appellate review but that the court can review for plain error); *see also Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48 (2018) (stating that to demonstrate plain error, an

¹We note that, during recross-examination by Morales-Soria, the officer identified Morales-Soria in the video based on the hat he wore, and Morales-Soria does not challenge that identification on appeal.

²Morales-Soria argues the district court erred by admitting the officer's testimony because it violated the best evidence rule. Morales-Soria did not object on this ground below, and he fails to demonstrate the district court plainly erred because the videos were presented at trial. *See Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48 (2018) (setting forth the plain error standard); *see also* NRS 52.235 (codifying the best evidence rule as "[t]o prove the content of a writing, recording or photograph, the original writing, recording or photograph is required"); *Young v. Nev. Title Co.*, 103 Nev. 436, 440, 744 P.2d 902, 904 (1987) ("The best evidence rule requires production of an original document where the actual contents of that document are at issue and sought to be proved.").

³The State conceded it altered the videos to make them brighter. It asserted that the videos became darker when pasted into PowerPoint and that it only brightened the videos in an attempt to match the brightness of the original videos.

appellant must show that: “(1) there was an ‘error’; (2) the error is ‘plain,’ meaning that it is clear under current law from a casual inspection of the record; and (3) the error affected the defendant’s substantial rights”).

Morales-Soria did not provide this court with a copy of the surveillance videos; thus, Morales-Soria failed to demonstrate the videos were substantially or materially altered. *See Greene v. State*, 96 Nev. 555, 558, 612 P.2d 686, 688 (1980) (“The burden to make a proper appellate record rests on appellant.”); *cf. Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) (“When an appellant fails to include necessary documentation in the record, we necessarily presume that the missing portion supports the district court’s decision.”); *see also* NRAP 10(b)(2) (“If exhibits cannot be copies to be included in the appendix, the parties may request transmittal of the original exhibits to the clerk of the Supreme Court under Rule 30(d).”); NRAP 30(d) (stating “the parties may file a motion requesting the court to direct the district court clerk to transmit original exhibits”). Therefore, we conclude Morales-Soria fails to demonstrate plain error and that Morales-Soria is not entitled to relief on this claim.

Third, Morales-Soria claims the State committed prosecutorial misconduct by improperly withholding the altered video, discussed above, in violation of *Brady v. Maryland*, 373 U.S. 83 (1963). A *Brady* violation has three components: “the evidence at issue is favorable to the accused; the evidence was withheld by the [S]tate, either intentionally or inadvertently; and prejudice ensued, i.e., the evidence was material.” *State v. Bennett*, 119 Nev. 589, 599, 81 P.3d 1, 8 (2003) (quotation marks omitted). Here,


Morales-Soria does not argue nor demonstrate the evidence at issue was favorable to Morales-Soria, and the evidence was not withheld because Morales-Soria was provided with the unaltered video. To the extent Morales-Soria relies on *McKee v. State* for the proposition that the State is required to turn over all inculpatory evidence, *McKee* is distinguishable. 112 Nev. 642, 917 P.2d 940 (1996). In *McKee*, the State had an open file policy and failed to disclose a picture the State intended to use to impeach the defendant. *Id.* at 647-48, 917 P.2d at 943-44. The Nevada Supreme Court found it was error for the State not to disclose the picture where the State had an open file policy and represented that all evidence was disclosed. *Id.* at 648, 917 P.2d at 944. Here, Morales-Soria does not allege the State had an open file policy and violated it by failing to turn over the altered video. Therefore, we conclude that Morales-Soria fails to demonstrate plain error and that Morales-Soria is not entitled to relief on this claim.

Finally, Morales-Soria argues the district court erred by imposing a \$1,000 reimbursement fee for attorney fees without first holding a hearing to ascertain whether Morales-Soria could pay the fee.⁴ Morales-Soria objected to the imposition of the fee below; however, Morales-Soria did not object on the ground he presents on appeal. An appellant “cannot change [the] theory underlying an assignment of error on appeal.” *Ford v. Warden*, 111 Nev. 872, 884, 901 P.2d 123, 130 (1995). But even reviewing

⁴We note that information regarding Morales-Soria’s ability to pay was included in the presentence investigation report.

Morales-Soria's claim for plain error as we would an otherwise forfeited error, Morales-Soria fails to demonstrate he is entitled to relief. Nevada's appellate courts have not yet addressed whether NRS 178.3975(2) requires the district court to hold a hearing to determine whether a defendant can pay the fee; thus, any alleged error was not clear under current law from a casual inspection of the record.⁵ Further, because Morales-Soria may petition the district court at any time for relief from the attorney fee obligation, *see* NRS 178.3975(3), Morales-Soria fails to demonstrate error affecting his substantial rights. Therefore, we conclude that Morales-Soria is not entitled to relief on this claim. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

⁵We decline to interpret the statute in the first instance.

cc: Hon. Kathleen M. Drakulich, District Judge
Washoe County Alternate Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk