IN THE SUPREME COURT OF THE STATE OF NEVADA

ANDREW YOUNG,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

Case No. 83243

RESPONDENT'S ANSWERING BRIEF

Appeal From Judgment of Conviction
Eighth Judicial District Court, Clark County

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page Number:

Cases

Statutes

Other Authorities

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANDREW YOUNG, Appellant, v. THE STATE OF NEVADA, Respondent.	Case No. 83243

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ROUTING STATEMENT

This appeal is not presumptively assigned to the Court of Appeals because it is a direct appeal from a jury trial involving Category B felonies. NRAP 17(b)(2)(A).

STATEMENT OF THE ISSUES

1. Whether Andrew Young (hereinafter "Young") established plain error regarding the admission any bad acts.
2. Whether Young established plain error regarding officers' identification of him and discussion of surveillance footage.
3. Whether the district court abused its discretion regarding a hearsay objection.
4. Whether the district court abused its discretion when it denied Young's motion for mistrial.
5. Whether Young established plain error regarding counsel's comments.
6. Whether Young established plain error regarding the jury instructions.
7. Whether Young established plain error regarding a Double Jeopardy violation.
8. Whether Young established plain error regarding his adjudication as a habitual criminal.
9. Whether Young established plain error regarding the district court not conducting a jury trial to adjudicate him as a habitual criminal.
10. Whether Young received ineffective assistance of counsel.

11. Whether there was sufficient evidence to convict Young.
12. Whether There was Cumulative Error.

STATEMENT OF THE CASE

On September 10, 2020, the State filed an Indictment charging Young as follows: Count 1– Battery with Use of a Deadly Weapon Resulting in Substantial Bodily Harm (Category B Felony – NRS 200.481); and Count 2– Attempt Murder with Use of a Deadly Weapon (Category B Felony – NRS 200.010, 200.030, 193.330, 193.165). IAA1-2. On October 1, 2020, the State filed an Amended Superseding Indictment charging Young as follows: Counts 1, 4, 6, 7, 9, 11, 13, 15, 19, 21, 23, and 24 – Burglary (Category B/C Felony – NRS 205.060, NRS 205.060.1B); Counts 2, 8, 10, and 16 – Larceny from the Person, Victim Sixty (60) Years of Age or Older (Category C Felony – NRS 205.270, 193.167); Count 3 – Grand Larceny (Category C Felony – NRS 205.222.2); Counts 5, 12, 14, 20, 22 – Fraudulent Use of Credit or Debit Card (Category D Felony – NRS 205.760); Count 17– Battery with Use of a Deadly Weapon Resulting in Substantial Bodily Harm (Category B Felony – NRS 200.481); and Count 18 – Attempt Murder with Use of a Deadly Weapon (Category B Felony – NRS 200.010, 200.030, 193.330, 193.165). IAA68-73.

On October 7, 2020, Young pled not guilty and invoked his right to a speedy trial. IIIAA588.

On February 22, 2021, the State filed two notices: (1) a Notice of Intent to Seek Punishment as a Habitual Criminal; and (2) a Notice of Witnesses and/or expert witnesses. IAA234, 237. On February 26, 2021, Young filed a Notice of Intent to Claim Alibi. IAA240.

On February 28, 2021, Young filed a Motion to Sever Counts. IIAA242. On March 10, 2021, the State filed an Amended Notice of Intent to Seek Punishment as a Habitual Criminal. IIAA254. On March 11, 2021, the State filed an Opposition to Young's Motion to Sever. IIAA258. On March 17, 2021, the district court granted Young's Motion to Sever Counts. IIAA333. The Order severed counts seventeen (17) and eighteen (18). IIAA334.

On March 29, 2021, the State filed a Notice of Motion and Motion in Limine to Admit Certain Evidence Under the Doctrine of Res Gestae, or in the Alternative State's Motion to Admit Evidence Related to Other Crimes. IIAA311. On April 8, 2021, Young filed an Opposition. IIAA337. On April 23, 2021, the district court filed an Order Granting State's Motion to Admit Certain Evidence Under the Doctrine of Res Gestae, or in the Alternative State's Motion to Admit Evidence Related to Other Crimes. IIAA356.

On April 26, 2021, the State filed a Second Superseding Indictment removing the severed counts. IIAA360-65.

On April 27, 2021, Young's jury trial commenced. IVAA611. On April 30, 2021, after four (4) days of trial, the jury found Young guilty of all counts except counts fourteen (14) and twenty (20). VIIAA1250, 1310-12.

On September 3, 2021, the district court sentenced Young as follows: Count 1 – life with a minimum parole eligibility of (10) years; Count 2 – a maximum of sixty (60) months with a minimum parole eligibility of twenty-four (24) months plus a consecutive term of sixty (60) months with a minimum parole eligibility of twelve (12) months for Victim 60 years of Age or Older, concurrent with Count 1; Count 3 – a maximum of sixty (60) months with a minimum parole eligibility of twenty-four (24) months, concurrent with Count 2; Count 4 – a maximum of sixty (60) months with a minimum parole eligibility of twenty-four (24) months, concurrent with Count 3; Count 5 – a maximum of sixty (60) months with a minimum parole eligibility of twenty-four (24) months, concurrent with Count 4; Count 6 – life with a minimum parole eligibility of (10) years, consecutive to counts 1, 2, 3, and 4; Count 7 – life with a minimum parole eligibility of (10) years, consecutive to count 6; Count 8 – a maximum of sixty (60) months with a minimum parole eligibility of twenty-four (24) months plus a consecutive term of sixty (60) months with a minimum parole eligibility of twenty-four (24) months for Victim 60 years of Age or Older, concurrent with Count 7. Count 9 – life with a minimum parole eligibility of (10) years, consecutive to count 8. Count 10 – a maximum of sixty (60) months

with a minimum parole eligibility of twenty-four (24) months plus a consecutive term of sixty (60) months with a minimum parole eligibility of twenty-four (24) months for Victim 60 years of Age or Older, concurrent with Count 9; Count 11 – life with a minimum parole eligibility of (10) years, consecutive to count 10; Count 12 – a maximum of sixty (60) months with a minimum parole eligibility of twenty-four (24), concurrent with Count 11; Count 13 – a maximum of sixty (60) months with a minimum parole eligibility of twenty-four (24), concurrent with Count 12; Count 15 – life with a minimum parole eligibility of (10) years, consecutive to count 13; Count 16 – a maximum of sixty (60) months with a minimum parole eligibility of twenty-four (24) months plus a consecutive term of sixty (60) months with a minimum parole eligibility of twenty-four (24) months for Victim 60 years of Age or Older, concurrent with Count 9; Count 17 – life with a minimum parole eligibility of (10) years, consecutive to count 16; Count 18 – a maximum of sixty (60) months with a minimum parole eligibility of twenty-four (24) months, concurrent with Count 17; Count 19 – a maximum of sixty (60) months with a minimum parole eligibility of twenty-four (24) months, concurrent with Count 18; Count 21 – life with a minimum parole eligibility of (10) years, consecutive to count 19; and Count 22 – life with a minimum parole eligibility of (10) years, consecutive to count 21. IIIAA519-23. The district court sentenced Young under the Large Habitual Criminal Statute for Counts 1, 6, 7, 9, 11, 15, 17, 21, and 22. IIAA521.

On July 15, 2021, Young filed a Notice of Appeal. On March 8, 2022, Young filed an Opening Brief and Amended Opening Brief.

STATEMENT OF THE FACTS

Incident at Rampart Casino (counts 1-5)

Mary Campo's Testimony

On June 29, 2020, seventy-two (72) year old Mary Campo (hereinafter "Campo") went to the Rampart Casino to gamble.[1] VAA787-89. While sitting at one of the machines, around 11:00 p.m. to 12:00 a.m., Young and another man approached her. VAA788-90, 792. One of them showed her a piece of paper and asked her a question while the other person stood behind her. VAA790-91. After both men left, Campo ordered a drink but when she looked inside her purse, her wallet was missing. VAA791. Her wallet contained around $1,600, her atm card, and other items. VAA791.

Later, Campo called Bank of America and stated her debit card had been stolen. VAA792. Bank of America sent her an email regarding the activity. VAA795. Campo never authorized anyone to use her card. VAA795.

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[1] Contemporaneous with the filing of this brief, the State filed a motion to transmit exhibit one (1) which is surveillance footage depicting this incident.

Marcia Martinez's Testimony

Marcia Martinez (hereinafter "Martinez") worked as a manager at the 7-Eleven located at 5110 South Maryland Parkway. VIAA1008. A Las Vegas Metropolitan Police Department (hereinafter "LVMPD") detective requested she pull video surveillance and certain receipts. VIAA1009. Surveillance footage from July 29, 2020, showed Young making a purchase. VAA1012-19. However, the card used in the transaction belonged to Campo. VIAA1174.

Incident at Walmart on East Serene Avenue (count 6)

Lydia Hefner's Testimony

On July 8, 2020, sixty-eight (68) year old Lydia Hefner (hereinafter "Hefner") went to the Walmart located at 2310 East Serene Avenue.[2] VIAA1131. Hefner placed her purse in her shopping cart and then browsed around the store. VIAA1132. At some point while shopping, a woman came to her and asked if Hefner still had her wallet. VIAA1134. Hefner checked her purse and realized her wallet was missing. VIAA134.

Vianca Eskildsen's Testimony

Vianca Eskildsen (hereinafter "Eskildsen") worked as asset protection at the Walmart located at 2310 East Serene Avenue. VIAA1067. On July 8, 2020, she

[2] Contemporaneous with the filing of this Brief, the State filed a motion to transmit exhibit three (3) which is surveillance footage depicting this incident.

called LVMPD to report Young for suspicious activity due to seeing him hover around a customer and maneuver his jacket in a suspicious manner. VIAA1068-74. LVMPD officers arrived and saw live surveillance footage of Young's larceny. VIAA1079-80.

Officer Jerry Wheeler's Testimony

On July 8, 2020, Officer Jerry Wheeler (hereinafter "Wheeler") received a call from Walmart security regarding a suspect attempting to steal from the store.[3] VAA840-43. Wheeler arrived at the security office and was shown surveillance footage of the suspect. VAA842-43. Wheeler watched live surveillance of Young walking around a shopping cart. VAA844-45. Young then reached into the cart and grabbed something. VAA845-46. After seeing this Wheeler and Officer Scott approach Young and escort him outside. VAA847. Wheeler read Young his Miranda rights which Young indicated he understood. VAA850-51. Young told the officers he found a wallet on the floor of the milk aisle. VAA851. However, Wheeler witnessed Young take the wallet on the surveillance footage. VAA852. Wheeler cited Young for a misdemeanor and released him. VAA852.

At the end of his testimony, Wheeler was shown exhibit five (5). VAA854. Exhibit five (5) was video footage showing Rhonda Hatcher interact with Young

[3] Contemporaneous with the filing of this Brief, the State filed a motion to transmit exhibit four (4) which is excerpts from Wheeler's body camera.

and another man on an elevator at Caesar's Palace. VIAA990-93. Wheeler identified Young as one of the people in the elevator. VAA854.

Incident at Caesar's Palace (counts 7-8)

Rhonda Kay Hatcher's Testimony

On July 8, 2020, around 10:30 p.m., sixty-three (63) year old Rhonda Kay Hatcher (hereinafter "Hatcher") was at the Caesar's Hotel and Casino.[4] VIAA989-90. She was there to gamble and have dinner. VIAA990. She and her mother eventually took the elevator to return to her room. VIAA991. Inside the elevator was Young and another man. VIAA993. One of the men started to talk to her and tell her that he was blind. VIAA993. Hatcher only focused on this man. VIAA994. After they got off the elevator, they thought something was wrong. VIAA994. She looked through her purse and noticed her wallet missing. VIAA994. The wallet contained her credit cards, gift cards, and around $170. VIAA995. Hatcher immediately started blocking her debit and credit cards. VIAA994.

Hatcher also filed a report with the hotel security. VIAA994-95. While doing so, she received six or seven alerts from her banks that someone used her debit and credit cards to make purchases. VIAA996-97. Hatcher did not authorize anyone to use her cards. VIAA998.

[4] Contemporaneous with the filing of this Brief, the State filed a motion to transmit exhibit five (5) which is surveillance footage depicting this incident.

After returning home to Arizona, she filed an online report with the LVMPD. VIAA989, 995.

Incident at the Albertsons (counts 9-10)

Joanne Frank's Testimony

On July 22, 2020, around 7:00 p.m., seventy-seven (77) year old Joanne Frank (hereinafter "Frank") went to an Albertsons located at 1001 South Rainbow Boulevard.[5] VAA811. She carried a backpack purse containing her wallet, credit cards, and other miscellaneous items. VAA812. While shopping, Young and another man approached her. VAA814. One of them spoke with Frank, while the other did not. VAA814-15. After the conversation ended, Frank noticed her backpack was open. VAA815-16. She later realized her backpack was lighter. VAA816. Upon searching her backpack, she noticed her wallet missing. VAA816. Her wallet contained $75, her driver's license, registration, insurance, and other items. VAA816. Frank went home and cancelled her cards. VAA816.

Later, Frank received an email from Bank of America. VAA817. They advised her card had been used. VAA817. Frank did not attempt to make that purchase and never authorized anyone to use her card. VAA817.

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[5] Contemporaneous with the filing of this Brief, the State filed a motion to transmit exhibit six (6) which is surveillance footage depicting this incident.

Incident at Walmart on Boulder Highway (counts 11-14)

Barbara Bowen's Testimony

On July 23, 2020, eighty (80) year old Barbara Bowen (hereinafter "Bowen") went to the Walmart located at 5198 Boulder Highway. VIAA1050. Once there, Bowen placed her purse in her shopping cart. VIAA1049-50. While she was browsing, Young approached her, spoke with her, and then left. VIAA1052.

While walking around the store, Bowen realized her wallet was not in her purse. VIAA1053. Her wallet contained around $65, her credit card, debit card, and other cards. VIAA1054-55. Bowen's daughter checked the car for the wallet, but it was also not there. VIAA1054.

That day, multiple attempted and completed transactions occurred using Bowen's cards. VIAA1055. Bowen did not authorize anyone to make the transactions. VIAA1055-56.

Kristen Trock's Testimony

Kristen Trock (hereinafter "Trock") worked as a store leader at GameStop. VAA960. LVMPD detectives requested Trock to pull video surveillance and certain receipts. VAA961. Surveillance footage from July 23, 2020, showed Young making a purchase. VAA965-67. However, the receipt of the purchase showed the card belonged to Bowen. VAA967.

Trock also pulled surveillance footage and a receipt from August 1, 2020. VAA968-72. This footage also showed Young, wearing the same clothing as he did on July 23, 2020, making a purchase. VAA971-73. However, this receipt showed the card used in the transaction belonged to Montho Boone. VAA970.

Incident at the Flamingo Hotel and Casino (counts 15-16)

Serry Mello's Testimony

On July 29, 2020, sixty-nine (69) year old Serry Mello (hereinafter "Mello") checked into the Flamingo Hotel and Casino.[6] VAA929-30. After checking in, he put his wallet in his left pocket and went towards the elevator with his wife. VAA930-32. Two people entered the elevator with Mello and his wife. VAA932-33. As Mello was exiting the elevator, one of the men said, "I got you" and appeared to be helping him move his luggage. VAA934.

Fifteen minutes after getting to his room, Wells Fargo warned Mello about suspicious activity on his debit card. VAA934-35. He then noticed his wallet was missing. VAA935. Mello did not authorize anyone to use his cards that day. VAA936.

Second Incident at Walmart on Boulder Highway (counts 17-20)

Montho Boone's Testimony

[6] Contemporaneous with the filing of this Brief, the State filed a motion to transmit exhibit nine (9) which is surveillance footage depicting this incident.

On August 1, 2020, eighty (80) year old Monto Boone (hereinafter "Boone") and her daughter went to the Walmart located at 5198 Boulder Highway. VAA827. She carried a purse containing her wallet. VAA828. Once inside, she tied her purse to her shopping cart. VAA828-29. While she was browsing the fruit department, she noticed her purse unzipped and wallet missing. VAA829. Her wallet contained around $230, her credit and debit cards, and other items. VAA830-31.

Upon noticing her wallet missing, Boone cried for help. VAA829. She contacted Walmart employees to help. VAA830. Later, a financial institution advised Boone someone used and attempted to use her cards. VAA831. Boone did not authorize anyone to use her cards. VAA831.

Janelle Phung's Testimony

Janelle Phung (hereinafter "Phung") worked at the Walgreen's on Boulder and Flamingo. VIAA1087. Phung reviewed both receipts and video surveillance from the Walgreen she worked at. VIAA1089. Video surveillance from July 23, 2020, and August 1, 2020, showed Young attempting to purchase items. VIAA1095-98. A receipt from August 1, 2020, showed Young attempted to use Boone's card to make the purchase. VIAA1090-92, 1141.

Third Incident at Walmart on Boulder Highway (count 21)

Tina Leigh's Testimony

On August 7, 2020, sixty (60) year old Tina Leigh (hereinafter "Leigh") went to the Walmart located on Boulder Highway.[7] VAA867-68. She strapped her purse to her shopping cart and made her way to the cleaning aisle. VAA867-69. Once there, a tall man asked her questions about cleaning supplies. While talking to him, she turned and noticed another stick his hand in her purse and take something. VAA869. Immediately, she checked her purse, and her wallet was gone. VAA869. The wallet contained Leigh's Social Security card, atm cards, and credit cards. VAA872. Leigh turned to the tall man to tell him what happened, but he ran away. VAA870. Leigh noticed that both men were black. VAA879-90.

Leigh called the bank and told them that her cards has been stolen. VAA876. Later, the bank notified her someone attempted to use the card. VAA 876, 883. Leigh did not attempt these transactions. VAA876.

Incident at Suncoast Hotel and Casino (count 22)

Barbara Angersbach's Testimony

On the late evening of August 9, 2020, and early morning of August 10, 2020, eighty-three (83) year old Barbara Angersbach (hereinafter "Angersbach") was at the Suncoast Hotel and Casino.[8] VAA905-06. While gambling on a slot machine,

[7] Contemporaneous with the filing of this Brief, the State filed a motion to transmit exhibit twelve (12) which is surveillance footage depicting this incident.
[8] Contemporaneous with the filing of this Brief, the State filed a motion to transmit exhibit thirteen (13) which is surveillance footage depicting this incident.

she placed her purse next to her. VAA907-08. Young and another man sat near her. VAA908-10. She told one of them that they could not sit near her due to covid restrictions. VAA908-10. After a brief discussion, both men took off. VAA908-10.

Afterwards, Barbara noticed her wallet was not inside her purse. VAA911. Her wallet contained driver's license, and credit cards. VAA912. She thought that she left it at home and did not look any further. VAA911. While driving home, she received a call regarding usage of her credit cards. VAA912. When she got home, she searched for her wallet but could not find it. VAA912-13. She received additional notifications regarding activity on her credit cards. VAA913. Angersbach did not authorize anyone to use her cards. VAA914.

LVMPD Investigation

Detective Jeremy Jacobitz

Detective Jeremy Jacobitz (hereinafter "Jacobitz") testified regarding his involvement in the case. VAA888. He was assigned an online report written by Hatcher about the theft of her wallet. VAA891-92. After reviewing the report, he contacted Caesar's to acquire any existing video footage. VAA892. As part of his investigation, he reviewed this video footage as well as surveillance footage from various other incidents involving Young. VA893-95.

Jacobitz described the Caesar's video footage. VAA895. He explained Young and his accomplice were engaged in a "distract theft." VAA895. This is where

multiple people have a target, follow them into an area, and then work together to take their belongings. VAA897. Young's actions looked like a "distract theft," because him and his accomplice follow the victims, take their property, and then leave the casino. VAA898.

Detective Dominick Cipriano's Testimony

Detective Dominick Cipriano (hereinafter "Cipriano") testified he was involved in the investigation of this case. VAA941. His investigation started regarding Young's Larceny at the Flamingo Hotel. VAA941. He read through the reports and acquired video surveillance. VAA941. After reviewing a substantial amount of video surveillance, he was able to identify Young. VAA946, 958.

Detective Sandeep Liske's Testimony

Detective Sandeep Liske (hereinafter "Liske") testified that he became involved in the investigation after Young's larceny from person of Boone. VIAA1137. Liske went to Walgreen's and GameStop to acquire video surveillance and receipts of Young's attempted transactions. VIAA1140. Liske reviewed the video and saw that Young appeared to be an older black male wearing the exact same clothing in both videos. VIAA1143.

Liske then learned that Young was involved in numerous different incidents. VIAA1144-51. Throughout these incidents, Young wore similar clothing and the same shoes. VIAA1151.

Detective Ethan Grimes' Testimony

Detective Ethan Grimes (hereinafter "Grimes") testified that he became involved in the investigation due to Young's larceny at the Rampart Hotel. VIAA1163. He later learned of another incident that occurred at the Suncoast Hotel. VIAA1171. When watching surveillance video from that that incident, he recognized Young. VIAA1172. Young wore the same shoes in both incidents. VIAA1172.

Detective Trent Byrd's Testimony

Detective Trent Byrd (hereinafter "Byrd") assisted with Young's identification. VIIAA1207. Byrd reviewed the incidents involving Young. VIIAA1208. He started with the incident on July 8, 2020, where Wheeler cited Young. VIIAA1208. This incident established that the man in the video's name was Young. VIIAA1208. He also noted Young's physical characteristics. VIIAA1209. Byrd's review of the video surveillance showed Young wearing the same or similar clothing and the same shoes. VIIAA1210-20.

SUMMARY OF THE ARGUMENT

First, Young fails to establish plain error regarding the admission of any bad acts. Young fails to establish the comments are references to any prior bad acts. Additionally, none of the comments are so inherently prejudicial that they compelled the district court to act. The comments were brief in nature and unsolicited by the

State. As such, Young cannot demonstrate error or that it was plain. Furthermore, Young cannot establish his substantial rights were impacted as any error was harmless in light of the substantial evidence presented against him.

Second, Young fails to establish plain error regarding the officers' identification or discussion of surveillance footage. Officers are permitted to narrate surveillance footage when it assists the jury or is relevant to their investigation. The officers' comments accomplished both needs. As such, Young cannot demonstrate error or that it was plain.

The officers also did not improperly identify Young. Their identification only occurred after they reviewed a considerable amount of surveillance footage. This surveillance footage showed Young wearing the same shoes. Additionally, one of the officers could identify Young based on his prior experience with him. As such, Young cannot demonstrate error or that it was plain. Furthermore, Young cannot establish his substantial rights were impacted as any error was harmless in light of the substantial evidence presented against him.

Third, the district court did not abuse its discretion regarding Young's hearsay objection. At trial, Young objected to hearsay. The district court allowed the State to attempt to lay foundation. When the witness testified that he was told verbally, the State ended its line of questioning. The district court properly gave the State the

opportunity to lay foundation regarding Jacobitz's statement. Furthermore, any error was harmless in light of the substantial evidence presented at trial.

Fourth, the district court did not abuse its discretion when it denied Young's motion for mistrial. Juror misconduct does not necessarily occur because a juror desires to aid a victim financially. Young and the district court extensively canvassed Juror No. 11. At no point did Juror No. 11 state that he came to a conclusion regarding Young's guilt. In fact, he continuously stated that it had nothing to do with the case and that he only wanted to help the elderly victims of a crime. As such, Young failed to establish Juror No. 11's actions constituted juror misconduct.

Fifth, Young fails to establish plain error regarding counsel's comments. The district court did stop counsel from arguing in the presence of a juror. As such, Young cannot establish error or that it was plain since the district court cannot be blamed for the comment. Additionally, after the comment, Juror No. 11 continued to state he was not biased. As such, Young fails to establish it affected a substantial right.

Sixth, Young fails to establish plain error regarding the jury instructions. Young correctly points out Jury Instruction No. 10 was incorrect. However, he is not entitled to the reversal of the larceny charges as he cannot establish the error was patently prejudicial. The incorrect jury instruction did not affect the counts relating to Hatcher and Frank as the items were clearly stolen from their physical person.

Additionally, it does not affect any burglary count, as the crime of burglary is complete regardless of whether Young committed the underlying felony.

Jury Instructions No. 13 and 14 properly state the law. Young misinterprets the meaning of the instruction. However, the instruction is a clear statement of Nevada law. As such, Young cannot demonstrate error or that he was patently prejudiced.

Jury Instructions No. 22 and 23 also properly state the law. This Court already determined the language in each instruction is appropriate. As such, Young cannot demonstrate error or that he was patently prejudiced.

Seventh, Young fails to establish plain error regarding a double jeopardy violation. First, any argument is moot as the State agrees count two (2) should be reversed. However, even if this Court considers Young's claim it is meritless. Grand larceny and larceny from the person each contain a unique element and are thus not the same offense under the Blockburger test. Young places his sole reliance on an unpublished case that was decided prior to January 1, 2016. Since he cannot cite this case, his argument is devoid of any legal authority.

Eighth, Young fails to establish plain error regarding the district court's adjudication of him as a habitual criminal. Young claims he was entitled to a hearing to contest his prior convictions. However, Young never denied his prior convictions and thus was not entitled to a hearing. Furthermore, Young's failure to oppose the

accuracy of his prior convictions should be read as a stipulation that they occurred. As such, Young cannot establish error or that any error was plain.

Ninth, Young fails to establish plain error regarding the district court not conducting a jury trial prior to adjudicating him as a habitual criminal. A jury determination is not necessary to adjudicate someone as a habitual criminal. Furthermore, any request to revisit this issue is inappropriate for plain error review.

Tenth, Young did not receive ineffective assistance of counsel. This Court should not entertain his claim of ineffective assistance of counsel on direct appeal. Regardless, Young fails to establish counsel's conduct fell below an objective standard of reasonableness. At the sentencing hearing, trial counsel explained he believed the best choice was to appeal the case. This is a strategic decision counsel made after reviewing the issues. Furthermore, Young cannot establish he was prejudiced. The district court heard from Young about his struggles with addiction and had the Presentence Investigation Report to rely upon. Additionally, Young was not given the maximum penalty. As such, he cannot demonstrate a reasonable probability of a different outcome.

Eleventh, there was sufficient evidence to convict Young. Sufficient evidence established Young's identity. An officer observed Young steal a victim's wallet on live surveillance and cited him with a misdemeanor. That officer was then able to identify Young as the man involved in one of the other offenses. Additionally, after

reviewing substantial footage, officers were able to identify young based on his shoes and appearance. The State also admitted numerous exhibits showing Young commit the crimes. As such, a reasonable juror could have decided Young was the perpetrator of the offenses.

There was also sufficient evidence to establish Young's intent. The jury heard testimony and saw surveillance footage depicting how Young behaved while at each business. Additionally, he carried a jacket with him to assist in the commission of his offense. A reasonable juror could infer that Young entered the buildings with the intent to commit a larceny or a different felony.

There was sufficient evidence to convict Young of burglary even though he was acquitted on the two underlying counts. Young was only acquitted on the underlying counts because he was not successful in fraudulently using the stolen cards. However, the crime of burglary was complete once he entered the building to fraudulently use the cards.

There was sufficient evidence to support counts eight (8) and ten (10). The record clearly showed that the victims associated with those counts exerted physical control over the stolen goods. The State does agree that count two (2) should be reversed due to insufficient evidence. However, this does not affect the burglary count associated with count two (2), as the burglary was complete when Young entered the building.

Twelfth, there are no errors to cumulate. Young only has one meritorious claim regarding Jury Instruction No. 10 and count two (2). As such, there are no errors to cumulate. Additionally, the issue of guilt was not close, as there was substantial evidence supporting his conviction. Finally, even if this Court considers habitual adjudication a grave crime, it should not weigh heavily on its analysis due to the substantial evidence.

ARGUMENT

Young raises twelve (12) issues in his Opening Brief. However, Young failed to object to the majority of these issues. Young forfeited the right to assert issues one (1), two (2), five (5), six (6), seven (7), eight (8), and nine (9). "The failure to preserve error, even an error that has been deemed structural, forfeits the right to assert it on appeal." Jeremias v. State, 134 Nev. 46, 50, 412 P.3d 43, 48 (2018). However, NRS 178.602 allows an appellant to raise a forfeited claim so long as they can establish there are "plain errors or defects affecting substantial rights. The decision by this Court to address plain error is discretionary. City of Las Vegas v. Eighth Judicial Dist. Court in & for County of Clark, 133 Nev. 658, 660, 405 P.3d 110, 112 (2017). To "correct a forfeited error, an appellant must demonstrate 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." Jeremias, 134 Nev. at 50, 412 P.3d 43, 48. The standard of review for the remaining claims will be discussed in each section.

I. YOUNG FAILS TO ESTABLISH PLAIN ERROR REGARDING THE ADMISSION OF ANY BAD ACTS

Young argues plain error occurred when the district court failed to sua sponte strike testimony. NRS 48.045 provides the rules for character evidence:

> 1. Evidence of a person's character or a trait of his or her character is not admissible for the purpose of proving that the person acted in conformity therewith on a particular occasion, except:
>
> (a) Evidence of a person's character or a trait of his or her character offered by an accused, and similar evidence offered by the prosecution to rebut such evidence;
>
> (b) Evidence of the character or a trait of character of the victim of the crime offered by an accused, subject to the procedural requirements of NRS 48.069 where applicable, and similar evidence offered by the prosecution to rebut such evidence; and
>
> (c) Unless excluded by NRS 50.090, evidence of the character of a witness, offered to attack or support his or her credibility, within the limits provided by NRS 50.085.
>
> 2. Evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show that the person acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.
>
> 3. Nothing in this section shall be construed to prohibit the admission of evidence in a criminal prosecution for a sexual offense that a person committed another crime, wrong or act that constitutes a separate sexual offense. As used in this subsection, "sexual offense" has the meaning ascribed to it in NRS 179D.097.

To be deemed an admissible bad act, the trial court must determine, outside the presence of the jury, that: (1) the incident is relevant to the crime charged; (2) the act is proven by clear and convincing evidence; and (3) the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice. Tinch v. State, 113 Nev. 1170, 1176, 946 P.2d 1061, 1064-65 (1997).

Young argues that Jacobitz and Cipriano's testimony that they reviewed video surveillance to identify Young constituted bad act evidence. Opening Brief, at 27-28. However, the video surveillance they reviewed came from the charged offenses. Throughout trial, the State admitted multiple exhibits of video surveillance from the different incidents. As such, Jacobitz and Cipriano saying they relied on video surveillance does not involve any other act. Since NRS 48.045 does not forbid witnesses from discussing evidence related to the charges, Young fails to establish any error occurred or that any error was plain.

Young then argues that Grimes stating he "did a records check" constituted bad act evidence. Opening Brief, at 28. NRS 48.045 "is not implicated where the conduct referenced is not a bad act or crime." Emerson v. State, No. 80749, 2021 WL 1533637, at *1 (Nev. Apr. 16, 2021) (*citing* Lamb v. State, 127 Nev. 26, 41, 251 P.3d 700, 710 (2011). At no point did Grimes testify that finding a match during a records check means the person committed some bad act or crime. As such, it does not implicate NRS 48.045. Likewise, Wheeler's statement does not specifically

assert Young committed any prior bad acts. Accordingly, Young fails to establish these statements constituted error or that any error was plain.

Young also cannot establish the statement were "so inherently prejudicial" that the district court was "compelled to preclude the statement sua sponte." Baker v. State, 89 Nev. 87, 88, 506 P.2d 1261, 1261 (1973); Wilson v. State, 86 Nev. 320, 326, 468 P.2d 346, 350 (1970). The statements from Wheeler and Jacobitz were brief in nature and unsolicited by the State.[9] Even if these statements should not have been made, the district court sua sponte striking testimony would have only drawn attention to the brief comments. As such, Young fails to show any comment was so inherently prejudicial that it required the district court to act.

Furthermore, Young's substantial rights were not impacted because any error was harmless in light of the substantial evidence presented against him. As discussed below, section XI, there was substantial evidence showing Young committed the offenses. As such, he cannot demonstrate any error affected his substantial rights. Accordingly, Young cannot establish plain error.

II. YOUNG FAILS TO ESTABLISH PLAIN ERROR REGARDING THE OFFICERS' IDENTIFICATION OF YOUNG AND DISCUSSION OF SURVEILLANCE FOOTAGE

[9] After Jacobitz made his statement, the State clarified that he did not have any information regarding Young "doing this for a long time." VAA898.

Young argues plain error occurred when the trial court failed to sua sponte preclude officers' testimony. Opening Brief, at 31. Specifically, his claim involves both narration of the surveillance footage and his identification. Opening Brief, at 31-35.

A. Officers Did Not Improperly Narrate the Surveillance Footage

Young argues that multiple officers improperly narrated portions of the surveillance footage. Opening Brief, at 31-35. Officers are allowed to narrate surveillance footage to "assist the jury in making sense of the images depicted in the video." Burnside v. State, 131 Nev. 371, 388, 352 P.3d 627, 639 (2015). Additionally, officers can narrate surveillance footage when it is "relevant to law enforcement's investigation." See Smith v. State, No. 67431, 2016 WL 1091729, at *2 (Nev. Mar. 17, 2016). The testimony Young contests falls neatly into both categories. The State presented a considerable amount of surveillance footage. This footage depicted events from different days and locations. As such, officers needed to explain what occurred to assist the jury in their understanding of the footage. Furthermore, the officers' comments were all related to their investigation. As such, Young forfeited any argument as he cannot establish any error occurred or that it was plain.

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B. Officers Did Not Improperly Identify Young

Young argues that multiple officers improperly identified him. Opening Brief, at 31-35. For officers to *independently* identify a defendant, they must "have some prior knowledge or familiarity with the [defendant] or [be] qualified experts in videotape identification." Burnside, 131 Nev. at 388, 352 P.3d at 639. However, officers may identify a defendant when they base the identification on other evidence. Id. Here, officers reviewed surveillance footage from their respective incidents and other incidents. VIAA1151-52, 1170-72; VIIAA946, 1207-19. Grimes, Liske, and Byrd explained that Young continued to wear the same shoes during these incidents. VIAA1151-52, 1170-72; VIIAA1212-1217. Additionally, Wheeler already identified Young as the man in the video. Wheeler had prior familiarity with Young after watching him steal and then citing him.

Furthermore, there was additional surveillance officers reviewed that was not discussed at trial. IIAA260-74. This footage revolved around Young's severed counts and gave the officers additional information to identify Young. IIAA260-74. As such, Young forfeited any argument as he cannot establish any error occurred or that it was plain.

C. Young Cannot Establish Any Error Impacted His Substantial Rights

Young's substantial rights were not impacted because any error was harmless in light of the substantial evidence presented against him. As discussed below,

section XI, there was substantial evidence establishing Young's identification and guilt. As such, he cannot demonstrate any error affected his substantial rights. Accordingly, Young forfeited any argument as he cannot establish any error occurred or that it was plain.

III. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION REGARDING TRIAL COUNSEL'S HEARSAY OBJECTION

Young argues the district court abused its discretion when it admitted certain evidence. Opening Brief, at 36. This Court reviews "a district court's decision to admit or exclude evidence for an abuse of discretion." Mclellan v. State, 124 Nev. 263, 267, 182 P.3d 106, 109 (2008). Hearsay is an out-of-court statement that is offered for the truth of the matter asserted. NRS 51.035.

The district court properly handled Young's objection. Young objected that the testimony was both a narrative and contained hearsay. VAA899. The trial court overruled the narrative objection and questioned the State to see if foundation would be laid regarding the hearsay objection:

> MR. FISCHER: Judge, I object to the extent that it was a narrative, and I got – quite frankly, I got lost. And then there was some reference, I believe a hearsay reference I'll make an objection to as to whether somebody checked into a room.
> THE COURT: So I'm going to overrule in regards to narrative. Mr. Brooks, your response into the information regards to the room.
> MR. BROOKS: Sure. I'll ask it. I'll ask that question.
> THE COURT: Are you going to lay foundation or –
> MR. BROOKS: Yeah.

VAA899-900. The State questioned Jacobitz regarding whether he received records from Caesar's Palace. VAA899-900. When Jacobitz testified that he was told verbally, the State ended the line of questioning. VAA900. The district court properly gave the State the opportunity to lay foundation regarding Jacobitz's statement. As such, the district court did not abuse its discretion.

Furthermore, any error was harmless. As discussed below, section XI, the State presented substantial evidence of Young's guilt. In light of this evidence, a brief comment regarding how Jacobitz reached his conclusion as to Young working with someone else is harmless. Accordingly, Young is not entitled to relief.

IV. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION WHEN IT DENIED YOUNG'S MOTION FOR MISTRIAL

Young argues that the district court abused its discretion when it denied his motion for mistrial. Opening Brief, at 38. The trial court has sound discretion to deny a motion for mistrial, and "the trial court's determination will not be disturbed on appeal absent a clear showing of abuse. Smith v. State, 110 Nev. 1094, 1102-03, 881 P.2d 649, 654 (1994) (internal citations omitted). A defendant's motion for a mistrial must demonstrate prejudice that prevents the defendant from receiving a fair trial. Rudin v. State, 120 Nev. 121, 144, 86 P.3d 572, 587 (2004). The "manifest necessity" standard generally does not apply to a defense motion for mistrial as it is only relevant in the double-jeopardy context. See Id. at 142-43, 86 P. 3d at 586. Similarly, the district court generally enjoys discretion in granting or denying a

motion for a new trial, and "this [C]ourt will not set aside a district court new trial ruling absent an abuse of discretion." State v. Carroll, 109 Nev. 975, 977, 860 P.2d 179, 180 (1993) (*citing* McCabe v. State, 98 Nev. 604, 655 P.2d 536 (1982)).

There are two types of jury misconduct: "(1) conduct by jurors contrary to their instructions or oaths, and (2) attempts by third parties to influence the jury process." Maestas v. State, 128 Nev. 124, 138, 275 P.3d 74, 83-84 (2012). "[O]nly in extreme circumstances will intrinsic misconduct justify a new trial." Nunnery v. State, 118 Nev. 787, 796, 59 P.3d 540, 546 (2002) (quoting Meyer, 119 Nev. at 565, 80 P.3d at 456 (2003)). "Each case turns on its own facts, and on the degree and pervasiveness of the prejudicial influence possibly resulting." Meyer, 119 Nev. at 562, 80 P.3d at 453-54. Juror misconduct must be "readily ascertainable from objective facts and overt conduct without regard to the state of mind and mental processes of any juror." State v. Thacker, 95 Nev. 500, 501, 596 P.2d 508, 509 (1979).

Juror misconduct does not occur solely because a juror desires to aid a victim financially. Hernandez v. State, 118 Nev. 513, 521, 50 P.3d 1100, 1106 (2002). In Hernandez, the jury convicted a defendant of first-degree murder. Id. at 520, 50 P.3d at 1105. After the defendant's guilt phase, but prior to his penalty phase, three jurors purchased a gift for murder victim's daughter. Id. at 521, 50 P.3d at 1106. The jurors returned a death sentence. Id. When questioned by the district court, the record only

showed that "the jury was sympathetic to an innocent child, who was a collateral victim of the murder." Id. at 522, 50 P.3d at 1107. This Court held that the record did not support the underlying claim of juror misconduct. Id. at 522, 50 P.3d at 1106-07. This Court also held that the defendant was not prejudiced as the record only demonstrated a sympathetic jury. Id.

The record does not support Young's argument that Juror No. 11 was biased. Juror No. 11 repeatedly stated he was impartial and that he only felt sympathy for the elderly victims:

> JUROR NO. 11: Yeah, for me it's got nothing to do with the case. This is, like, you know, poor old ladies. So, I mean, I could [indiscernible] all the time, you know, it's like a week out of my life, so I feel like if I can do two things at once, that's it. I can be impartial and still want to, like, help people that have lost money.
> . . .
> JUROR NO. 11: Yeah, I mean, it has nothing to do with him.
> THE COURT: Okay.
> JUROR NO. 11: I mean, I help victims all the time, so its –
> . . .
> JUROR NO. 11: For me, I didn't think I was ever going to be able to get their contact information. I don't think that's public and I never thought I'd see them again. So, I – you know, the one lady's got $3 to her name, she lost all her information, It's not so much about the money, it's just, you know, she's in the middle of a pandemic, doesn't have her medical cards, whatever, I mean –
> . . .
> JUROR NO. 11: I mean, if I saw somebody lose their wallet, I'd feel, you know, compassion for them and help out homeless people all the time, so it's got absolutely

> nothing to do with him, its got nothing to do, really, with the court case. It's just, you know, people that are in hard times, that's it.

VIAA1116-21. At no point did Juror No. 11's statements indicate he was biased against Young. He continuously repeated that his desire to help the victims was something he routinely did for others and had nothing to with the case. Young's defense revolved around the question of identity, not whether the witnesses were victims of a crime. As such, it does not necessarily demonstrate bias for Juror No. 11 to want to assist the elderly victims of a crime.

Young's attempt to distinguish Hernandez based on the gift being offered to the victims, rather than a collateral victim, is unpersuasive. The key question is whether a juror commits intrinsic misconduct when they wish to aid someone affected by a crime. Whether the juror desires to give a gift to a victim or a collateral victim is inconsequential. Either situation shows sympathy for a person due to them being affected by a crime.

Furthermore, the record indicates no prejudice occurred beyond a reasonable doubt. Like Hernandez, Juror No. 11's desire to help only demonstrates he was sympathetic to the elderly victims who faced additional struggles during the COVID-19 pandemic. They do not show the already concluded Young was guilty prior to the end of trial. As such, the record indicates beyond a reasonable doubt that no prejudice occurred.

Ultimately, the district court is in the best position to decide regarding a juror's bias. Nothing here demonstrates that the district court abused its discretion. Accordingly, the district court did not abuse its discretion.

V. YOUNG FAILS TO ESTABLISH PLAIN ERROR REGARDING COUNSEL'S COMMENTS

Young argues the district court committed plain error when it failed to prevent counsel from arguing. Opening Brief, at 42. During Juror No. 11's canvass, counsel made a comment regarding the juror's bias.[10] VIAA1119.

Young cites to Sanders v. Sears-Page, 131 Nev. 500, 354 P.3d 201 (Nev. App. 2018) to support his argument. However, Sanders involved a situation where the district court asked a party whether they wanted to challenge a juror for cause in front the juror. Id. at 513, 354 P.3d at 209-10. Here, the district court did not elicit the comment from counsel. Rather, the district court immediately stopped counsel from making any further argument:

> THE COURT: Do you have any other questions, Mr. Fischer?
> MR. FISCHER: Judge, I think it's blatantly obvious that he's not fair and impartial.
> MR. STANTON: Judge –
> THE COURT: Okay. Wait, no, not argument.

[10] "Given his participation in the alleged error," Young is estopped from raising any objection. Jones v. State, 95 Nev. 613, 618, 600 P.2d 247, 250 (1979).

VIAA1119-20. A review of the record shows that the district court cannot be blamed for counsel's comments. As such, Young fails to establish the district court erred.

Furthermore, Young fails to establish it affected a substantial right. After the comments, the district court continued to ask Juror No. 11 questions. Once again, Juror No. 11 stated that it has "nothing to do with [Young] at all." VIAA1120. Nothing from the record indicates any comments prejudiced Juror No. 11. As such, Young forfeited any claim, as he cannot demonstrate plain error.

VI. YOUNG FAILS TO ESTABLISH PLAIN ERROR REGARDING THE JURY INSTRUCTIONS

Young argues five (5) jury instructions constituted plain error. Opening Brief, at 44-55. "The district court has broad discretion to settle jury instructions, and this court reviews the district court's decision for an abuse of discretion or judicial error." Jackson v. State, 117 Nev. 116, 120, 17 P.3d 998, 1000 (2001). However, the "failure to object to or request a jury instruction precludes appellate review, unless the error is patently prejudicial and requires the court to act sua sponte to protect the defendant's right to a fair trial." McKenna v. State, 114 Nev. 1044, 1052, 968 P.2d 739, 745 (1998).

A. Young Fails to Establish Jury Instruction No. 10 Was Patently Prejudicial

Young argues Jury Instruction No. 10 misstates Nevada law. Opening Brief, at 44-45. Jury Instruction No. 10 stated the following:

> Property is deemed taken "from the person" of the victim if the property was within the victim's reach, inspection, observation, disposition, or control.

IIAA396. This jury instruction is incorrect, as larceny from the person "is not committed if the property is taken from the immediate presence, or constructive control or possession of the owner." Terral v. State, 84 Nev. 412, 414, 442 P.3d 465, 466 (1968). Specifically, the instruction should not include the language "reach, inspection, observation."

Larceny from the person requires the taking occur from "the physical person." Ibarra v. State, 134 Nev. 582, 590, 426 P.3d 16, 22 (2018). "The physical person" also includes any items which a person exerts control over. See id. In Ibarra, this Court cited several cases where larceny from the person was upheld. Id. One of these cases, In Re George B., 228 Cal.App.3d 1088 (1991), involved a situation where "the juvenile stole groceries from a shopping cart the victim was pushing toward her car in the parking lot." Id.

Young is not entitled to reversal of the larceny from the person charges, as he cannot establish the error was patently prejudicial. The evidence presented at trial established that Young committed larceny from the person against both Hatcher and Frank.[11] Young stole Hatcher and Frank's wallets out of their purse. VAA812-16;

[11] The State does not discuss the larceny from the person conviction related to Campo. As discussed below, the State agrees that larceny from person conviction

VIAA990-96. Hatcher was carrying her purse and Frank had her purse strapped to her back. VAA812; VIAA990-96. As such, both victims exerted control over their purse.

Young concedes that the "instruction likely did not impact the disposition of offenses" relating to the theft of Mello's wallet. Opening Brief, at 45 n. 16. In terms of what constitutes "the physical person," there is no difference between a wallet in a pocket and a wallet in a purse carried by a victim. Each instance represents a situation where a victim maintains exerts control over the property prior to it being stolen. As such, Young forfeited any claim as he cannot demonstrate that any error affected a substantial right or patently prejudiced him.

Regardless, the burglary charges would not be affected by the instruction. NRS 205.060(1)(b) states:

> A person who, by day or night, unlawfully enters or unlawfully remains in any:
>
> Business structure with the intent to commit grand or petit larceny, assault or battery on any person or any felony is guilty of burglary of a business

"The offense of burglary is complete when the . . . building is entered with the specific intent designated in the statute." Carr v. Sherrif, Clark County, 95 Nev. 688, 689-90, 601 P.2d 422, 423 (1979). Young's burglary was completed as soon as he

involving Campo should be reversed. However, the related burglary charge should not be reversed based on the argument in this section.

entered the business structure. It is irrelevant whether he committed larceny from the person, as the evidence established he entered with the intent to commit larceny. As such, even if Young could establish plain error regarding the larceny from person counts, it would not require the reversal of the burglary counts.

B. Young Fails to Establish Jury Instructions No. 13 and 14 Were Patently Prejudicial

Young argues that Jury Instructions No. 13 and 14 violated his due process rights.[12] Opening Statement, at 47. Young specifically challenges the following language:

> You shall find the defendant guilty of the crime of Petit Larceny if (1) some of you are not convinced beyond a reasonable doubt that the defendant is guilty of Grand Larceny; and (2) all twelve of you are convinced beyond a reasonable doubt that the defendant is guilty of the crime of Petit Larceny.

IIAA399.

Young misinterprets the meaning of this language, as he argues that this means "all twelve jurors need reject the greater offenses before considering the lesser ones." Opening Statement, at 47. Nowhere in the instruction does it say all twelve must not be convinced beyond a reasonable doubt before they consider the lesser offense. The instruction clearly states it applies "if . . . some of you are not

[12] Young acknowledges he requested instructions regarding the lesser offenses. "Given his participation in the alleged error," Young is estopped from raising any objection. Jones, 95 Nev. at 618, 600 P.2d at 250 (1979).

convinced" that Young committed grand larceny, but "all twelve" are convinced he committed petit larceny. IIAA399. This is a proper statement of law regarding how to consider lesser offenses. As such, Young forfeited any claim, as he cannot demonstrate error or that he was patently prejudiced him.

C. Young Fails to Establish Jury Instruction No. 22 Was Patently Prejudicial

Young argues Jury Instruction No. 22 violated his constitutional rights. Opening Brief, at 50. Young specifically argues the phrase "the defendant is presumed innocent *until* the contrary is proved" is improper. Opening Brief, at 50. This Court already ruled this language is permissible:

> Blake argues the word "until" nullified the presumption of innocence by implying that his guilt would eventually be proven beyond a reasonable doubt. However, read as a whole, the instruction did not imply this. The instruction also defined reasonable doubt in accordance with NRS 175.211 and concluded: "If you have a reasonable doubt as to the guilt of the Defendant, he is entitled to a verdict of not guilty." The instruction plainly contemplated that guilt might not be proven. Accordingly, we deny relief on this basis.

Blake v. State, 121 Nev. 779, 799, 121 P.3d 567, 580 (2005). As such, Young forfeited any claim, as he cannot demonstrate error or that he was patently prejudiced.

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D. Young Fails to Establish Jury Instruction No. 23 Was Patently Prejudicial

Young argues Jury Instruction No. 23 violated his constitutional rights. Opening Brief, at 54. Jury Instruction No. 23 reads:

> You are here to determine the guilt or innocence of the Defendant from the evidence in the case. You are not called upon to return a verdict as to the guilt or innocence of any other person. So, if the person in the case convinced you beyond a reasonable doubt of the guilt of the Defendant, you should so find, even though you may believe one more persons are also guilty.

IIAA409. In Guy v. State, 108 Nev. 770, 778, 839 P.2d 578, 683 (1992) this Court considered an identical instruction. This Court held that the language of the instruction was appropriate:

> We hold that the trial court did not err in giving Jury Instruction No. 30. In effect, this instruction admonishes the jury to ignore Pendleton's culpability when determining whether appellant is guilty as charged. Such an instruction was both appropriate and necessary.

Id. As such, Young forfeited any claim, as he cannot demonstrate error or that he was patently prejudiced.

VII. YOUNG FAILS TO ESTABLISH PLAIN ERROR REGARDING A DOUBLE JEOPARDY VIOLATION

Young argues his convictions for both grand larceny and larceny from the person violate the Double Jeopardy Clause.[13] Opening Brief, at 56-58. The Double Jeopardy Clause of the Fifth Amendment to the United States Constitution, applicable to Nevada citizens via the Fourteenth Amendment to the United States Constitution, provides that no person shall "be subject for the same offence to be twice put in jeopardy of life or limb." This protection is additionally guaranteed by the Nevada Constitution. Nev. Const. art. 1, § 8. Under the strict application of Blockburger, an offense is lesser included only where the defendant, in committing the greater offense, has also committed the lesser offense. See Barton v. State, 117 Nev. 686, 692, 30 P.3d 1103, 1107 (2001), overruled on other grounds by Rosas v. State, 122 Nev. 1258, 1269, 147 P.3d 1101, 1109 (2006); McIntosh v. State, 113 Nev. 224, 226, 932 P.2d 1072, 1073 (1997) ("The general test for determining the existence of a lesser included offense is whether the offense in question *cannot be committed without committing the lesser offense.*") (emphasis added).

Grand larceny and larceny from the person are not the same offense under the Blockburger test. Grand larceny requires a specific value be stolen, while larceny from the person does not. Larceny from the person requires the item be stolen "from the person," which grand larceny does not. As such, each offense contains a unique

[13] Young's argument is moot, as the State agrees the larceny from person involving Campo should be reversed.

element and satisfies the Blockburger test. Accordingly, Young forfeited any claim as he cannot demonstrate error.

Young sole reliance on Mosby v. State. No. 59839, 2012 WL 5834933 (Nev. Nov. 15, 2012) is misplaced. A party may only cite an "unpublished disposition issued by the Supreme Court on or after January 1, 2016." NRAP 36(c)(3). As such, Young inability to rely on Mosby leaves his argument unsupported by any legal authority.[14] It is Young's responsibility, pursuant to Emperor's Garden, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) to cogently argue and to support his allegations with relevant legal authority. His failure to do so results in no need to address this claim on its merits. Maresca, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987). His lack of any legal authority leaves this Court "no reason" to consider his argument. State Dept. of Motor Vehicles & Pub. Safety v. Rowland, 107 Nev. 475, 479, 814 P.2d 80, 83 (1991); Randall v. Salvation Army, 100 Nev. 466, 470-71, 686 P.2d 241, 244 (1984); Holland Livestock Ranch v. B & C Enterprises, 92 Nev. 473, 533 P.2d 950 (1976). Accordingly, Young forfeited any claim, as he cannot establish plain error.

VIII. YOUNG FAILS TO ESTABLISH PLAIN ERROR REGARDING THE DISTRICT COURT'S ADJUDICATION OF HIM AS A HABITUAL OFFENDER

[14] Additionally, the unpublished holding in Mosby related to Nevada's redundancy case law, not the Double Jeopardy Clause. Mosby, at *1.

Young argues the district court committed plain error by sentencing him in absence of a separate hearing. Opening Brief, at 61. Specifically, he argues every adjudication of a habitual offender requires a hearing. Opening Brief, at 61. NRS 207.016(3) states:

> If a defendant charged pursuant to NRS 207.010, 207.012, or 207.014 pleads guilty or guilty but mentally ill, or is found guilty or guilty but mentally ill of, the primary offense but *denies any previous conviction charged*, the court shall determine the issue of the previous conviction after hearing all relevant evidence presented on the issue by the prosecution and the defendant. At such a hearing, the defendant may not challenge the validity of a previous conviction.

(emphasis added). Nevada law only entitles a defendant to a hearing regarding the existence of a prior conviction when the defendant denies the conviction. NRS 207.016(3). Young did not deny any of his prior convictions and thus was not entitled to a hearing. As such, the district court's conduct did not violate the procedure set forth in NRS 207.016(3) or implicate Young's due process rights.

Furthermore, Young did not oppose the accuracy of his prior convictions.[15] See Hodges v. State, 119 Nev. 479, 485, 78 P.3d 67, 70 (2003) (explaining a defendant can stipulate to the existence or validity of his prior convictions). Young

[15] Young has previously been adjudicated a habitual criminal. IRA1-2. In that case, he challenged the "nine certified felony convictions," including some of his Pennsylvania convictions. IRA1-2. This Court affirmed the district court's adjudication of Young as a habitual criminal. IRA1-2.

had notice of the prior convictions the State planned to rely on. Almost six (6) months prior to the sentencing hearing, the State filed its Amended Notice that contained Young's thirteen (13) prior convictions. IAA234-36. He filed no motions challenging the prior convictions and raised no objection at his sentencing hearing. Young should not be permitted to now litigate the existence of his prior convictions. His failure to contest their accuracy conveys he acquiesced to their existence.[16] Accordingly, Young forfeited any claim, as he cannot establish plain error.

IX. YOUNG FAILS TO ESTABLISH PLAIN ERROR REGARDING THE DISTRICT COURT NOT CONDUCTING A JURY TRIAL TO ADJUDICATE HIM AS A HABITUAL OFFENDER

Young argues the district court committed plain error when it did not conduct a "jury trial on the habitual criminal allegations." Opening Brief, at 67. A defendant is not entitled to have a jury make the determination on whether he was a habitual criminal. O'Neill v. State, 123 Nev. 9, 11-18, 153 P.3d 38, 40-44 (2007). Here, the district court followed Nevada law by not having a jury determine whether Young was a habitual criminal.

Young recognizes that he is he requesting this Court "to revisit the issue raised here." Opening Statement, at 72. Any argument requesting this Court to reconsider

[16] The Presentence Investigation Report (hereinafter "PSI") also reflects the convictions as felonies. PSI, at 5-8. Young objected to one issue in the PSI, but did not raise any issues regarding the status of the convictions as felonies. VIIAA1324-25.

its prior decision fails under plain error review. As such, Young forfeited any claim as he cannot demonstrate the district court committed any error or that the error was plain.

X. YOUNG FAILS TO ESTABLISH HE RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL

Young argues he received ineffective assistance during his sentencing hearing. Opening Brief, at 73. The Sixth Amendment to the United States Constitution provides that, "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense." The United States Supreme Court has long recognized that "the right to counsel is the right to the effective assistance of counsel." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993).

To prevail on a claim of ineffective assistance of trial counsel, a defendant must prove he was denied "reasonably effective assistance" of counsel by satisfying the two-prong test of Strickland, 466 U.S. at 686-87, 104 S. Ct. at 2063–64. See also Love, 109 Nev. at 1138, 865 P.2d at 323. Under the Strickland test, a defendant must show first that his counsel's representation fell below an objective standard of reasonableness, and second, that but for counsel's errors, there is a reasonable probability that the result of the proceedings would have been different. 466 U.S. at 687–88, 694, 104 S. Ct. at 2065, 2068; Warden, Nevada State Prison v. Lyons, 100

Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland two-part test). "[T]here is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one." Strickland, 466 U.S. at 697, 104 S. Ct. at 2069.

The court begins with the presumption of effectiveness and then must determine whether the defendant has demonstrated by a preponderance of the evidence that counsel was ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). "Effective counsel does not mean errorless counsel, but rather counsel whose assistance is '[w]ithin the range of competence demanded of attorneys in criminal cases.'" Jackson v. Warden, 91 Nev. 430, 432, 537 P.2d 473, 474 (1975).

Counsel cannot be ineffective for failing to make futile objections or arguments. See Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the "immediate and ultimate responsibility of deciding if and when to object, which witnesses, if any, to call, and what defenses to develop." Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167 (2002).

Based on the above law, the role of a court in considering allegations of ineffective assistance of counsel is "not to pass upon the merits of the action not taken but to determine whether, under the particular facts and circumstances of the

case, trial counsel failed to render reasonably effective assistance." Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978). This analysis does not mean that the court should "second guess reasoned choices between trial tactics nor does it mean that defense counsel, to protect himself against allegations of inadequacy, must make every conceivable motion no matter how remote the possibilities are of success." Id. To be effective, the constitution "does not require that counsel do what is impossible or unethical. If there is no bona fide defense to the charge, counsel cannot create one and may disserve the interests of his client by attempting a useless charade." United States v. Cronic, 466 U.S. 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19 (1984).

"There are countless ways to provide effective assistance in any given case. Even the best criminal defense attorneys would not defend a particular client in the same way." Strickland, 466 U.S. at 689, 104 S. Ct. at 689. "Strategic choices made by counsel after thoroughly investigating the plausible options are almost unchallengeable." Dawson v. State, 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989). In essence, the court must "judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.

The decision not to call witnesses is within the discretion of trial counsel and will not be questioned unless it was a plainly unreasonable decision. See Rhyne v. State, 118 Nev. 1, 38 P.3d 163 (2002); *see also* Dawson v. State, 108 Nev. 112, 825 P.2d 593 (1992). Strickland does not enact Newton's third law for the presentation of evidence, requiring for every prosecution expert an equal and opposite expert from the defense. In many instances cross-examination will be sufficient to expose defects in an expert's presentation. When defense counsel does not have a solid case, the best strategy can be to say that there is too much doubt about the State's theory for a jury to convict. Harrington v. Richter, 131 S.Ct. 770, 791, 578 F.3d. 944 (2011). "Strategic choices made by counsel after thoroughly investigating the plausible options are almost unchallengeable." Dawson v. State, 108 Nev. 112, 117, 825 P.2d 593, 596 (1992).

Even if a defendant can demonstrate that his counsel's representation fell below an objective standard of reasonableness, he must still demonstrate prejudice and show a reasonable probability that, but for counsel's errors, the result of the trial would have been different. McNelton v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (*citing* Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. (*citing* Strickland, 466 U.S. at 687-89, 694, 104 S. Ct. at 2064–65, 2068).

The Nevada Supreme Court has held "that a habeas corpus petitioner must prove the disputed factual allegations underlying his ineffective-assistance claim by a preponderance of the evidence." Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Furthermore, claims of ineffective assistance of counsel asserted in a petition for post-conviction relief must be supported with specific factual allegations, which if true, would entitle the petitioner to relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). "Bare" and "naked" allegations are not sufficient, nor are those belied and repelled by the record. Id. NRS 34.735(6) states in relevant part, "[Petitioner] must allege specific facts supporting the claims in the petition[.] . . . Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed." (emphasis added).

Young's claim fails, as this Court has consistently concluded that it will not entertain claims of ineffective assistance of counsel on direct appeal. Corbin v. State, 111 Nev. 378, 381, 892 P.2d 580, 582 (1995) (*citing* Gibbons v. State, 97 Nev. 520, 634 P.2d 1214 (1981). This Court will generally only consider ineffective assistance of counsel claims on direct appeal if there has been an evidentiary hearing, or an evidentiary hearing would have been unnecessary. Pellegrini v. State, 117 Nev. 860, 883, 34 P.3d 519, 535 (2001). The record is not clear regarding the ineffective assistance of counsel claim. As such, this Court should not consider Young's claim.

Even if this Court considers the claim, Young cannot establish trial counsel's conduct fell below an objective standard of reasonableness. At a sentencing hearing, counsel is tasked with the responsibility to strategically advocate for their client. These types of strategic choices are almost unchallengeable when done after a thorough investigation. See Dawson v. State, 108 Nev. at 117, 825 P.2d at 596; see also Ford v. State, 105 Nev. at 853, 784 P.2d at 953. At the sentencing hearing, trial counsel explained he believed the best choice was to appeal the case VIIAA1342-43. This is a strategic choice trial counsel made after representing defendant at trial and reviewing the issues. As such, his decision falls within the objective standard of reasonableness.

Additionally, Young fails to demonstrate prejudice, as he cannot show a reasonable probability of a different outcome. In light of Young's extensive criminal history, there is no reason to believe trial counsel presenting information regarding "Mr. Young's background, character, or other aspects of his life" would have led to a different outcome. Furthermore, the district court heard from Young about his desire to enter a drug rehabilitation program and his struggles with addiction:

> But what I'm standing here asking you to day is for some type of program. You know? Because I never had no help for my addiction.
> . . .
> It's the same thing like the last time when I was in prison. You all gave a 67-year-old man a opportunity to go to boot camp to make a lesson out of him for his drug program . .

> . I never got a chance for nothing but prison, prison, prison. That's all it's been out of you all. You know? Not to help.
> . . .
> You know, I got a drug problem. But they get help, I don't.
> . . .
> Let me go to one of them drug programs and let them, you know, advise with me, help me.
> . . .
> You know, just don't send me off, you know, send me off, you know to the wolves. I not got long to live, I got bad health and everything.

VIIAA1338-41. The district court also had a Presentence Investigation report to rely upon. Finally, Young did not receive the maximum penalty. The State requested Young be sentenced to life without the possibility of parole. VIIAA1330-31. However, the Court granted Young leniency and did not sentence him to the maximum penalty. Accordingly, Young cannot demonstrate prejudice. Thus, this Court should deny Young's ineffective assistance of counsel claim.[17]

XI. THERE WAS SUFFICIENT EVIDENCE TO CONVICT YOUNG

Young argues there was insufficient evidence to support his conviction. Opening Brief, at 76-77. In reviewing a claim of insufficient evidence, the relevant inquiry is "whether, after reviewing 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-Candid v. State, 114 Nev. 378, 381, 956

[17] Even if Counsel was ineffective, the remedy is only a new sentencing hearing.

P.2d 1378, 1380 (1998), (quoting Koza v. State, 100 Nev. 245, 250, 681 P.2d 44, 47 (1984)); See also Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789 (1979). "Where there is substantial evidence to support a jury verdict, it [the verdict] will not be disturbed on appeal." Smith v. State, 112 Nev. 1269, 927 P.2d 14, 20 (1996); Kazalyn v. State, 108 Nev. 67, 71, 825 P.2d 578, 581 (1992); Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981).

Moreover, "it is the jury's function, not that of the court, to assess the weight of the evidence and determine the credibility of the witnesses." Origel-Candido, 114 Nev. at 381, 956 P.2d at 1380 (quoting McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992)); see also Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221 (1979) (the Court held it is the function of the jury to weigh the credibility of the identifying witnesses); Azbill v. Stet, 88 Nev. 240, 252, 495 P.2d 1064, 1072 (1972) cert. denied, 429 U.S. 895, 97 S. Ct. 257 (1976) (In all criminal proceedings, the weight and sufficiency of the evidence are questions for the jury; its verdict will not be disturbed if there is evidence to support it and the evidence will not be weighed by an Appellate Court). This does not require this Court to decide whether "it believes that the evidence at the trial established guilt beyond a reasonable doubt." Jackson v. Virginia, 443 U.S. at 319-20, 99 S. Ct. at 2789 (quoting Woodby v. INS, 385 U.S. 895, 87 S. Ct. 483, 486 (1966)). This standard thus preserves the fact finder's role and responsibility "[to fairly] resolve conflicts in the testimony, to

weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." Id. at 319, 99 S. Ct. at 2789.

A jury is free to rely on both direct and circumstantial evidence in returning its verdict. Wilkins v. State, 96 Nev. 367, 609 P.2d 309 (1980). This Court has consistently held that circumstantial evidence alone may sustain a conviction. Deveroux v. State, 96 Nev. 388, 391, 610 P.2d 722, 724 (1980) (*citing* Crawford v. State, 92 Nev. 456, 552 P.2d 1378 (1976); see also Mulder v. State, 116 Nev. 1, 15, 992 P.2d 845, 853 (2000) ("The trier of fact determines the weight and credibility to give conflicting testimony.").

A. Sufficient Evidence Established Young's Identity

Young claims there was insufficient evidence regarding his identification. Opening Brief, at 76-77. He argues that because none of the victims or store employees identified him, the State failed to establish identification. Opening Brief, at 76-77. However, no established law states a victim must be the person to identify the defendant.

There was substantial evidence presented to the jury that Young was the person who committed the offenses. Wheeler observed Young steal Hefner's wallet on live surveillance and cited him with a misdemeanor. VAA842-52. Wheeler was then able to identify Young as the man in the video footage depicting the larceny at Caesar's palace. VAA854. Additionally, multiple officers testified that they

reviewed a substantial amount of video footage. VAA946; VIAA1151, 1172; VIIAA1207-20. Throughout the video footage, Young wore the same shoes and often wore the same or similar clothing. VIAA1151, 1172; VIIAA1210-20. Finally, the state admitted numerous exhibits showing Young. The jury had the ability to compare the man in the videos with Young.

Identification is precisely the type of determination that a jury is in the best position to determine. See Burnside, 131 Nev. at 390-91, 352 P.3d at 641 (explaining the jury evaluates the weight of a witness's identification testimony). Both the State and Young provided the jury with different explanations of the perpetrator's identity. When considering this evidence and left to make the ultimate determination, the jury decided the State met its burden and established Young's identity beyond a reasonable doubt. Based on the evidence at trial, a jury could reasonably decide Young was the perpetrator of the offenses. As such, this Court should find that there was sufficient evidence to support the jury's decision.

B. Sufficient Evidence Established Young's Intent

Young argues the State failed to prove intent to commit a felony regarding the burglaries. Opening Brief, at 77. Intention is manifested by the circumstances connected with the perpetration of the offense, and the sound mind and discretion of the person accused." NRS 193.200. "As in any other case where the intent is material, the intent need not be proved by positive or direct evidence, but may be

inferred from the conduct of the parties and the other facts and circumstances disclosed by the evidence." Moore v. State, 122 Nev. 27, 36, 126 P.3d 508, 513 (2006) (quoting Larsen v. State, 86 Nev. 451, 453, 470 P.2d 417, 418 (1970)). Additionally, "whether a defendant enters a building with the requisite intent for burglary is for the jury to decide." Id.

Circumstantial evidence is sufficient to prove intent. Moore, 122 Nev. at 36, 126 P.3d at 514. In Moore, the defendant entered a store while possessing a stolen credit card. Id. The defendant's behavior of selecting random items indicated fraudulent credit card use. Id. The defendant then purchased these items with the stolen credit card and was later convicted of burglary. Id. This Court held such circumstantial evidence was sufficient for a jury to determine whether the defendant possessed the requisite intent needed to commit burglary. Id.

The State presented overwhelming evidence that Young acted with the requisite intent necessary to commit the burglaries. Young's behavior upon entering each business indicates he was only at each business to commit a felony or larceny. For the burglaries involving larceny, testimony and surveillance footage depicted Young bringing a jacket with him to assist with the larcenies, distracting the victims and then typically leaving once he acquired the stolen items. VAA898-899 (Count seven); VIAA1166-70 (Count one); VIAA1072-79 (Count six); VAA813-16, Exhibit six (Count nine); VIIAA1217 (Count fifteen); VIAA1150 (Count twenty-

one); VIAA1173-74 (Count twenty-two). Young's conduct demonstrates a clear plan to commit larcenies when he enters the businesses. Likewise, Young's intent is clear regarding the burglaries involving him using or attempting to use the stolen cards. After stealing the victim's cards, he immediately goes to the business to use them. VIAA1010-21, 1170 (Count four); VIAA1148-49 (Count eleven); VIAA1148-49 (Count thirteen); VIAA1142 (Count seventeen); VIAA1142 (Count nineteen).

Similar to identification, the jury is in the best position to determine intent. See Moore, 122 Nev. at 36, 126 P.3d at 513. When considering this evidence, the jury decided that State met its burden and established beyond a reasonable doubt that Young committed the burglaries. Based on the evidence at trial, a jury could reasonably infer that Young entered the buildings with the intent to commit larceny or a different felony.

Young also argues that because he was acquitted on counts fourteen and twenty, there must have been insufficient evidence to convict him with the associated burglary charges. Opening Brief, at 77. The offense of burglary is complete upon entering the building with the requisite intent. Carr, 95 Nev. at 689-90, 601 P.2d at 423. As such, it does not matter whether Young successfully used the victims' cards. It only matters whether he intended to fraudulently use them when he entered the business. As discussed in this section, there was sufficient evidence

for the jury to believe that. As such, this Court should find that there was sufficient evidence to support the jury's decision.

C. Larceny From Person

Young argues there was insufficient evidence to support counts two (2), eight (8), and ten (10). Opening Brief, at 77. The State agrees with Young that count two (2) should be reversed. The record indicates that Campo did not exert physical control over her purse. VI AA 1167 ("her purse was on that seat next to her left"). As such, this Court should reverse count two (2) for insufficient evidence.

However, there was sufficient evidence to support counts eight (8) and ten (10). As discussed above, section V(A), the victims associated with counts eight (8) and ten (10) exerted physical control over their purses. Young stole Hatcher and Frank's wallets out of their purse. VAA812-16; VIAA990-96. Hatcher was carrying her purse and Frank had her purse strapped to her back. VAA812; VIAA990-96. As such, both victims exerted control over their purse.

As such, a rational juror could convict the victims of both counts. Furthermore, as discussed in section V(A), there was sufficient evidence to support the burglary counts associated with counts two (2), eight (8), and ten (10). As such, this Court should find that there was sufficient evidence to support the jury's decision.

/ / /

XII. YOUNG FAILS TO ESTABLISH CUMULATIVE ERROR

Young alleges that he is entitled to reversal based on the cumulative effect of the errors. Opening Brief, at 78. This Court considers the following factors in addressing cumulative error: (1) whether the issue of guilt is close; (2) the quantity and character of the error; and (3) the gravity of the crime charged. Mulder v. State, 116 Nev. 1, 17, 992 P.2d 845, 854–55 (2000). Young must present all three elements to succeed on appeal. Id. Moreover, a defendant "is not entitled to a perfect trial, but only a fair trial." Ennis v. State, 91 Nev. 530, 533, 539 P.2d 114, 115 (1975) (*citing* Michigan v. Tucker, 417 U.S. 433, 94 S.Ct. 2357 (1974)).

First, Young has only asserted one meritorious claims of error regarding the Jury Instruction No. 10 and count two (2), thus, there are no errors to cumulate. United States v. Rivera, 900 F.2d 1462, 1471 (10th Cir. 1990) ("…cumulative-error analysis should evaluate only the effect of matters determined to be error, *not the cumulative effect of non-errors*.") (emphasis added). Second, as discussed above, there was more than sufficient evidence to support Young's conviction and, therefore, the issue of guilt is not close. Finally, even if this Court considers Young's habitual adjudication as a grave crime, the evidence was more than sufficient to convict him. As such, it should not weigh heavily in this Court's analysis. Without any error to cumulative, and with overwhelming evidence to convict Young, his claim regarding cumulative error is meritless.

CONCLUSION

Based on the foregoing, the State respectfully requests that this Court AFFIRM the Judgment of Conviction except for count two (2).

Dated this 6th day of July, 2022.

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CERTIFICATE OF COMPLIANCE

1. **I hereby certify** that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in 14 point font of the Times New Roman style.
2. **I further certify** that this brief complies with the type-volume limitations of NRAP 32(a)(8)(B) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points and contains 13,428 words.
3. **Finally, I hereby certify** that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 6th day of July, 2022.

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on July 6, 2022. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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