IN THE SUPREME COURT OF THE STATE OF NEVADA

KEANDRE VALENTINE,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

Case No. 74468

RESPONDENT'S ANSWERING BRIEF

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

SHARON G. DICKINSON
Deputy Public Defender
Nevada Bar #003710
309 South Third Street, #226
Las Vegas, Nevada 89155
(702) 455-4685

Counsel for Appellant

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
Regional Justice Center
200 Lewis Avenue
Post Office Box 552212
Las Vegas, Nevada 89155-2212
(702) 671-2500
State of Nevada

ADAM PAUL LAXALT
Nevada Attorney General
Nevada Bar #012426
100 North Carson Street
Carson City, Nevada 89701-4717
(775) 684-1265

Counsel for Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases Page Number:

Statutes

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEANDRE VALENTINE, Appellant, v. THE STATE OF NEVADA, Respondent.	Case No. 74468

RESPONDENT'S ANSWERING BRIEF

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

ROUTING STATEMENT

This appeal is not presumptively assigned to the Court of Appeals under NRAP 17(b)(2) because it is an appeal from a Judgment of Conviction involving a Category B felony.

STATEMENT OF THE ISSUES

1. Whether the evidence was insufficient.
2. Whether the district court erred in denying Appellant's challenge to the jury venire.
3. Whether the district court abused its discretion in admitting grand jury testimony.
4. Whether the district court abused its discretion in admitting photographs.
5. Whether the district court abused its discretion in denying Appellant's motion for mistrial.
6. Whether the State committed prosecutorial misconduct regarding rebuttal witnesses.
7. Whether the district court abused its discretion in admitting Appellant's jail calls.
8. Whether the district court erred regarding jury instructions.
9. Whether the State committed prosecutorial misconduct regarding DNA evidence.

10. Whether there was cumulative error.

STATEMENT OF THE CASE

On June 29, 2016, Keandre Valentine ("Appellant") was charged by way of Indictment with seven counts of Robbery With Use of a Deadly Weapon; three counts of Burglary While in Possession of a Deadly Weapon; one count of Attempt Robbery With Use of a Deadly Weapon; one count of Possession of Document or Personal Identifying Information; and two counts of Possession of Credit or Debit Card Without Cardholder's Consent. 1 Appellant's Appendix ("AA") 0001-0006.

On July 7, 2016, Appellant was arraigned in district court, entered a plea of not guilty, and invoked his right to a speedy trial. 4 AA 842. Trial was scheduled for September 6, 2016, with calendar call September 1, 2016. Id. At calendar call, the district court granted Appellant's request for a continuance over the State's objection and the trial date was vacated and reset to February 21, 2017. 4 AA 0843. Trial was subsequently continued twice and several pre-trial motions were filed. 4 AA 0844-0855.

On July 24, 2017, the jury trial began and, at the conclusion of trial, the jury found Appellant guilty of all counts. 4 AA 0855; 0874-0875.

Appellant was sentenced on September 28, 2017, to an aggregate term of a minimum of eighteen (18) years and a maximum of forty-eight (48) years in the Nevada Department of Corrections, with four-hundred and eighty-nine (489) days

credit for time served. 4 AA 0879-0887. The Judgment of Conviction was filed October 16, 2017. 4 AA 0827-0831.

On November 6, 2017, Appellant filed his Notice of Appeal. 4 AA 0832-0836. On August 8, 2018, Appellant filed his Opening Brief ("AOB"). The State responds herein.

STATEMENT OF THE FACTS

1) Victim Marvin Bass

On May 26, 2016, Marvin Bass ("Marvin") was shopping for clothes at Rancho Discount Mall. 7 AA 1469-1470. When Marvin exited the mall, he made his way toward his vehicle. Id. Once inside his vehicle, Marvin noticed a four door, white car pull up behind him. Id. at 1471-1472. An African-American male in his mid-20s, later identified as Appellant, exited the white car and walked towards Marvin's car. 12 AA 2721; 7 AA 1473. Marvin, thinking he recognized Appellant, rolled down his window. 7 AA 1473. As Appellant drew closer, however, Marvin realized he did not recognize the man. Id.

Appellant approached the open window and said "this is a robbery." Id. Appellant told Marvin "give me your gold, give me your wallet, or I'll shoot your fat ass." 7 AA 1475. Noticing that Marvin was wearing two gold chains with charms, Appellant reached through the window and pulled the chains off Marvin's neck as Appellant held a 9mm Glock in his left hand. 7 AA 1473-1474. Unsatisfied with

Marvin's gold chains, Appellant demanded that Marvin give him his wallet and cell phone. 7 AA 1474. Fearing for his life, Marvin gave Appellant his wallet. Id. Appellant patted down Marvin's body as he searched for a cellphone, but failed to find one. 7 AA 1475. Appellant then ordered Marvin to put his head down. Id. Marvin feared Appellant was going to shoot him. Id. Instead, Appellant fled with Marvin's possessions. 7 AA 1476. Marvin noticed Appellant re-entered the white car and decided to follow Appellant. 7 AA 1476-1477. As Marvin followed, he called 911, however, he eventually lost sight of Appellant. 7 AA 1478-1480.

Detective William Majors ("Det. Majors") responded to Marvin's 911 call. 10 AA 2183-2184. Marvin provided Det. Majors with a description of the suspect and vehicle. 10 AA 2185-2186. Marvin also described his stolen gold necklaces. 10 AA 2188. Neither necklaces were recovered.[1] Id.

[1] During rebuttal, the State produced several witnesses. Marvin was one of those witnesses. He testified that one of his gold chains had a dragon charm and the other had a cross with approximately nine diamonds on it. 12 AA 2720. Additionally, the State called Alma Luevanos ("Alma"), a manager of a local pawnshop. Alma testified that she recovered four tickets which indicated a person had sold the following items to the pawnshop: (1) a gold chain with a broken clasp with a Gucci link, (2) a gold chain with a Figaro type of link; (3) a gold square dragon charm, and (4) a gold cross with nine diamonds. 12 AA 2748-2754. Per the tickets, the items were sold by Omara McBride, later identified as Appellant's girlfriend, on May 26, 1016 between 2:46 p.m. and 2:51 p.m. 14 AA 2992-2999; 11 AA 2347.

On June 1, 2016, Det. Majors met with Marvin to view a photographic line-up. 7 AA 1481. Marvin identified Appellant and testified that he was "100 percent sure" of his identification. 7 AA 1482, 1487.

2) Victims Darrell and Deborah Faulkner

At approximately 6:53 a.m. on May 28, 2016, Darrell and Deborah Faulkner were gathering their belongings in their garage as they prepared to move out-of-state. 9 AA 1957-1958. As Darrell turned his back, he heard his wife say that someone was there "to talk" or "see" him. Id. Darrell turned around and saw a man, later identified as Appellant, pointing a .40 caliber Glock at him. 9 AA 1958-1960. Appellant held the gun in his left hand. Id.

Appellant ushered Darrell and Deborah into their garage and, while holding the gun, ordered them "to get on the ground or [he would] shoot [them]. 9 AA 1960. They complied. Id.; 9 AA 1990. Throughout the robbery, Darrell was "trying to keep [his] eyes on [Appellant]." 9 AA 1962. Darrell told Appellant he had a "hundred dollars" in his wallet. 9 AA 1963. Appellant ordered Darrell to give him the hundred dollars. Id. As Darrell opened his wallet, Appellant reached for it, but Darrell pulled it back. 9 AA 1964. Darrell explained that Appellant could not have his wallet because it contained his driver's license that Darrell needed for work but that he would give him the money. Id.

Once Darrell gave Appellant the money, Appellant demanded that they show him where they kept their "valuables." 9 AA 1912; 1963-1964. Fearing for his wife's safety because Appellant was pointing a firearm at her, Darrell tried to divert Appellant's attention to attack him. 9 AA 1964-1965. Darrell was unsuccessful. Id. Appellant then ordered Deborah to "dump out" her purse. 9 AA 1914; 1965. Seeing that there was no money in the purse, Appellant ordered the Faulkners to go into their house, stop staring at him, and shut the garage. 9 AA 1964. They complied and Appellant fled. 9 AA 1915; 1966.

Once inside the house, the Faulkners called the police. 9 AA 1967. Around 7:22 a.m., Det. Majors responded and made contact with Darrell. 10 AA 2196-2199. Later that morning, Darrell went to an apartment complex for a show-up and Darrell identified Appellant, with 100 percent certainty. 9 AA 1971-1973. Deborah also identified Appellant at trial, testifying that she was 1,000 percent certain Appellant was the man who robbed them. 9 AA 1915.

3) Victim Jordan Alexander

At approximately 7:01 a.m. on May 28, 2016, Jordan Alexander was loading his mother's car before leaving for California for his aunt's funeral. 7 AA 1586-1588. While placing two purses and a car seat into the car, Jordan saw a Mazda driving down the street. 7 AA 1589. The Mazda looked "brand new" and was unregistered. 7 AA 1589-1590.

After Jordan secured the car seat, he exited the car and noticed a man, later identified as Appellant, holding a handgun. 7 AA 1590; 1607. Appellant held the gun in his left hand, near Appellant's stomach, as he pointed the gun at Jordan. 7 AA 1590; 1592. As he held Jordan at gunpoint, Appellant said to Jordan, "[G]ive me everything you got." 7 AA 1590. Jordan told Appellant he did not have anything. 7 AA 1590. Appellant repeated "give me everything you got." 7 AA 1590. Fearing for his safety, Jordan gave Appellant his wallet containing his (1) identification card, (2) Social Security card, (3) Wells Fargo Visa debit card, and (4) blood-type card. 7 AA 1592-1593. Appellant asked Jordan about the purses and looked inside the car to see if there was anything to take. 7 AA 1593. Appellant also noticed Jordan held keys in his hands. Id. Jordan told Appellant the keys were for another vehicle. Id. Appellant accepted Jordan's answer, and began walking back toward the Mazda. 7 AA 1594.

Jordan carefully observed the Mazda and noticed the windows on the new Mazda were "extremely tinted." 7 AA 1594, 1616. Jordan also noticed that the back of the car had a "Mazda 3" badge on it along with a badge that said "SKYACTIV." Id. Jordan ran into the house and told his family he had been robbed at gunpoint. 7 AA 1596. Jordan attempted to chase the Mazda in his own car, but Appellant escaped. 7 AA 1596-1597. Jordan saw a police car, which happened to be responding to a nearby robbery, signaled the officer and explained what happened. 7 AA 1597-

1598. Later that morning, an officer drove Jordan to a show-up and Jordan immediately identified Appellant with "100 percent" certainty. 7 AA 1606-1609. Jordan identified Appellant at 8:55 a.m. 10 AA 2230.

4) Victims Santiago Garcia and Juan Carlos

At approximately 7:08 a.m. on May 28, 2016, Santiago Garcia and Juan Carlos Campos Torres, landscapers, were cutting down a tree at a residential job site. 8 AA 1683. Juan was on the roof of the house and Santiago was perched on a ladder; Santiago observed a white car, driven by an African-American male, park about three houses away. 8 AA 1684, 1686. Santiago later identified the driver as Appellant. 8 AA 1706-1707. Santiago also noticed that the car was unregistered and had a "black piece of paper" where the license plate holder is located. 8 AA 1685.

Appellant approached the men as they worked, brandished a gun, and then pointed it at Santiago and Juan. 8 AA 1689. Appellant ordered the men to come down off the roof, and Juan retreated and hid. 8 AA 1686-1689. Appellant then pointed the gun at Santiago and told Santiago to "shut off the fucking hedge trimmer and put it on the ground." 8 AA 1690-1691. Santiago complied. Id. Appellant demanded Santiago give him "the fucking money." Id. While Appellant pointed a 9mm gun at Santiago's chest, Santiago retrieved his cellphone, truck keys, and about five-hundred dollars in cash from his pockets. 8 AA 1691-1692. Appellant took the five-hundred dollars and iPhone. Id. As Appellant retreated, he continued to point

his gun at Santiago. 8 AA 1693. Appellant eventually made it to the white car and fled. Id.

At approximately 7:08 a.m., Santiago knocked on his client's door and called the police. Id.; 10 AA 2207. Once the police arrived, Santiago provided the officer with a voluntary statement. 8 AA 1696. Since Santiago could not write the voluntary statement in English, his client assisted him. Id. Even after the robbery, Santiago stayed on the premises to finish the landscaping job. 8 AA 1697. A few hours later, an officer took Santiago to an apartment complex where he identified the white car as the car from the robbery. 8 AA 1700. Santiago was taken back to the job site. 8 AA 1701. Approximately, ten minutes after Santiago completed the landscaping job, police contacted Santiago again and asked him to attend a show-up. 8 AA 1701-1702. At the show-up, Santiago identified Appellant with "100 percent certainty" as the man who robbed him of his cellphone and five hundred dollars. 8 AA 1705-1707.

5) Victims Lazaro Bravo Torres and Rosa Vazkuez Ramirez

At approximately 7:00 a.m. on May 28, 2016, Lazaro Bravo-Torres and his wife Rosa Elena Vazkuez were getting ready for work. 9 AA 1872. Lazaro was parked on the street, and waited for Rosa in his truck as she locked the gate to their house. Id. Lazaro and Rosa saw a young African-American male, later identified as Appellant, walking towards them with his hands tucked in his shirt. 9 AA 1874; 1935; 1948. As Appellant moved closer, Rosa entered the truck. 9 AA 1875.

As Lazaro sat in the driver's side, he had rolled down the window. 9 AA 1935. Appellant walked up to the driver's side and asked Lazaro for directions to Martin Luther King Street. Id. As Lazaro gave Appellant instructions, Rosa placed her purse on the truck's floorboard. 9 AA 1875. Suddenly, Appellant brandished a firearm and pointed it at Lazaro's chest and shoulder area.[2] Id. Rosa grabbed the door handle and attempted to escape, but Appellant yelled "Don't move." 9 AA 1876. When Rosa turned around, Appellant was pointing the gun directly at her. Id.

Appellant continued to point the gun back and forth between Lazaro and Rosa as he demanded money. 9 AA 1938. Appellant patted down Lazaro's pants in search of Lazaro's wallet, but could not locate it. 9 AA 1878. Appellant ordered Lazaro out of the truck. Id. Appellant then climbed in the truck and rummaged through it including the center console. 9 AA 1878-1879. Appellant took Rosa's purse and placed it on his shoulder. Id.; 9 AA 1940. Rosa's purse contained her (1) Samsung cellphone, (2) identification card, (3) bank cards, and (4) approximately fifty dollars. 9 AA 1878-1879. Appellant then told Lazaro to get back in the truck and warned him not to turn around. 9 AA 1880; 1941. As Appellant fled with Rosa's purse, he kept pointing the gun at the truck. Id. Lazaro complied with Appellant's demands,

[2] At trial, Lazaro testified that, at some point, the barrel of the gun touched his chest. 9 AA 1939.

turned the truck around, and Rosa used his cellphone to call the police at 7:15 a.m. 9 AA 1942; 10 AA 2211.

The police responded within five or six minutes. 9 AA 1945. Det. Majors noted that Lazaro and Rosa's description of Appellant was similar to descriptions given by other recent robbery victims. 10 AA 2212. Later that morning, officers drove Lazaro to a nearby apartment complex where a show-up was conducted. 9 AA 1945-1946. The show-up contained two men and Lazaro identified Appellant at approximately 9:10 a.m. 9 AA 1945-1946, 1948; 10 AA 2230. Rosa also identified Appellant. 10 AA 2230.

6) Investigation

On May 26, 2016, Det. Majors investigated a series of robberies. 10 AA 2181-2184. One robbery occurred on May 26, 2016, and the others on the morning of May 28, 2016. Id. All involved an African-American suspect and a white car. 10 AA 2195-2219.

On the morning of May 28, 2016, Officer David Wise began his daily shift at 6:00 a.m. and responded to a series of robbery calls. 10 AA 2131-2134. At one point, he heard over his radio that the suspect was driving a white vehicle. 10 AA 2135. Subsequently, Officer Wise heard another officer over the radio state that he had located a white vehicle. Id. Since the officer was located nearby, Officer Wise assisted with the call. Id. Upon arriving at an apartment complex, Officer Wise

observed the white sedan, touched the hood of the vehicle and noticed it was warm. 10 AA 2137-2138. Officer Wise also noted that the car did not have license plates. 10 AA 2139.

Shortly thereafter, Det. Majors received information that officers had found a white unregistered vehicle with a warm hood at an apartment complex. 10 AA 2123. Det. Majors responded to the call and made contact with Omara McBride. 10 AA 2124. Omara explained to Det. Majors that she owned the white Mazda. Id. Det. Majors and Detective Dean Ludwig then made contact with Chanise Williams who lived in apartment 218. 12 AA 2595.

Detectives learned Omara was staying with Chanise in apartment 218 and obtained Chanise's consent to search the apartment. 10 AA 2144; 2217. Inside, officers found two males whom were arrested. 10 AA 2144; 2214-2218. One of these males was Appellant, and he was arrested in the bedroom of the apartment, pretending to be asleep while he laid under the covers wearing his flip-flops. 10 AA 2219. After the initial sweep, a search warrant was secured for the apartment and executed by Dets. Ubbens, Majors, and Ludwig 218. 8 AA 1780.

At approximately 8:57 a.m., Crime Scene Analyst ("CSA") Jeff Smith arrived to inventory items found in apartment 218 and document any evidence from the Mazda 3. 7 AA 1546-1548. CSA Smith photographed the Mazda 3's SKYACTIV Technology emblem on the back of the vehicle and a black, blue, and white dealer

license plate template on the license plate holder. 7 AA 1549-1552; 15 AA 3344. CSA Smith also observed a yellow "sticker" on the Mazda's driver's side window, suggesting that the Mazda's windows had been recently tinted. 7 AA 1553-1554. CSA Smith also dusted the Mazda's interior and exterior for fingerprints. 7 AA 1552-1559. CSA Smith discovered five latent fingerprints. Id. Appellant's right index finger and right middle finger were a match for the prints recovered from the driver's side window. 10 AA 2099-2100.

CSA Smith also photographed the items found in apartment 218, including a Glock Model 27 .40 caliber handgun found in two pieces, each located in two separate bedrooms. 4 AA 1560-1563. CSA Smith also impounded .40 caliber cartridges. 7 AA 1571. Detectives also recovered the following items from apartment 218: (1) debit and identification cards with the name Jordan Alexander on both cards; (2) a Visa debit card with Rosa Vazkuez Ramirez's name; and (3) one Samsung and two iPhone cellphones. 8 AA 1785-1794.

After Appellant was arrested, he was interviewed by Dets. Majors and Ludwig. 11 AA 2346. During the interview, Detectives learned that Chanise is Appellant's cousin and Appellant confirmed that Omara was his girlfriend and that he had given Omara the money to purchase the white Mazda. 11 AA 2347.

At trial, Appellant presented a mistaken identity theory of defense 12 AA 2534-2537. Appellant claimed that his friend Bobby McCoy committed the robberies. 7 AA 1452-1463.

SUMMARY OF THE ARGUMENT

None of Appellant's claims has merit and his claims should be denied. First, the evidence presented to the jury was not insufficient to find Appellant guilty. The victims' trial testimony identifying Appellant as the robber and the evidence found in apartment 218 were more than sufficient for a reasonable trier of fact to convict Appellant. Second, the district court did not abuse its discretion in denying Appellant's objection to the racial composition of the jury venire as a whole and finding that the system for creating jury venires was adequate. Third, the district court did not abuse its discretion in admitting grand jury transcripts under NRS 51.035(2)(d). Fourth, the district court did not abuse its discretion regarding the admission of photographs of Bobby. Fifth, the district court did not abuse its discretion in denying Appellant's motion for mistrial. Sixth, the State did not commit prosecutorial misconduct. Seventh, the district court did not err in admitting Appellant's jail calls and their corresponding transcripts. Eighth, the district court did not err regarding jury instructions. Finally, there was no cumulative error. As such, the Judgment of Conviction should be affirmed.

/ / /

ARGUMENT

I. The evidence was not insufficient.

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-Candido v. State, 114 Nev. 378, 381, 956 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).

"[I]t 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. 378, 381, 956 P.2d 1378, 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) (holding that 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) (concluding that 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) (cert. denied by 429 U.S. 895, 97 S.Ct. 257 (1976)).

Appellant challenges the sufficiency of the evidence for Counts 4, 8, and 9, Robbery With Use of a Deadly Weapon, Attempt Robbery With Use of a Deadly

Weapon, and Robbery With Use of a Deadly Weapon, respectively. AOB at 22-24. This is without merit.

a) Count 4: Robbery With Use of a Deadly Weapon (Victim Deborah)

Appellant claims the evidence was insufficient for Robbery With Use of a Deadly Weapon of Deborah because he "did not take anything from her purse even though he asked her to dump it." AOB at 23.

Robbery requires the unlawful taking of personal property from the person of another, or in the person's presence, by means of force or violence or fear of injury. NRS 200.380. The State presented evidence to support this charge – including, but not limited to the following: Deborah testified she is married to Darrell (9 AA 1907); Deborah and Darrell testified that Appellant ordered them into the garage, while Appellant held a gun in his left hand, and told them to get on the ground or he would shoot them (9 AA 1958-1960); Deborah testified that while Appellant pointed his gun at her Darrell told Appellant he could have the one hundred dollars Darrell had in his wallet (9 AA 1963); and Deborah testified that after Appellant forced her to empty her purse, Appellant escaped with the one hundred dollars he stole from Darrell. 9 AA 1914-1915. Appellant took the one hundred dollars in Deborah's presence. Appellant stole the money by forcing the Faulkners into their garage and instilling fear of injury by robbing them at gunpoint. Lastly, because Deborah is married to Darrell the one hundred dollars is considered community property. For

all these reasons, the evidence was not insufficient for this count and the Judgment of Conviction should be affirmed.

b) Count 8: Attempt Robbery with Use of a Deadly Weapon (Victim Juan)

Appellant claims the evidence was insufficient evidence for Attempt Robbery with Use of a Deadly Weapon of Juan because Appellant "did not demand money or personal property from Juan." AOB at 24.

For Attempt Robbery with Use of a Deadly Weapon, the State had to prove that Appellant had the intent to commit a robbery and took steps to effectuate the commission of the crime but failed to actually complete the crime. See NRS 193.330 (defining attempt); NRS 200.380 (defining robbery). The State presented evidence to support this charge – including, but not limited to the following: Santiago testified he and his helper, Juan, were cutting down a tree at a residential job site (8 AA 1683); Santiago was perched on a ladder while Juan was on the roof of the house (8 AA 1686); Appellant approached, brandished a handgun, and in a loud voice demanded Juan come down from the roof and Santiago come down off the ladder (8 AA 1689); and Appellant ordered the men to come down while "pointing the gun at [them]." Id.

Appellant avers there was no evidence that Appellant demanded anything from Juan or that Juan heard Appellant or understood English. However, Appellant's argument ignores Santiago's testimony. First, regarding intent, as discussed supra,

Appellant committed two robberies before he encountered Juan and Santiago. Minutes before robbing Santiago, Appellant robbed the Faulkners and Jordan. Second, regarding the act requirement, at trial, Santiago testified he first saw Appellant holding a gun when Appellant approached the house and told *both* men "to get down" from their respective positions. 8 AA 1689 (emphasis added). Appellant appears to argue that pointing a firearm at someone and ordering them to move to a certain location does not amount to an act towards the commission of a robbery. Third, regarding the failure to complete the crime requirement, Juan was never robbed. To the contrary, it was Santiago, who complied with Appellant's harsh demand to come down from the ladder, who was robbed at gunpoint.

Lastly, Appellant's argument that there is no evidence that Juan heard Appellant's demand or that Juan understood English, is without merit. Juan did not need to understand English to infer that a man yelling at him and Santiago, while pointing his gun at them, had nefarious intentions. This is particularly true because Santiago testified that once Appellant appeared, pointed his gun at Juan and Santiago, Juan hid on the roof until Appellant fled with Santiago's iPhone and five hundred dollars. 8 AA 1691-1692; see Wilkins v. State, 96 Nev. 367, 374, 609 P.2d 309, 313 (1980); Hernandez v. State, 118 Nev. 513, 531, 50 P.3d 1100, 1112 (2002). As such, this claim fails.

/ / /

c) Count 9: Robbery With Use of a Deadly Weapon (Victim Lazaro)

Appellant argues the evidence was insufficient for Robbery with Use of a Deadly Weapon of Lazaro because Appellant "did not take Lazaro's cellphone [and] Lazaro testified he did not have a wallet." AOB at 23.

The State presented evidence to support the robbery charge – including, but not limited to the following: Rosa testified she is married Lazaro and they both live together. (9 AA 1871); Rosa testified Appellant approached the driver's side of the truck, where her husband sat, and asked Lazaro for directions (9 AA 1875); Rosa further testified that Appellant pulled out a gun, pointed at Lazaro, and forced him to exit the truck (Id.); Rosa tried to escape, but Appellant ordered her not to move and pointed his gun at her (9 AA 1876); and Appellant then rummaged through the cabin, found Rosa's purse, placed it on his shoulder, and escaped. 9 AA 1878; 9 AA 1940. Appellant entered the truck's cabin after he forced Lazaro out of his truck at gunpoint, found Rosa's purse, and, in the presence of Lazaro, placed it on his shoulder before he fled. Appellant acquired Rosa's purse by instilling fear of injury in both Rosa and Lazaro. Finally, because Rosa and Lazaro are married, Rosa's purse is community property. The jury drew "reasonable inferences from basic facts to ultimate facts" and found Appellant guilty of Counts 4, 8, and 9. Jackson, 443 U.S. at 319, 99 S.Ct. at 2789.

When reviewing the evidence in the light most favorable to the State and in the context of all the evidence, a rational trier of fact could have – and, in fact, did – found Appellant guilty. As such, Appellant's claim is meritless and should be denied.

II. The district court did not err in denying Appellant's challenge to the jury venire.

The Sixth and Fourteenth Amendments entitle criminal defendants to a jury venire chosen from a fair cross section of the community, meaning the venire does not systematically exclude minority groups within the community. *Williams v. State*, 121 Nev. 934, 939, 125 P.3d 627, 631 (2005). To prove a "prima facie violation of the fair-cross-section requirements" a defendant must show:

> (1) that the group alleged to be excluded is a 'distinctive' group in the community; (2) that the representation of this group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community; and (3) that this underrepresentation is due to systematic exclusion of the group in the jury-selection process.

Williams, 121 Nev. at 940, 125 P.3d at 631 (internal quotation and emphasis omitted). However, there is no constitutional right to a venire that perfectly reflects the community's composition. Id. at 939, 125 P.3d at 631.

In Nevada, NRS 6.110(1) prescribes the process for the selection of jurors for counties with a population of more than 100,000 people. This statute directs the clerk of the court to select at least 500 names *at random* from the available lists and then

mail those prospective jurors questionnaires. NRS 6.110(1) (emphasis added). This Court has upheld this random process in the past. Kirksey v. State, 112 Nev. 980, 923 P.2d 1102 (1996); see also Battle v. State, 2016 Nev. Unpub. LEXIS 607, *5-6, 2016 WL 4445494 (Nev. Aug. 10, 2016) [3] ("We conclude that the process explained by the jury commissioner provides no opportunity for systematic exclusion of specific races."). Similar processes have also been upheld in other states. See, e.g., State v. Flack, 232 W.Va. 708 (2013); People v. Brown, 75 Cal. App. 4th 916 (1999).

Appellant argues that the district court erred in denying his request for an evidentiary hearing because the jury venire only contained three African-Americans and five Latinos. AOB, 24-30. Appellant asserted at trial that African-Americans comprised 11.5% of the Clark County population while Latinos comprised 30% of the population and that the comparative disparity in Appellant's venire amounted to 41.7% regarding African-Americans and 63% regarding Latinos. 5 AA 948, 951. The district court then considered the three Williams factors. First, the district court found that Appellant satisfied the first requirement under Williams because African-Americans and Latinos are distinctive groups. 5 AA 957. Second, the district court concluded that the absolute disparity of African-Americans on the venire was "fair and reasonable," but Latinos were unfairly represented. 5 AA 962. Third, the district

[3] Citation to the unpublished opinion as persuasive authority is permissible. E.g., NRAP 36(c)(3); MB America Inc. v. Alaska Pacific Leasing Company, 123 Nev. Ad. Op. 8, 15, n.1 (Feb. 4, 2016).

court denied Appellant's motion because he could not prove that African-Americans or Latinos were systematically excluded. Id.

Here, the district court did not err. First, it was not error for the district court to not require the Jury Commissioner to testify when Appellant requested a new venire. As discussed supra, NRS 6.110(1) prescribes the process for the selection of jurors in specific detail, and this process has been upheld in Nevada as well as other states. See NRS 6.110(1) (directing the clerk of the court to select at least 500 names at random from the available lists and then mail those prospective jurors questionnaires); Kirksey v. State, 112 Nev. 980, 923 P.2d 1102 (1996); see also e.g., State v. Flack, 232 W.Va. 708 (2013); People v. Brown, 75 Cal. App. 4th 916 (1999).

Additionally, the district court made the following findings:

> But as to the third factor, the lack of fair representation of Hispanics, I -find that it's not due to systematic exclusion, you know, the *Battle v. State* and the other cases that I've seen suggest to me that the system that we do have in place is, you know, the best system we can come up with to date.
> . . .
>
> For the record . . . the [Jury Commissioner] has testified in the past regarding the procedures that she employs in summoning jurors to appear.

5 AA 962-963; see Battle v. State, 2016 Nev. Unpub. LEXIS 607, *5-6, 2016 WL 4445494 (Nev. Aug. 10, 2016) (upholding the denial of a request for a hearing with the Jury Commissioner where the district court relied on previous testimony of the

Jury Commissioner to conclude that the jury selection process "provides no opportunity for systematic exclusion of specific races" and the defendant had failed to provide any competing evidence in the record and so had failed to make a prima facie showing as required under Williams).

Second, Appellant failed to demonstrate that the juror summoning process systematically excluded African-Americans and Latinos. Instead, Appellant's trial counsel challenged the current jury summons process by asserting that jury summonses were mailed out in equal numbers based on zip codes. 5 AA 955. This process, trial counsel argued, ensured that one out of three individuals in "rich Summerlin" would receive a summons, compared to one out of ten or fifteen in "poor Vegas." Id. The district court commented that it had witnessed the Jury Commissioner testify about the process "several times" and that it had never heard of the method described by Appellant. Id. Trial counsel explained to the court that his understanding was premised on the explanation of the jury summons process by other attorneys in his office. Id. Appellant does not provide evidence, empirical or otherwise, showing that minorities on Appellant's venire were underrepresented because of systematic exclusion by the Clark County Jury Commissioner.

Finally, Appellant's argument that the district court committed structural error by not holding an evidentiary hearing also fails. AOB, 28. Appellant misapplies Brass v. State, 128 Nev.748, 291 P.3d 145 (2012) for the proposition that the district

court's failure to hold an evidentiary hearing with the jury commissioner is structural error. AOB 28. However, in Brass this Court held that it was structural error to dismiss a challenged juror prior to conducting a Batson hearing. Brass, 128 Nev. 748, 291 P.3d 145. Here, the issue on appeal involves the composition of the jury venire, not a Batson challenge. Additionally, the district court never granted an evidentiary hearing. As such, Brass is inapposite.

Therefore, the district court did not err. As such, this claim should be denied.

III. The district court did not abuse its discretion in admitting grand jury testimony.

This Court reviews a district court's decision to admit or exclude evidence for an abuse of discretion. Hernandez v. State, 124 Nev. 639, 646, 188 P.3d 1126, 1131, (2008); see, e.g., Mclellan v. State, 124 Nev. 263, 267, 182 P.3d 106, 109 (2008). Hearsay is a statement offered in evidence to prove the truth of the matter asserted. NRS 51.035. Under NRS 51.035(2)(d) a statement will not be considered hearsay if the declarant testifies at a trial or hearing and is subject to cross-examination concerning the statement and the statement is a "transcript of testimony given under oath at a trial or hearing or before a grand jury." A "statement" is an oral or written assertion, or nonverbal conduct of a person, if it is intended as an assertion. NRS 51.045. This court reviews admission of a hearsay statement, or a Confrontation Clause issue, for harmless error. Franco v. State, 109 Nev. 1229, 1236, 866 P.2d 247, 252, (1993).

Appellant argues that the district court erred when it admitted the grand jury testimony of Marvin, Jordan, Santiago, and Rosa. AOB, 32. Specifically, Appellant contends the district court abused its discretion because it did not have the authority to admit the grand jury transcripts under NRS 51.035(2)(d). AOB, 34. Further, Appellant avers that when the district court admitted the grand jury transcripts it deprived Appellant of the opportunity to effectively cross-examine witnesses because the witnesses were not subject to cross examination at the grand jury proceeding. AOB, 35-37. Appellant's arguments are unpersuasive.

Here, the district court admitted the grand jury transcripts under NRS 51.035(2)(d) which allows for the admission of grand jury testimony if the grand jury declarant testifies at trial. Maginnis v. State, 93 Nev. 173, 174, 561 P.2d 922, 922 (1977) (quoting California v. Green 399 U.S. 149, 158 (1970)) (holding that the Confrontation Clause is not violated by admitting a declarant's out-of-court statements, so long as the declarant is a testifying witness at trial and is subject to full and effective cross-examination); see also, Levi v. State, 95 Nev. 746, 748, 602 P.2d 189, 190 (1979). At trial, the district court found that the grand jury transcripts were admissible under NRS 51.035(2)(d). 7 AA 1508. In exercising its discretion, the district court relied on the plain meaning of the statute and noted that the transcripts would be independently admissible unless they would mislead or confuse the jury or were unduly prejudicial. 7 AA 1511. The district court gave trial counsel

the opportunity to explain why the transcripts were inadmissible. Id. Trial counsel argued that such admission seemed "wrong" because the defense could not introduce the transcripts as substantive evidence. 7 AA 1523. The district court explained that the defense could call the grand jury witnesses to testify and introduce the grand jury transcript at that time. 7 AA 1524. After listening to the trial court's reasoning as to why it admitted the transcript, trial counsel simply said "[o]kay. Thank you." 7 AA 1525.

Appellant contends he was not able to cross-examine witnesses at the grand jury proceeding. However, Appellant had every opportunity to fully and effectively cross-examine every witness at trial, including the witnesses who also testified before the Grand Jury. Moreover, if any of the witnesses testified inconsistently at trial, the defense could have impeached each witness on the stand with their prior testimony. Indeed, the record supports that Appellant took advantage of such opportunity by cross-examining Marvin, Jordan, Santiago, and Rosa. 7 AA 1489-1540; 8 AA 1658-1670; 8 AA1724-1739, 1763-1771; 9 AA 1897-1899. Notably, the district court admitted the transcript during Marvin's initial cross-examination. 7 AA 1511. Every testifying witness, starting with Marvin, was subject to full and effective cross-examination regarding their statements at the grand jury. Maginnis, 93 Nev. at 174, 561 P.2d at 922.

Appellant argues that this Court should not follow its long-established precedent because Maginnis conflicts with the recorded recollection statute and was decided prior to Crawford v. Washington, 541 U.S. 36, 44, 124 S. Ct. 1354, 1360 (2004). NRS 51.125. Appellant's argument is meritless. First, the recorded recollection statute is irrelevant to the hearsay exception found in NRS 51.035(2)(d). Second, NRS 51.035(2)(d) does not create a confrontation problem because witnesses that testify at a grand jury proceeding are subject to full and effective cross-examination regarding their previous statements during trial. Maginnis, 93 Nev. at 174, 561 P.2d at 922. Therefore, this Court should not find for Appellant and depart from well-settled precedent. See Miller v. Burk, 124 Nev. 579, 597, 188 P.3d 1112, 1124 (2008) (noting that "under the doctrine of *stare decisis*, [this Court] will not overturn [precedent] absent compelling reasons for so doing").

Therefore, the district court did not abuse its discretion by admitting the grand jury transcript. Accordingly, Appellant's claim is without merit and should be denied.

IV. The district court did not abuse its discretion in denying Appellant's request to admit multiple photographs of the same person.

This Court reviews a district court's decision to admit or exclude evidence for an abuse of discretion. Hernandez, 124 Nev. at 646, 188 P.3d at 1131; see, e.g., Mclellan, 124 Nev. at 267, 182 P.3d at 109. Relevant evidence "is not admissible if

its probative value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues or of misleading the jury." NRS 48.035. "The admission of photographs lies within the sound discretion of the district court. Browne v. State, 113 Nev. 305, 314, 933 P.2d 187, 192 (1997). "The trial judge is vested with discretion to simplify the issues and to exclude even relevant evidence if its probative value is substantially outweighed by the danger that it will confuse the issues or mislead the jury. Uniroyal Goodrich Tire Co. v. Mercer, 111 Nev. 318, 890 P.2d 785 (1995).

Here, Appellant argues the district court prevented him from presenting a complete defense by admitting only one photograph of Bobby. AOB, 38-30. Appellant claims he was prejudiced because the State admitted a side view of Appellant, but the district court denied Appellant's request to admit a photograph of Bobby's side view. Id. Appellant's argument is unpersuasive.

First, although Appellant cites Holmes v. South Carolina, 547 U.S. 319, 126 S. Ct. 1727 (2006) for the proposition that defendants have a constitutional right to present evidence of third-party guilt, district courts have the discretion to exclude evidence if the evidence is unfairly prejudicial, confuses the issues, or misleads the jury under NRS 48.035. At trial, Appellant sought to introduce, over the State's objection, Bobby's booking photo. 12 AA 2533-2536. Trial counsel asserted that a side photo of Bobby was not prejudicial because Bobby was not a party to the case.

12 AA 2537. The district court found that the introduction of a *booking photo* was "completely irrelevant." 12 AA 2538. The district court noted:

> The jury cannot draw inference that just because this guy, Bobby McCoy, has been a bad person in the past that he might have been booked, that he might have been arrested, that he might have been in jail, that he might have a criminal history. None of that is relevant to the issue on whether defendant Valentine committed the crimes in question.
> . . .
>
> So it's completely irrelevant. It'll be completely misleading to the jury, confusing to the jury, and unfairly prejudicial to the State. There's absolutely no way that this booking photo thing is coming in or these photos are coming in. All right.

Id.

After further argument, the parties stipulated to the admission of the one photograph of Bobby in State's Exhibit 196. 12 AA 2539; 15 AA 3242-3243. The district court excluded the proffered photos of Bobby because admitting numerous photographs of Bobby would have misled and confused the jury. Additionally, admitting "all pictures" that Appellant had of Bobby certainly would have been duplicative. AOB, 38. Lastly, Appellant's claim that the district court violated Appellant's right to present evidence of third-party guilt, is simply false. To the contrary, the district court admitted a forward-facing photograph of Bobby. Notably, the jury also received a forward-facing photograph of Appellant. 15 AA 3241. This allowed for a full comparison of both men.

Accordingly, the district court did not abuse its discretion in excluding all photographs of Bobby and Appellant's claim should be denied.

V. The district court did not abuse its discretion in denying Appellant's motion for mistrial.

A "[d]enial of a motion for mistrial is within the district court's sound discretion, and this court will not overturn a denial absent a clear showing of abuse." Randolph v. State, 117 Nev. 970, 981, 36 P.3d 424, 431 (2001).

Appellant claims the State violated discovery rules and orders regarding: (1) Appellant's jail calls; (2) Darrell's statements; (3) DNA charts; (4) video form pawnshop; (5) pawn tickets from a pawnshop and (6) rebuttal alibi witnesses.

a) Appellant's jail calls

Appellant alleges that before trial, the State admitted that it did not disclose all of Appellant's jail calls.[4] AOB at 39. Appellant further argues that the district court held that the State was "required to disclose all of [Appellant's] jail calls." AOB, 41. Lastly, Appellant argues he was prejudiced because the State "purposely withheld" a jail call conversation between Appellant and Chanise.

[4] This is incorrect. At the start of trial, the State indicated that it had received approximately 30 jail calls involving Appellant calling a specific phone number. 6 AA 1255. The State admitted that it had not listened to all the jail calls. Id. However, the State listened to all the jail calls it intended to use during its case-in-chief and turned those calls over to the defense. 6 AA 1245-1247.

Regarding Appellant's argument that the State purposely withheld the jail call between Appellant and Chanise ("Chanise call"), this argument should be disregarded because (1) the State was not required to turn over impeachment material and (2) Appellant failed to show prejudice. The State discovered the Chanise call on the morning (9:47 a.m.) of August 2, 2017. 12 AA 2700; 2702. The Chanise call involved a conversation between Chanise and Appellant which took place on July 31, 2017. Id. The State did not intend to use the Chanise call in its case-in-chief nor did it intend to use Appellant's statements in the jail call. 12 AA 2703. Rather, the call would impeach Chanise's credibility *if* she denied ever having a conversation with Appellant regarding her plan to testify at trial. Id. The district court observed that the State learned about the call earlier that morning and had disclosed it to the defense four-and-a-half hours later. 12 AA 2706. When trial counsel argued that the State only played a portion of the call for the jury, the district court noted that trial counsel could play the entire call. 12 AA 2707.

The State argued that its impeachment evidence did not require disclosure unless, as the district court observed, the material was "exculpatory." 6 AA 1246. The Chanise call was not exculpatory evidence because it involved a conversation whereby Appellant told Chanise that if she did not feel "comfortable" testifying, she did not have to. 12 AA 2644. The State used the call for a limited purpose: to impeach Chanise's credibility on cross-examination. Further, as the district court

noted, the call was disclosed hours after the State became aware of its existence. 12 AA 2706.

Appellant also argues he was prejudiced, but fails to show prejudice how he was prejudiced. In fact, the district court noted several times that the State's use of the Chanise call did not amount to "prejudice." 12 AA 2709; 2710; 2711. Moreover, any perceived prejudice was cured by the district court's decision to provide the jury with the following stipulated limiting instruction:

> You have heard reference to a recent jail call that Ms. Chanise Williams had with the defendant. Absent evidence proving otherwise, you are not to assume that anything said by the defendant was wrong or that he tried to convince the witness to lie.

12 AA 2714. Lastly, once Appellant moved for a mistrial, the district court noted that while it respected the motion for mistrial, there was "insufficient evidence" for the district court to find that the State violated the district court's discovery order. 12 AA 2716-2718. Further, any alleged error should be viewed as harmless due to the overwhelming evidence of guilt in this case.

For all these reasons, Appellant's claim should be denied.

b) Darrell's statements

Under NRS 174.235(1)(a), a prosecutor, upon defendant's request, shall permit the defense to inspect and to copy or photograph any "written or recorded

statements made by a witness the prosecuting attorney intends to call during the case in chief of the state."

At trial, Det. Majors testified that he remembered Darrell writing a statement on a show-up regarding Appellant. 10 AA 2222. Det. Majors also testified that he had not been able to locate the statement. Id. Appellant argues that the State never disclosed the fact that Darrell read and wrote such a statement. AOB, 42. Appellant's argument is unpersuasive because trial counsel cross-examined Det. Majors in the presence of the jury and Darrell testified that he did not remember making a statement.

As an initial matter, it is not even clear that Darrell ever wrote such a statement – as discussed supra, the record shows that Darrell testified that he did not recall writing such a statement, Det. Majors did not document that Darrell made such a statement in his report, and that Det. Majors testified at trial that he recalled Darrell doing so but that his contemporaneous report did not include that information and that he was unable to find any such statement.

Moreover, even assuming arguendo that Darrell made such a statement and that it was missing, this claim would still fail. As the district court noted during its bench conference that the fact the statement was missing did not amount to gross negligence by the State. 10 AA 2237; 2241. Next, the district court established cross examination parameters and made the following findings:

> So I'll let you – I'll let you question him as to whether there was a form, let you question him as to where the form should have been found, where they – what the process normally is to file these forms, who has custody and possession and control of these forms, why would it disappear, what – what happened to this form, if – did he ever see this form, you know, where were the other forms found? We need that information.

10 AA 2240.

The jury then returned from its break and trial counsel proceeded to cross-examine Det. Majors on a host of issues. 11 AA 2283-2285. Significantly, trial counsel asked Det. Majors why he omitted in his report the fact that Darrell completed a show-up statement. Id. Det. Majors admitted that he made a "mistake" and failed to memorialize the fact that Darrell made a statement regarding the show-up. 11 AA 2286. To the extent there was any prejudice, the cross-examination of Det. Majors in the presence of the jury cured any potential prejudice. The fact that Det. Majors did not include in his report that Darrell made a statement did not amount to gross negligence or bad faith. Therefore, Appellant was not afforded a presumption that the statement would have been unfavorable to the State. See Randolph v. State, 117 Nev. 970, 987, 36 P.3d 424, 435 (2001). This is particularly true because, during cross-examination, Darrell himself testified that he did not remember making a written statement on a police form. 9 AA 1987-1988. Darrell testified that he identified Appellant as the man who robbed him and his wife with 100 percent certainty. Id.

Therefore, because trial counsel cross-examined Det. Majors and Darrell testified that he did not remember making a statement, the State did not have an obligation to turn over a non-existent statement and the district court denied Appellant's motion for mistrial. Thus, Appellant's claim fails.

c) DNA charts

Appellant argues the State violated NRS 174.235 because the State did not disclose DNA charts that summarized the DNA expert's findings. However, during a bench conference, trial counsel conceded that the DNA expert could testify about her conclusions and results. 10 AA 2069. The district court considered trial counsel's argument that the graphs may confuse the jury. Id. However, the district court admitted the DNA charts because they were "reflective of her methodology and it helps – it's relevant to the issue of reliability, of her conclusions." Id.

Here, trial counsel did not have a basis to object to the DNA expert's findings because the State provided trial counsel with a copy of the DNA expert's report on two occasions: September 20, 2016 and January 26, 2017. 14 AA 3101. Consequently, because trial counsel conceded that he did not object to the DNA expert's findings, reviewing a demonstrative chart summarizing the expert's findings did not prejudice Appellant. To the contrary, as the district court observed, the charts assisted the jury in understanding the DNA expert's methodology and conclusions. Id.

d) Pawnshop video

Appellant argues he was deprived of the ability to prepare his defense because of the alleged disappearance of a video from EZPAWN. AOB, 44-45. At trial, Det. Majors testified that he impounded video from EZPAWN, but the video was missing. 11 AA 2299-2300. Appellant contends that the video was important to his defense because the pawnshop's surveillance may have captured Marvin's robbery. AOB, 45. Appellant avers this video was significant because Marvin described the white car used in the robbery differently compared to the other victims. Appellant's argument is unpersuasive.

First, Appellant was not deprived of his ability to present a defense because the district court allowed trial counsel to cross-examine Det. Majors about whether or not he impounded a video from EZPAWN. Trial counsel showed Det. Majors his report and Det. Majors conceded that while he did not remember impounding a video his report reflected otherwise. 11 AA 2299-2300. The district court allowed trial counsel to cross-examine Det. Majors about the impoundment of the surveillance video and counsel took full advantage of the opportunity. In fact, trial counsel cross-examined Det. Majors until he admitted, three times, that he impounded a surveillance video, but it was missing. Id.

Second, when Steve Denton ("Steve"), EZPAWN's custodian of records, testified, he indicated that he did not have any independent recollection of providing

Det. Majors with a copy of a surveillance video. 12 AA 2667-2668. Significantly, Steve testified that the pawnshop's cameras captured "some" parking lot activity, however, it could not capture faces or license plates. 12 AA 2671.

Third, Marvin's testimony was consistent with the other victims' description of the white Mazda. Marvin testified that a four door "white car" pulled up behind him. 7 AA 1471-1472. On cross-examination, Marvin testified that he originally told detectives that Appellant's white car was a "Kia type" car. 7 AA 1493. When someone is robbed at gunpoint it is unreasonable to expect that individual to remember, with specificity, the make and model of Appellant's car. Importantly, Marvin remembered Appellant's face, the color of Appellant's car, and that it was a sedan. 7 AA 1471-1472; 1482; 1487. Ultimately, Appellant cross-examined Det. Majors about the surveillance video. Marvin's testimony was consistent and he identified Appellant with 100 percent certainty. 7 AA 1482; 1487. Accordingly, any alleged error would be harmless due to the overwhelming evidence of guilt.

For all these reasons, this claim fails and should be denied.

e) Pawn tickets

Appellant argues that the State violated NRS 174.235 and NRS 174.295 by not disclosing pawn tickets from SuperPawn showing Omara sold Marvin's stolen property. AOB, 45-46. Appellant argues that he was unable to investigate and

evaluate the information before trial and that these pawn tickets suggested he was in town with Omara at the time Marvin was robbed. This fails.

This Court reviews a district court's decision to admit or exclude evidence for an abuse of discretion. Hernandez, 124 Nev. at 646, 188 P.3d at 1131; see, e.g., Mclellan, 124 Nev. at 267, 182 P.3d at 109. Under NRS 48.035, relevant evidence "is not admissible if its probative value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues or of misleading the jury."

Here, the State discovered the pawnshop tickets showing Omara had sold merchandise matching the description of Marvin's gold chains on August 2, 2017. 12 AA 2732; 2748-2754. These pawnshop tickets were not exculpatory and, therefore, there was no discovery violation. Moreover, the pawnshop tickets were used in rebuttal to specifically rebut Chanise Williams' testimony that Appellant had not arrived with Omara until May 27, 2016. 12 AA 2653; 2782. This is relevant because the pawnshop tickets, which included Omara's name, were dated May 26, 2016. 14 AA 2992-2999.

Regarding Appellant's argument that he was unable to obtain the pawnshop records and evaluate them before trial, this is inaccurate. Appellant had the ability to subpoena records from the surrounding pawnshops. In making its findings, the district court noted that trial counsel did not have "any evidence" that the prosecutor engaged in bad faith. 12 AA 2734. The district court held that NRS 174.235 had not

been violated because the pawn tickets were not used during the prosecutor's case in chief. 12 AA 2736-2737. Rather, the pawn tickets were used on rebuttal. In an effort to cure any possible prejudice, the district court allowed trial counsel to call Omara on surrebuttal. 12 AA 2740. However, counsel opted not do so. Once trial counsel moved for a mistrial, the district court denied the motion and made the following findings:

> I'm denying the Motion for Mistrial. I find that the court properly admitted the evidence, that the evidence submitted during the rebuttal stage of the State's case was within the proper scope of rebuttal. The evidence was properly admitted as a business record. The court properly considered the probative value versus the prejudicial impact, [and] allowed the evidence to come in. [It] [d]idn't violate hearsay rule. The evidence doesn't violate the confrontation clause [because] the proposed evidence was nontestimonial in nature.
> . . .
>
> [T]he defense has not demonstrated to the court that there was any bad faith motive by the part of the State. And the court also finds that the State did not violate any duty to more timely disclose the pawnshop evidence it had obtained.

13 AA 2784.

For all these reasons, Appellant's claim lacks merit. Moreover, Appellant failed to demonstrate prejudice. Thus, this claim should be denied.

/ / /

/ / /

f) Rebuttal alibi witness

Appellant argues that the State violated its continuing duty to disclose rebuttal alibi witnesses and witnesses it intended to present in its case-in-chief.[5] NRS 174.233(3); NRS 174.264(3).

Here, as discussed supra, Alma was not an alibi rebuttal witness. Rather, she was a general rebuttal witness that testified after the defense rested. 12 AA 2718; 2728. Alma's testimony was narrow in scope and purpose as it was used to rebut Chanise's claim that Appellant and Omara had not arrived into Las Vegas until May 27, 2016. 12 AA 2653. The pawnshop tickets rebutted this testimony by proving that Omara was in Las Vegas on May 26, 2016. 14 AA 2992-2999. The State did not violate NRS 174.233 or NRS 174.234. This is particularly true because Alma's testimony was not part of the State's case-in-chief. Whether the State was investigating Omara during its case in chief is irrelevant because Alma did not testify during the State's case-in-chief. AOB at 47.

Overall, Appellant received a fair trial. Appellant failed to make a "clear showing of abuse" by the district court that would warrant overturning Appellant's conviction. Randolph, 117 Nev. at 981, 36 P.3d at 431 (2001). Moreover, Appellant

[5] Interestingly, Appellant filed an alibi notice naming Davion Smith as an alibi witness. However, Davion Smith was never called at trial. Instead, the defense called Chanise Williams who testified that Appellant and Omara were not in Las Vegas until May 27, 2016. 12 AA 2653.

failed to provide this Court with binding precedent to support reversal. Rather, Appellant cites to three non-binding cases to support his proposition that the trial court abused its discretion in denying Appellant's motions for mistrial. See White v. State, 223 Co.3d 859, 867 (Miss. Ct. App. 2017); Wagner v. State, 208 So. 3d 1229, 1230-31 (Fla. Dist. Ct App. 2017); Bess v. State, 208 So. 3d 1213, 1214015 (Fla. Dist. Ct. App. 2017).

However, even if this Court finds the district court abused its discretion, the error was harmless. Admitting evidence "will be deemed harmless" when the evidence of guilt is strong. Kelly v. State, 108 Nev. 545, 552, 837 P.2d 416 (1992). An error is harmless when it is "clear beyond a reasonable doubt that a rational jury would have found the defendant guilty absent the error." Wegner v. State, 116 Nev. 1149, 1155-56, 14 P.3d 25 (2000) (quoting Neder v. United States, 527 U.S. 1, 18 (1999). Here, the evidence against Appellant was overwhelming. First, multiple eyewitnesses testified that they, with great certainty and specificity, identified Appellant as the man who robbed them. 7 AA 1482;1487; 7 AA 1606-1609; 8 AA 1705-1707; 9 AA 1945-1946; 1948; 9 AA 1971-1973; 9 AA 1915. Second, Jordan's identification card and debit card were found in the apartment where Appellant was arrested. 8 AA 1785-1794. Police also found Rosa's Visa debit card and Santiago's cellphone in the same apartment. Id. Third, Appellant's girlfriend sold a gold chain to a local pawnshop which perfectly matched Marvin's description of the chain

Appellant took from his person while Marvin was parked outside the Rancho Disco Mall. 12 AA 2720; 14 AA 2992-2999. The chains were sold to the pawnshop within hours after Appellant robbed Marvin on May 26, 2016. Id.

For the foregoing reasons, Appellant's claims should be denied.

VI. The State did not commit prosecutorial misconduct regarding identification of Appellant.

In Andres v. Harley Davidson, Inc., 106 Nev. 533, 539, 796 P.2d 1092, 1096 (1990) this Court observed that "[r]ebuttal evidence explains, contradicts, or disproves evidence introduced by a defendant in his case-in-chief" and that the [t]est for determining what constitutes rebuttal evidence is whether the evidence offered tends to contradict new matters raised by the adverse part." To establish prosecutorial misconduct, the defendant must show that the prosecutor's error was prejudicial in order to establish that it affected his substantial rights. Gallego v. State, 117 Nev. 348, 365, 23 P.3d 227, 239 (2001) (overruled in part by Nunnery v. State, 127 Nev. 749, 263 P.3d 235 (2011)).

Appellant attempts to argue that the State's three rebuttal witnesses did not rebut any evidence presented during Appellant's case in chief. AOB, 49-51. Additionally, Appellant argues, but provides no case law to support his position, that by recalling Marvin and Jordan to identify Appellant as the robber, the State violated Appellant's due process rights. Id.

Appellant's first argument is belied by the record. During Appellant's opening argument trial counsel told the jury that these robberies were not committed by Appellant. 7 AA 1452-1463. Instead, trial counsel claimed that Bobby was the culprit. Id. During defense's case in chief the defense continued this strategy of misidentification by calling Dr. Steven Smith ("Dr. Smith") to testify about the unreliability of eyewitness testimony. 11 AA 2356-2394. However, on two occasions Dr. Smith conceded that corroborating evidence was one factor that would increase reliability of a witnesses' identification. 11 AA 2435; 2484. Consequently, the State recalled Marvin and Jordan as rebuttal witnesses. 12 AA 2719-2723; 2724-2725. On rebuttal, Marvin gave a detailed description of his gold necklaces. 12 AA 2719-2721.

Moreover, because the defense argued Bobby was the culprit, Marvin was shown a photo of Bobby and he testified that Bobby was not the man who robbed him. Id. Similarly, Jordan was shown a photograph of Bobby, and he too rejected Bobby as the culprit and instead identified Appellant as the robber. 12 AA 2725. Both Marvin and Jordan's testimony corroborate the other victims' testimony that Appellant, not Bobby, was the robber. Additionally, Marvin's testimony also increased the reliability of Jordan's identification of Appellant. This is noteworthy because Chanise testified that Appellant and Omara arrived in Las Vegas on May 27, 2016. 12 AA 2653. However, Marvin's testimony coupled with Alma's

testimony, directly rebutted Chanise's testimony that Appellant and Omara were not in Las Vegas when Marvin was robbed.[6]

Appellant's second argument also fails because he has not shown how he was prejudiced by the State's rebuttal witnesses. First, all of the State's rebuttal witnesses were subject to cross examination by the defense. Second, Appellant cites Foster v. California, 394 U.S. 440 (1969) but fails to elaborate on how that case is relevant to this case. The facts of Foster are inapplicable to the instant case. In Foster, a sole witness was asked to identify a defendant multiple times, however, every time the sole witness was unsure if the defendant was one of the robbers. Foster, 394 U.S. 440, 441-42. At trial, the witness identified the defendant and the defendant was convicted. Here, the majority of the State's witnesses identified Appellant as the robber, prior to trial. In fact, Appellant was identified within hours of the robberies by Jordan, Santiago, and Darrell. Additionally, at trial all witnesses identified Appellant. Therefore, Foster is inapplicable and the Court should deny Appellant's claim.

VII. The district court did not err in admitting Appellant's redacted jail calls and transcripts.

This Court reviews a district court's decision to admit or exclude evidence for an abuse of discretion. Hernandez, 124 Nev. at 646, 188 P.3d at 1131; see, e.g.,

[6] Appellant re-raises its argument that Alma was an improper rebuttal witness. The State responded to this argument supra in issue V.

Mclellan, 124 Nev. at 267, 182 P.3d at 109. Relevant evidence "is not admissible if its probative value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues or of misleading the jury." NRS 48.035. Additionally, the rule of completeness, provides that "[w]hen any part of a writing or recorded statement is introduced by a party, the party may be required at that time to introduce any other part of it which is relevant to the part introduced, and any party may introduce any other relevant parts." NRS 47.120(1). "Trial courts have considerable discretion in determining the relevance and admissibility of evidence." Crowley v. State, 120 Nev. 30, 34, 83 P.3d 282, 286 (2004).

Appellant claims that the district court erred when it admitted three redacted jailhouse calls and their transcripts. Specifically, Appellant contends he was prejudiced because the calls revealed Appellant's custody status to the jury, the evidence was cumulative, and was incomplete.

Here, Appellant was not prejudiced by the fact that each jail call began with the title "Clark County Detention Center Phone Calls." AOB, 52. This is established by the fact that the jury knew Appellant was arrested for the robberies early on in the case. In fact, in the defense's own opening statement to the jury, trial counsel noted on two separate occasions that Appellant was arrested. 7 AA 1455-1456. Additionally, Det. Ludwig testified that after Appellant was interviewed by the

detectives, Appellant was arrested, transported, and booked at the Clark County Detention Center.[7] 11 AA 2348.

Additionally, introducing jail calls and corresponding transcripts of the calls was not cumulative. To the contrary, the district court observed that the transcripts served a particular purpose: to assist the jury because sometimes things are hard to hear. 9 AA 2010. A review of the record also suggests that trial counsel, over objection, considered playing the audio and including the transcript a "compromise position." 9 AA 2006.

The rule of completeness was inapplicable with respect to a May 29, 2016, jail call. During the jail call, Appellant said "Bobby's been left, 2 days ago." 15 AA 3062. Trial counsel sought to include additional dialogue from the call to clear up Appellant's misperception of how long he had been in jail. 10 AA 2026-2037. Trial counsel argued that the additional language was necessary because Appellant had only been in jail one day and the extra language would explain that Bobby was not arrested because he had left two days prior. Id.

However, Appellant provides no authority for the proposition that the language "the party *may* be required" supersedes a district court's discretion regarding admission of evidence. NRS 47.120 (emphasis added); Crowley, 120 Nev.

[7] Appellant provides no case law to support its position that playing a jail call titled "Clark County Detention Center Phone Calls" is prejudicial.

at 34, 83 P.3d at 286 (noting that "[t]rial courts have considerable discretion in determining the relevance and admissibility of evidence"). Additionally, Appellant sought to introduce the additional language to argue to the jury that Appellant, instead of Bobby, was arrested because Bobby was "gone." 10 AA 2036. In making its ruling, the district court observed that Appellant's argument was not only "irrational" and "inconsistent" but also, "not supported by the Doctrine of Completeness." 10 AA 2037. Lastly, Appellant fails to demonstrate that the statements proffered by the State in the jail calls were misleading or taken out of context. See United States v. Vallejos, 742 F.3d 902, 905 (9th Cir. 2014) (stating that the purpose of the rule of completeness is to "avert misunderstanding or distortion caused by introduction of only part of a document"). Therefore, Appellant's claim fails.

VIII. The district court did not abuse its discretion regarding jury instructions.

District courts have "broad discretion" to settle jury instructions. Cortinas v. State, 124 Nev. 1013, 1019, 195 P.3d 315, 319 (2008). This Court reviews whether an instruction is an accurate statement of the law de novo. Id., 124 Nev. at 1019, 195 P.3d at 319. District courts' decisions settling jury instructions are reviewed for an abuse of discretion. Crawford, 121 Nev. at 748, 121 P.3d at 585 (2003). The district court abuses its discretion only when the "decision is arbitrary or capricious or if it exceeds the bounds of law or reason." Crawford, 121 Nev. at 748, 121 P.3d at 585

(2005). A defendant has no right to have the jury instructed on a theory of the case which is not supported by any evidence. See Wyatt v. State, 77 Nev. 490, 496, 367 P.2d 104 (1961) (*citing* State v. Moore, 48 Nev. 405, 233 P. 523 (1925); State v. Alsup, 69 Nev. 121, 243 P.2d 256 (1952)).

a) Appellant's Proffered "Two Reasonable Interpretations" Instruction

Appellant proposed a two reasonable interpretation instruction because "everything in the case [was] circumstantial" and the jury was presented with two theories: one where Appellant was the robber, another where Bobby was the robber. 13 AA 2806. However, Appellant's argument lacks merit.

The district court found that the proposed instruction was "completely unnecessary. . .[because the jury] was already instructed on reasonable doubt." 13 AA 2807. Moreover, this Court has repeatedly held that when the jury is properly instructed on reasonable doubt, it is not error for the district court to refuse to give an instruction on circumstantial evidence or evidence susceptible to two reasonable interpretations. See Mason v. State, 118 Nev. 554, 559, 51 P.3d 521, 524 (2002); *Bails v. State*, 92 Nev. 95, 96-98, 545 P.2d 1155, 1155-56 (1976). Since this Court has found that failure to give a "two reasonable interpretations" instruction does not constitute error when the jury is properly instructed on reasonable doubt, the district court did not abuse its discretion in declining to give the instruction. Therefore, Appellant's claim fails.

b) Sanborn Instruction

Relying on Sanborn v. State, 107 Nev. 399, 812 P.2d 1279 (1991), Appellant claims that the district court abused its discretion in refusing to provide a Sanborn jury instruction regarding the presumption of lost evidence that was, allegedly, in the State's possession. AOB at 56.

In Sanborn, this Court ruled that a defendant is entitled to an irrebuttable presumption instruction in his favor if the State failed to preserve evidence potentially critical to the defense and the absence of that evidence buttressed the State's case. Sanborn, 107 Nev. at 408, 812 P.2d at 1285-86. However, a defendant is only entitled to such an instruction if he shows either that the State acted in bad faith or that the defendant suffered undue prejudice and the exculpatory value of the evidence was apparent before it was lost or destroyed. Daniel v. State, 119 Nev. 498, 520, 78 P.3d 890, 905 (2003). Further, to show undue prejudice, the defendant must show that "the evidence would have been exculpatory and material to the defense." Id.

Here, Appellant requested a Sanborn instruction and the district court denied it. 13 AA 2808; see supra section V. The district court allowed trial counsel to cross-examine Det. Majors about the alleged failure to preserve Darrell's statement regarding the show-up and EZPAWN video. 11 AA 2283-2286; 11 AA 2299-2300. Appellant has not – and cannot show – shown any bad faith. Daniel, 119 Nev. at

520, 78 P.3d at 905. Moreover, counsel cross-examined Det. Majors about not preserving Darrell's statement[8] and this benefited the defense because it attacked Det. Major's credibility and competency as a detective. Similarly, Det. Majors was cross-examined regarding the EZPAWN video and acknowledged that he impounded a video, however, it was misplaced. 11 AA 2299-2300. Again, by cross-examining Det. Majors, the defense attacked his competency as a detective and furthered Appellant's theory of the case. Marvin's testimony that Appellant drove a white four-door car was relevant because: (1) it was consistent with the other victims who identified Appellant driving a white car and (2) Marvin was 100 percent confident that Appellant was the robber.

The district court did not abuse its discretion regarding the Sanborn instruction because Appellant failed to show bad faith or prejudice. Therefore, Appellant's claim fails.

c) Accessory after the crime

Appellant claims the district court abused its discretion by denying defense's proposed instruction because the State acknowledged it knew defense's theory of the case since opening statements. 13 AA 2829.

[8] As discussed supra, Darrell testified that he did not remember making such statement. 9 AA 1987-1988.

Here, Appellant argued that he sought an "accessory after the crime" instruction because the evidence presented at trial supported such instruction. 13 AA 2830-2831. However, during his argument, trial counsel conceded that the district court had "discretion" to give the instruction. Id. The district court highlighted the fact that Appellant was not facing an "accessory" charge. 13 AA 2830. In making its decision the district court noted that the State did not attempt to prove a lesser-related crime at trial, "didn't argue it and didn't charge it." 13 AA 2835. Further, the district court concluded that giving a jury instruction on accessory would only "confuse the jury." 13 AA 2836. Therefore, because an accessory jury instruction would have been inconsistent with the evidence presented at trial, the district court did not err in refusing to give the instruction. Cortinas, 124 Nev. at 1019, 195 P.3d at 319 (noting that "[d]istrict courts have broad discretion to settle jury instructions"). As such, Appellant's claim should be denied.

IX. The State did not commit prosecutorial misconduct regarding DNA testimony.

When considering claims of prosecutorial misconduct, this Court applies a two-step analysis. Valdez v. State, 124 Nev. 1172, 1188, 196 P.3d 465, 476 (2008). First, this Court determines whether the prosecutor's comments were improper, and second, whether the improper comments were sufficient to deny the defendant a fair trial. Id. This Court views the statements in context, and will not lightly overturn a jury's verdict based upon a prosecutor's statements. Byars v. State, 130 Nev. ___,

___, 336 P.3d 939, 950–51 (2014). Normally, the defendant must show that an error was prejudicial in order to establish that it affected substantial rights. Gallego v. State, 117 Nev. 348, 365, 23 P.3d 227, 239 (2001).

With respect to the second step, this Court will not reverse if the misconduct was harmless error. Valdez, 124 Nev. at 1188, 196 P.3d at 476. The proper standard of harmless-error review depends on whether the prosecutorial misconduct is of a constitutional dimension. Id. at 1188-89, 196 P.3d at 476. Misconduct may be constitutional if a prosecutor comments on the exercise of a constitutional right, or the misconduct "so infected the trial with unfairness as to make the resulting conviction a denial of due process." Id. 124 Nev. at 1189, 196 P.3d 476-77 (quoting Darden v. Wainright, 477 U.S. 168, 181, 106 S.Ct. 2464, 2471 (1986)). When the misconduct is of constitutional dimension, this Court will reverse unless the State demonstrates that the error did not contribute to the verdict. Id. 124 Nev. at 1189, 196 P.3d 476-77. When the misconduct is not of constitutional dimension, this Court "will reverse only if the error substantially affects the jury's verdict." Id.

Appellant claims that the State improperly characterized the DNA evidence during its closing argument. AOB, 57-60. This is without merit.

During closing argument, the State noted: "You heard about the DNA evidence in this case. Now, the scientist came in. She told you she could not make any results." 13 AA 2868. The State then noted that Appellant's specific alleles, 12,

13, 13.2, 14, 15, 16, 17, and 28, mirrored the alleles found on the handgun.[9] 13 AA 2869-2870. Trial counsel objected, and the district court overruled the objection noting that, although the DNA expert mentioned that the data itself was "unreliable," the State was "merely arguing that there should be some weight given" to the DNA evidence. 13 AA 2869. Ultimately, the State concluded by stating the following regarding the DNA evidence: "Ladies and gentlemen, it's just worth considering. Take a look at it. See what you think. Make your own determination." 13 AA 2870.

The State was, as the district court found, merely commenting on the weight of the evidence and asked the jury to "make their own determination[s]." Appellant asserts that the State's comments were "highly suggestive" and allowed the jury to incorrectly draw an inference that Appellant's DNA was on the gun. AOB, 59. Appellant seems to argue that he was prejudiced when the State asked the jury to weigh the DNA expert's findings that some of Appellant's alleles matched those found on the gun.[10] This is unpersuasive because the State reminded the jury that the

[9] Appellant represents that the prosecutor "noted Keandra's [sic] DNA matched 12 of 13 allele [sic] found on the swab." AOB 58. This suggests that the State communicated to the jury that 12 out of the 13 alleles found on the handgun matched Appellant's alleles. The State never made this argument. Rather, the State explained to the jury that the "swab of the handgun revealed a 12 and a 13 allele. . .Mr. Valentine [has] a 12 and a 13 allele. 13 AA 2869.

[10] Appellant reasserts his argument from issue V. Specifically, the argument that the DNA expert's charts were improperly admitted even though the district court found that the charts would assist the jury in comprehending the DNA expert's testimony. 14 AA 1301.

DNA expert could not any conclusive findings. 13 AA 2868. Moreover, any perceived prejudice was cured when the district court ruled on Appellant's objection and stated that the underlying DNA expert's data was "unreliable." Id. Ultimately, the State wanted the factfinder to consider and weigh the DNA evidence. Nothing more. These comments were well within the scope of permissible argument.

However, to the extent this Court finds any error, it was harmless. Specifically, because the jury was presented with multiple eyewitnesses who identified Appellant as the robber. Under NRS 178.598, "[a]ny error, defect, irregularity or variance which does not affect substantial rights shall be disregarded." Non-constitutional trial error is reviewed for harmlessness based on whether it had substantial and injurious effect or influence in determining the jury's verdict. Knipes v. State, 124 Nev. 927, 935, 192 P.3d 1178, 1183 (2008). Because the jury would have found Appellant guilty absent the State's comment, Appellant cannot demonstrate that the State's comments are such that warrant reversal.

X. There was no cumulative error.

This Court considers the following factors in addressing a claim of 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, 854-5 (2000). Appellant must present all three elements to succeed in proving a cumulative error claim. 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)).

Here, as discussed supra, Appellant fails to demonstrate any error, let alone cumulative error sufficient to warrant relief. Appellant's guilt is evident based on the evidence that was presented at trial. Appellant argues that the identification procedures were highly suggestive, the crimes were serious, and the quality and character of errors were substantial. AOB, 60-61. The State disagrees. Appellant was identified by seven different eyewitnesses as the robber. Many of whom identified Appellant within hours after they were robbed. Additionally, most of the witnesses identified Appellant as the robber with 100 percent certainty. Moreover, police also found the personal property of some of the victims that were robbed on the morning of May 28, 2016, in the apartment where Appellant was arrested. Ultimately, the evidence overwhelmingly supported Appellant's conviction. Therefore, Appellant's claim of cumulative error is meritless and this Court should affirm Appellant's Judgment of Conviction.

Lastly, the State submits that if any errors were committed during trial, those errors should be subject to a harmless error analysis in light of the overall record. Pursuant to NRS 178.598, "any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded." See also Knipes v. State, 124 Nev. 927, 935, 192 P.3d 1178, 1183 (2008) (noting that nonconstitutional trial error is

reviewed for harmlessness based on whether it had substantial and injurious effect or influence in determining the jury's verdict). On the other hand, constitutional error is evaluated by the test laid forth in Chapman v. California, 386 U.S. 18, 24, 87 S. Ct. 824, 828 (1967). The test under Chapman for constitutional trial error is "whether it is 'clear beyond a reasonable doubt that a rational jury would have found the defendant guilty absent the error.'" Tavares v. State, 117 Nev. 725, 732 n.14, 30 P.3d 1128, 1132 n. 14 (2001). Here, as discussed supra, the State presented extensive and compelling evidence linking Appellant to the crime. Accordingly, because any rational trier of fact could have found the Appellant guilty of all charges, beyond a reasonable doubt, Appellant's arguments fail.

CONCLUSION

Based on the foregoing, the State respectfully requests that this Court order the Judgment of Conviction AFFIRMED.

Dated this 6th day of November, 2018.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY */s/ Krista D. Barrie*
KRISTA D. BARRIE
Chief Deputy District Attorney
Nevada Bar #010310
Office of the Clark County District Attorney

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 13,336 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 November, 2018.

Respectfully submitted

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY */s/ Krista D. Barrie*
KRISTA D. BARRIE
Chief Deputy District Attorney
Nevada Bar #010310
Office of the Clark County District Attorney
Regional Justice Center
200 Lewis Avenue
Post Office Box 552212
Las Vegas, Nevada 89155-2212
(702) 671-2500

CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on November 6, 2018. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

ADAM PAUL LAXALT
Nevada Attorney General

SHARON G. DICKINSON
Deputy Public Defender

KRISTA D. BARRIE
Chief Deputy District Attorney

/s/ E. Davis
Employee, Clark County
District Attorney's Office

KDB/John Torre/ed