

IN THE SUPREME COURT OF THE STATE OF NEVADA

SHAWN GLOVER,
Appellant,

v.

THE STATE OF NEVADA,
Respondent.

Electronically Filed
May 16 2019 09:17 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Case No. 77425

RESPONDENT'S ANSWERING BRIEF

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

KEDRIC A. BASSETT
Deputy Public Defender
Nevada Bar #004214
309 South Third Street, Ste.226
Las Vegas, Nevada 89155-2610
(702) 455-4685

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

AARON D. FORD
Nevada Attorney General
Nevada Bar #007704
100 North Carson Street
Carson City, Nevada 89701-4717
(775) 684-1265

Counsel for Appellant

Counsel for Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
ROUTING STATEMENT.....	1
STATEMENT OF THE ISSUES.....	1
STATEMENT OF THE CASE.....	1
STATEMENT OF THE FACTS	3
SUMMARY OF THE ARGUMENT	7
ARGUMENT	8
I. THE STATE PRESENTED SUFFICIENT EVIDENCE TO CONVICT GLOVER ON ALL COUNTS.....	8
II. THE STATE’S REMARKS DURING REBUTTAL DID NOT SHIFT THE BURDEN TO GLOVER	12
III. THE DISTRICT COURT DID NOT ADMIT IMPROPER CHARACTER EVIDENCE.....	16
CONCLUSION.....	21
CERTIFICATE OF COMPLIANCE.....	23
CERTIFICATE OF SERVICE	24

TABLE OF AUTHORITIES

Page Number:

Cases

Bridges v. State,

116 Nev. 752, 762, 6 P.3d 1000, 1008 (2000)..... 13

Browning v. State,

124 Nev. 517, 533, 188 P.3d 60, 72 (2008)..... 12

Chavez v. State,

125 Nev. 328, 339, 213 P.3d 476, 484 (2009)..... 17

Colley v. State,

98 Nev. 14, 16, 639 P.2d 530, 532 (1982)..... 13

Evans v. State,

112 Nev. 1172, 1193, 926 P.2d 265, 279 (1996)..... 9, 12

Fields v. State,

125 Nev. 785, 789, 220 P.3d 709, 712 (2009)..... 17

Knipes v. State,

124 Nev. 927, 935, 192 P.3d 1178, 1183 (2008)..... 15

Leonard v. State,

117 Nev. 53, 66, 17 P.3d 397, 405 (2001)..... 20

McNair v. State,

108 Nev. 53, 56, 825 P.2d 571, 573 (1992)..... 10

McNelton v. State,

115 Nev. 396, 408–09, 990 P.2d 1263, 1271–72 (1999) 13

Milton v. State,

111 Nev. 1487, 1491, 908 P.2d 684, 686–87 (1995) 9

Neder v. United States,

527 U.S. 1, 3, 119 S. Ct. 1827, 1830 (1999) 15

<u>Newman v. State,</u>	
129 Nev. 222, 236, 298 P.3d 1171, 1181	21
<u>Salgado v. State,</u>	
114 Nev. 1039, 1042-43, 968 P.2d 324, 326-27 (1998).....	17
<u>State v. Green,</u>	
81 Nev. 173, 176, 400 P.2d 766, 767 (1965).....	13
<u>Tavares v. State,</u>	
117 Nev. 725, 732 n.14, 30 P.3d 1128, 1132 n. 14 (2001)	15, 21
<u>U.S. v. Lopez-Alvarez,</u>	
970 F.2d 583, 596 (9 th Cir. 1992)	13
<u>United States v. Young,</u>	
470 U.S. 1, 11 (1985)	16
<u>Wilkins v. State,</u>	
96 Nev. 367, 374, 609 P.2d 309, 313 (1980).....	9
<u>Williams v. State,</u>	
113 Nev. 1008, 1018-19, 945 P.2d 438, 444-45 (1997).....	13
<u>Statutes</u>	
NRS 48.045(2).....	16, 17, 19
NRS 178.598	15

IN THE SUPREME COURT OF THE STATE OF NEVADA

SHAWN GLOVER,
Appellant,

v.

THE STATE OF NEVADA,
Respondent.

Case No. 77425

RESPONDENT’S ANSWERING BRIEF

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

ROUTING STATEMENT

This appeal is presumptively retained by the Nevada Supreme Court pursuant to NRAP 17(b)(1) because it is a direct appeal from a Judgment of Conviction based on a jury trial that involves convictions of a Category A and B felonies.

STATEMENT OF THE ISSUES

1. Whether there was sufficient evidence to convict Glover of all counts.
2. Whether the State shifted the burden of proof at trial.
3. Whether the State introduced improper character evidence at trial.

STATEMENT OF THE CASE

On February 4, 2016, the State charged Appellant Shawn Glover (“Glover”) by way of Indictment with the following: Count 1: Murder With Use of a Deadly

Weapon (Category A Felony - NRS 200.010, 200.030, 193.165); Counts 2: Assault With a Deadly Weapon (Category B Felony - NRS 200.471); Count 3: Ownership or Possession of Firearm by Prohibited Person (Category B Felony - NRS 202.360); and Count 4: Discharge of Firearm From or Within a Structure or Vehicle (Category B Felony - NRS 202.287). 1 Appellant's Appendix ("AA") 001-003. On July 21, 2018, the State filed an Amended Indictment.¹

On July 30, 2018, Glover's trial commenced before the Honorable Judge Jennifer Togliatti. 3 AA 435. On August 3, 2018, the jury found Glover guilty of Counts 1-3: (1) First-Degree Murder With Use of a Deadly Weapon, (2) Assault With a Deadly Weapon, and (3) Discharge of Firearm From or Within a Structure or Vehicle.² 2 AA 257-258. On October 10, 2018, Glover was adjudged guilty and sentenced to the Nevada Department of Corrections ("NDOC") as follows: Count 1: Life without the possibility of parole, plus a consecutive term of 48-180 months for the Use of a Deadly Weapon; Count 2: a maximum of 72 months with a minimum

¹ The Amended Indictment had only one modification: The State switched the positioning of counts 3 and 4. 1 AA 214-216. Therefore, Glover was charged as follows: Count 3: Discharge of Firearm From or Within a Structure or Vehicle and Count 4: Ownership or Possession of Firearm by Prohibited Person. Counts 1 and 2 remained the same.

² The record shows that the State agreed to dismiss Count 4 if the jury found Glover guilty of first or second degree murder. 5 AA 990. The State explained that if Glover raised a claim, on appeal or in a post-conviction habeas petition, regarding Count 4, the State reserved the right to charge Glover with Count 4. *Id.* As Glover was found guilty of first-degree murder, Count 4 was dismissed. 5 AA 1046.

of 28 months, to run concurrent to Count 1; and Count 3: a maximum of 180 months with a minimum 60 months, to run concurrent to Counts 1 and 2. 5 AA 1066-1067. Glover received 1,011 days of credit for time served. Id. A Judgment of Conviction (“JOC”) was filed on October 15, 2018. 2 AA 305-306.

On November 8, 2018, Glover filed his Notice of Appeal. 2 AA 307-310.

STATEMENT OF THE FACTS

On January 1, 2016, Miranda Sutton (“Miranda”) lived in a townhome in North Las Vegas with her husband, Patrick Fleming (“Patrick”), her 21-year-old daughter Akira Veasley (“Akira”), her goddaughter Angela, and Angela’s two boys.³ 4 AA 789-90, 837-38. Approximately, one week prior to Miranda and her family moving into the townhome, Glover, also temporarily moved in. 4 AA 792-93. Glover started staying with Miranda and her family because he had a daughter with Angela. Id.

On the morning of New Year’s Day, 2016, Patrick woke up, drove Angela to work, and stopped by his office to retrieve his paycheck. Id. When he returned, Patrick confronted his step-daughter, Akira, about having a young man in his vehicle on New Year’s Eve when he asked her not to. 4 AA 794-95. Akira then started to

³ At trial, Miranda testified that the townhome had two stories. 4 AA 790-91. She described that the entrance to the townhome was on the first-floor along with garage. Id. She noted that when you entered the townhome on the first-floor there was a landing with stairs leading to the dining/living room area. Id. The landing area also contained a door that lead into the garage. Id.

argue with Patrick in the garage. 4 AA 839. Hearing the argument, Miranda headed downstairs and into the garage. 4 AA 794-95 There, she observed her husband, Patrick, and her daughter, Akira, engaged in a “typical argument.” Id.

At some point, Glover interrupted the argument when he came downstairs and handed Miranda the phone. 4 AA 840. Miranda spoke to Angela on the phone and observed Glover head back up the stairway of the townhome. 4 AA 796. After the argument ended and Patrick apologized, Glover came downstairs a second time and asked to speak with Miranda. 4 AA 796-97, 841. Miranda followed Glover upstairs. 4 AA 797. Upstairs, Glover headed towards Angela’s bedroom and asked to speak with Miranda in the bedroom. Id. Once in the bedroom, Glover asked Miranda: “do you want me to handle this, do you want me to take care of it?” Confused, Miranda asked for clarification. Id. Glover explained that he heard Patrick “down there fighting you guys.” Id. Miranda admitted to Glover that there was an argument, however, she assured him that “everything [was] okay . . . [and that there was] no problem.” Id.

During the conversation between Miranda and Glover, Akira testified that “[e]verything was done [and] [e]verything [was] fine at this point.” 4 AA 841. Miranda and Glover exited Angela’s bedroom and Patrick confronted Glover as to why he was talking to Miranda. 4 AA 799. Miranda and Akira testified that they observed the confrontation between Glover and Patrick. Id., 4 AA 841. They further

testified that they heard Glover accuse Patrick of fighting with both women in the garage. Id. Patrick denied Glover's allegation and explained that they were "just having a conversation." 4 AA 841. Akira observed that Patrick's denial made Glover "even more mad." Id. When Patrick attempted to touch Glover, Miranda and Akira, testified that Glover said, "get off me." 4 AA 799, 842. Patrick then told Glover that they should go downstairs to talk. 4 AA 799.

Miranda and Akira then testified that they observed Patrick walking down the stairs and Glover following right behind him. 4 AA 799, 842. At this point, Miranda headed towards Angela's room to retrieve some baby items and then heard three gunshots. 4 AA 800. Similarly, Akira who was sitting on the couch upstairs, testified that approximately 10 to 15 seconds after she saw Glover following Patrick down the stairs, she heard three gunshots. 4 AA 843. Miranda hurried out of Angela's room, looked at Akira, and they both ran towards the stairs. 4 AA 800-01, 843. Miranda reached the stairs first and started to make her way down the stairs as Akira stayed behind her mom. Id. Miranda and Akira looked down and saw Patrick's body lying on the landing. 4 AA 801, 843. Terrified, Akira ran back up the stairs and called 911. 4 AA 802. Miranda observed Glover holding a gun as he stood over Patrick's motionless body. 4 AA 801. Glover then raised his gun, pointed it at

Miranda, and said something like: “don’t tell on me, don’t say anything.”⁴ Id. Miranda thought Glover was going to shoot her. Id. Miranda then saw Glover go through the garage door, heard the garage door opening, and attempted to give Patrick CPR until officers arrived. 4 AA 803.

Fearful because Glover had, at gunpoint, threatened her and her family if she said anything, Miranda chose to initially tell police that Patrick had been shot by some unknown person. 4 AA 815-18. Similarly, Akira initially told police that her step-father had been shot by a person named Hatch, who had come to the townhome to buy marijuana from Patrick. 4 AA 850-51. In addition to Glover’s threat, Miranda and Akira both chose to lie to police because they testified that they knew Glover had committed other acts of violence against other people in the past. 4 AA 836, 856. Miranda testified that once she went back upstairs to check on the children in the house, she noticed they were in a room with the door shut. 4 AA 804. The children told Miranda that Glover had ushered them into the room, closed the door, and told them to stay in the room. Id.

Upon arrival, Homicide Detective Benjamin Owens (“Det. Owens”) began to protect the integrity of the crime scene after he determined that Patrick had been

⁴ At trial, the State refreshed Miranda’s memory by showing her a transcript of what she told police regarding what Glover had said to her when he pointed his gun at her. 4 AA 810. Miranda testified that Glover said: “if you and your kids want to live, you’ll shut the fuck up.” Id. at 811.

murdered. 5 AA 939-940. During his investigation, Det. Owens discovered that Patrick had a Glock 19 tucked into a waistband holder. Id. at 941, 943. Det. Owens testified that he later determined that the gun found on Patrick was loaded, however, its chamber was empty. Id. Therefore, the gun would not fire if the trigger was pulled. Id. Indeed, for the gun to fire it needed to be racked back in order for a round to enter its chamber. 4 AA 895. Det. Owens's investigation also revealed that the townhome had no signs of forced entry and that there was no property loss within the townhome. Id. at 946.

Finally, the medical examiner testified that Patrick was shot three times. 4 AA 870. The first shot entered the back of Patrick's head at downward angle, went through his brain, cut his brain stem, and lodged in his fractured jaw. 4 AA 873. The second shot entered and exited through Patrick's inner right upper arm causing a broken humerus. 4 AA 876. The third shot entered Patrick's upper right thigh. 4 AA 877. The medical examiner concluded that wounds had a downward trajectory and the cause of Patrick's death was the gunshot wound to the back of his head. 4 AA 878.

SUMMARY OF THE ARGUMENT

Glover challenges the sufficiency of the evidence with respect to his convictions. However, Glover's arguments in support of his claims are unpersuasive because when viewed in a light most favorable to the State, the evidence presented

was sufficient for any reasonable trier of fact to convict Glover of all counts beyond a reasonable doubt. Additionally, Glover avers that the State engaged in burden shifting during rebuttal. A close examination of the record shows that there was no prosecutorial misconduct and Glover cannot establish that he was prejudiced and denied a fundamentally fair trial. Lastly, Glover complains that he was denied a fair trial when the district court allowed improper character evidence of his previous bad acts. This claim fails because Glover cannot show that the district court abused its discretion when it allowed Miranda and Akira to testify that they knew Glover had been violent in the past with other people to explain their inconsistent statements. Similarly, Glover cannot demonstrate he was prejudiced by their testimonies as the district court took great lengths to ensure Miranda's and Akira's testimonies were limited in scope. Even after limiting the scope of their testimonies, the district court took an additional precautionary step by issuing a limiting instruction. Further, even if this Court finds that the district court did err, the error was harmless because of the overwhelming evidence of guilt presented at trial against Glover. As such, Glover's Judgment of Conviction should be affirmed in its entirety.

ARGUMENT

I. THE STATE PRESENTED SUFFICIENT EVIDENCE TO CONVICT GLOVER ON ALL COUNTS

First, Glover challenges the sufficiency of the evidence presented at trial. Appellant's Opening Brief ("AOB") at 8-10. Glover argues that the State failed to

present fingerprint or DNA evidence linking him to the murder. Id. at 8. Glover contends that the only evidence presented against him was the testimony of Miranda and Akira. Id. at 9-10. Glover, therefore, concludes that because both Miranda and Akira initially did not reveal to police that he was the shooter, he should have been found not guilty at trial. Id. Glover's arguments are unpersuasive as the State presented sufficient evidence to convict on all counts.

The relevant inquiry in a sufficiency of the evidence claim is not whether the court is convinced of the defendant's guilt beyond a reasonable doubt. Wilkins v. State, 96 Nev. 367, 374, 609 P.2d 309, 313 (1980). Rather, the limited inquiry is "whether, after viewing 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." Milton v. State, 111 Nev. 1487, 1491, 908 P.2d 684, 686-87 (1995) (quotation and citation omitted). Thus, the evidence is only insufficient when "the prosecution has not produced a minimum threshold of evidence upon which a conviction may be based, even if such evidence were believed by the jury." Evans v. State, 112 Nev. 1172, 1193, 926 P.2d 265, 279 (1996) (emphasis removed).

Here, the jury properly convicted Glover of counts 1-3. First, the State was not required to present DNA or fingerprint evidence tying Glover to Patrick's murder. Second, Glover's attempt to argue that this Court should overturn his convictions based on Miranda's and Akira's testimonies lacks merit and is

unsupported by any case law. This is particularly true because both of their testimonies were substantially the same and the factfinder had the opportunity to weigh their credibility, and concluded they were credible. McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992) (reasoning that “it is the jury’s function, not that of the court, to assess the weight of the evidence and determine the credibility of witnesses.”).

With respect to count 1, Murder in the First Degree, the jury’s conviction was proper. Indeed, Miranda explained to the jury that Patrick and Akira had an argument on January 1, 2016. 4 AA 794-95. Miranda told the jury that when Glover pulled her aside she assured him that this was only a family argument and he did not need to “handle” anything. 4 AA 797. Despite the explanation, Glover disregarded Miranda’s comments and decided to kill Patrick. Miranda and Akira both testified that they saw Patrick head down the stairs first while he was followed closely by Glover. 4 AA 799, 842. They both testified that, seconds later, they heard not one, not two, but three gunshots. 4 AA 800, 843. When Miranda and Akira reached the stairs, they witnessed Patrick’s body lying on the landing, and Miranda saw Glover standing over Patrick’s body. 4 AA 801, 843.

In addition to the eyewitness testimony, the State introduced, and the jury considered and weighed, evidence from the medical examiner’s autopsy. The medical examiner’s findings corroborated Miranda’s and Akira’s testimonies.

Specifically, the medical examiner testified that one of the gunshot wounds entered the back of Patrick's head, traveled downward, and became lodged in his jaw. 4 AA 873. The downward trajectory of this gunshot, along with the other two gunshot wounds, was wholly consistent with Miranda's and Akira's testimonies that they observed Glover going down the stairs closely behind Patrick and then heard three gunshots. As such, the State presented sufficient evidence to convict Glover of count 1.

Regarding count 2, Glover committed Assault With a Deadly Weapon when he looked up at Miranda, raised his gun at her, and threatened her. 4 AA 801-02. Glover placed Miranda in reasonable apprehension of immediate bodily harm. Indeed, she testified that given that Glover had just murdered her husband, Miranda thought Glover would shoot her next. 4 AA 801. Accordingly, count 2 was supported by the evidenced presented at trial.

Regarding count 3, Glover was properly convicted of discharging a firearm from or within a structure. Glover maliciously fired his gun when he murdered Patrick by shooting him three times inside of a townhome in North Las Vegas. 4 AA 789-90, 870. Miranda testified that the townhome had stairs leading from the dining/living room area to a first-floor landing. 4 AA 790-91. Miranda and Akira further testified that seconds after they observed Patrick head down the townhome's stairs, while being followed by Glover, they heard gunshots. 4 AA 799, 842-43.

When they hurried over to the top of the stairs, they saw Patrick's body lying in the townhome's landing. 4 AA 801, 843. Therefore, because Glover discharged his gun multiple times from within the townhome, this conviction should stand. Accordingly, because the jury weighed the evidence in this case and determined that Miranda's and Akira's testimonies were credible, when viewing the evidence in the light most favorable to the prosecution, this Court should uphold all of Glover's convictions.

II. THE STATE'S REMARKS DURING REBUTTAL DID NOT SHIFT THE BURDEN TO GLOVER

Next, Glover argues that the State shifted the burden to the defense. AOB, at 11-12. Glover claims that the State attempted to "short circuit any possible consideration of [] reasonable doubt" during its rebuttal and that the State's comment resulted in burden shifting. *Id.* However, Glover's claim fails because when taken in context the State's remarks do not warrant reversal as criminal convictions are not to be overturned lightly. *Browning v. State*, 124 Nev. 517, 533, 188 P.3d 60, 72 (2008) ("When reviewing prosecutorial misconduct, the challenged comments must be considered in context and a criminal conviction is not to be lightly overturned on the basis of a prosecutor's comments standing alone.") (internal quotations omitted).

"[A]s long as a prosecutor's remarks do not call attention to a defendant's failure to testify, it is permissible to comment on the failure of the defense to counter or explain evidence presented." *Evans v. State*, 117 Nev. 609, 631, 28 P.3d 498, 513

(2001), citing U.S. v. Lopez-Alvarez, 970 F.2d 583, 596 (9th Cir. 1992). Further, the State may respond to defense theories and arguments. Williams v. State, 113 Nev. 1008, 1018-19, 945 P.2d 438, 444-45 (1997). This includes commenting on a defendant's failure to substantiate his theory. Colley v. State, 98 Nev. 14, 16, 639 P.2d 530, 532 (1982); See also Bridges v. State, 116 Nev. 752, 762, 6 P.3d 1000, 1008 (2000), citing State v. Green, 81 Nev. 173, 176, 400 P.2d 766, 767 (1965) ("The prosecutor had a right to comment upon the testimony and to ask the jury to draw inferences from the evidence, and has the right to state fully his views as to what the evidence shows."). *Further, if the defendant presents a theory of defense, but fails to present evidence thereon, the State may comment upon the failure to support the supposed theory.* Evans, 117 Nev. at 630-631, 28 P.3d at 513; see McNelton v. State, 115 Nev. 396, 408-09, 990 P.2d 1263, 1271-72 (1999) (emphasis added).

Commenting on the lack of evidence supporting a defense theory does not constitute burden shifting. During Glover's closing argument, defense counsel attempted to stir reasonable doubt by arguing that there was no DNA or other physical evidence linking Glover to the murder. 4 AA 1027-30. Counsel downplayed the fact that Glover had placed the children in the room prior to murdering Glover. 5 AA 1030. Counsel argued that one reason why Glover would place the children in the room was to prevent them from hearing the argument between Patrick and Akira.

Id. Then counsel said the following: “And that’s even if [Glover] were there and [Glover] was involved in this thing, which he wasn’t.” 5 AA 1030-31.

On rebuttal, the State explained that DNA or other physical evidence would not have proven that Glover killed Patrick. 5 AA 1031-33. The State highlighted that this was particularly true because Glover’s DNA and fingerprints would have been found throughout the house as he had been living in the townhome. Id. During its explanation, the State commented on defense counsel’s argument that Glover was not even in the townhome by stating the following:

State: He said – [Defense counsel] said, as he was making his comment about this Defendant, is [sic] the Defendant was not even there. Where is the evidence about that? In fact, the evidence is quite the contrary. Ms. Sutton and Ms. Veasley say the Defendant is in the apartment at the time of the shooting. Well, when the police arrive, where's Mr. Glover?

5 AA 1033.

Here, the State was merely commenting on defense counsel’s statement that Glover was not in the townhome on the day of the murder. The State was not arguing that Glover had to provide evidence to rebut elements of the charges against him. Through its comment, the State explained to the jury that the defense’s theory of the case, that Glover was not the shooter, was directly belied by Miranda’s and Akira’s testimonies. Both Miranda and Akira testified that they observed Patrick head down the stairs while being trialed by Glover then, seconds later, heard three gunshots, and

when they rushed to the stairs they saw Patrick's lying motionless on the landing. 4 AA 800-01, 843. Further, the State's comment did not disparage counsel or Glover. Instead, the State merely commented on the evidence presented at trial, which was entirely permissible. Evans, 117 Nev. at 630–31, 28 P.3d at 513; McNelson, 115 Nev. at 408-409, 990 P.2d at 1271–1272; Colley, 98 Nev. at 16, 639 P.2d at 532. Accordingly, Glover's claim should be denied.

However, even if the Court concludes that the State's remarks were improper, Glover's claim still fails under a harmless-error standard of review because he cannot show a substantial right was prejudiced and given the evidence at trial a rational jury would have found him guilty.

NRS 178.598 provides that “[a]ny error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.” Constitutional error is harmless when “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) (quoting Neder v. United States, 527 U.S. 1, 3, 119 S. Ct. 1827, 1830 (1999)). 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).

Here, the State presented extensive and compelling evidence linking Glover to the crime. As discussed *supra* in section I, the jury was presented with eyewitness testimony from Miranda and Akira, both of which identified Glover as the person who murdered Patrick. Notably, the jury also heard testimony from the medical examiner that corroborated both Miranda's and Akira's testimonies. Specifically, that Patrick was being followed by Glover as they headed down the stairs of the townhome. Within seconds, Miranda and Akira heard three gunshots, ran to the stairs, and saw Patrick lying on the ground. Valdez, 124 Nev. 1172, 1188, 196 P.3d 465, 476 (2008) (reasoning that "this court will not reverse a conviction based on prosecutorial misconduct if it was harmless error."); see also United States v. Young, 470 U.S. 1, 11 (1985) ("[A] criminal conviction is not to be lightly overturned on the basis of a prosecutor's comments standing alone, for the statements or conduct must be viewed in context . . .").

Accordingly, because any rational trier of fact, given the overwhelming evidence of guilt presented by the State, would have found Glover guilty beyond a reasonable doubt, and Glover fails to show he was prejudiced by the State's remarks, his conviction should be upheld.

III. THE DISTRICT COURT DID NOT ADMIT IMPROPER CHARACTER EVIDENCE

Next, Glover argues that the district court erred when it allowed improper evidence under NRS 48.045(2). AOB, 12-15. Specifically, Glover contends that he

was prejudiced by the district court allowing Miranda and Akira to testify that they knew he had been violent in the past. Id. at 14. Glover concludes that such testimony amounted to propensity evidence and caused him to receive an unfair trial. Id. at 14-15. Glover's arguments are unpersuasive.

NRS 48.045(2) provides that, "[e]vidence 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." However, such evidence is admissible "for other purposes," including establishing intent, motive, or knowledge. Id. Evidence is not a prior bad act unless the evidence elicited speaks to chargeable collateral offenses. See Salgado v. State, 114 Nev. 1039, 1042-43, 968 P.2d 324, 326-27 (1998) (explaining that cases in which the evidence does not implicate prior bad acts or collateral offense on the defendant's part, a Petrocelli hearing is not required). "This [C]ourt reviews a district court's decision to admit or exclude prior-bad-act evidence under an abuse of discretion standard." Fields v. State, 125 Nev. 785, 789, 220 P.3d 709, 712 (2009); see also Chavez v. State, 125 Nev. 328, 339, 213 P.3d 476, 484 (2009) ("We generally review a district court's evidentiary rulings for an abuse of discretion.").

On the second day of trial, prior to opening statements, the district court heard argument regarding the fact that Miranda and Akira knew Glover for years, they had knowledge that he was likely involved in a gang, had committed a murder, and had

an extensive criminal record that involved acts of violence. 4 AA 717-746, 723. The State explained to the district court that Miranda and Akira had given police two versions of what happened on January 1, 2016. Id. In the first version, they conceded that someone named Hatch killed Patrick. Id. at 718. In the second version, Miranda and Akira, on January 2, 2016, contacted police and revealed to them that Glover shot Patrick. 4 AA 721-723. Therefore, the State argued that to explain the inconsistency between the two versions of the crime that were given to police, the State was allowed to inquire about the fact that Miranda and Akira knew Glover had a history of violence. Id. Miranda and Akira's knowledge of Glover's past would explain why they took his threat seriously when he told Miranda, at gunpoint, not to snitch on him. 4 AA 801, 811.

After a lengthy argument, the district court made a preliminary ruling that it would not allow the State to inquire about whether Miranda and Akira knew if Glover had previously murdered people. 4 AA 742-43. However, the district court also found that it would allow the State "to inquire if [Miranda and Akira had] [] knowledge of his history of -- that he had a history of violence in the past." Id. The district court explained to the parties that such evidence was "not evidence that the Defendant committed a bad act." Id. at 744. Rather, the district court was going to instruct the jury that such evidence was limited to show the witnesses' mindset as to why they would change their story. Id. Prior to making a final ruling, the district

court explained that it needed to hear an offer of proof from both Miranda and Akira before allowing State's line of questioning. Id. at 743. After hearing testimony from Miranda and Akira, outside the presence of the jury, the district court made its final ruling:

So, based upon the testimony of the witnesses, balancing -- all the balancing in the world, I appreciate that there's some evidence of knowledge of gang affiliation, but the gist of this is that these women both believed he went to prison before for some kind of death of another, at the hands of another, and the mother -- I mean the wife of the decedent testified that she knew he had a violent past. And so, that's where I'm going to leave it. I'm going to allow the District Attorney to talk about the witness' beliefs of the history of violence, but I'm going to exclude gang affiliation because it's not really the impetus of this. It's mostly a deceased relative, a very serious threat, and a history of violence.

4 AA 784.

Here, the district court did not err when it allowed Miranda and Akira to testify on redirect that they were aware that Glover had been violent towards other people in the past. 4 AA 837, 856. This is particularly true because the State offered the evidence to explain the inconsistency in the witnesses' testimonies, not to show that Glover had a propensity for violence under NRS 48.045(2). Indeed, the district court during its preliminary ruling, explained that this was "not evidence that [Glover] committed a bad act." 4 AA 744. After hearing from Miranda and Akira, the district court further limited its ruling and made it clear to the State that it was prohibited

from inquiring about Glover's gang affiliation. Id. at 784. Because the district court limited its ruling it specifically sought to avoid Glover being unduly prejudiced by Miranda's and Akira's relevant testimony.

While Glover argues that he was prejudiced by such testimony, any perceived prejudice was cured by the district court's decision to provide the jury with a limiting instruction. After the State asked both Miranda and Akira if they had knowledge that Glover "committed other acts of violence against other people in the past" the district court gave the following instruction:

Ladies and gentlemen, I'm going to caution you now, ladies and gentlemen of the jury, that the testimony that the witness believed the Defendant had a history of violence against persons is being offered and may only be considered by you solely for the purpose of explaining the state of mind of the witness at the time she made her statement to police on January 1st, 2016. This testimony, if believed, is not to be considered as substantive evidence that the Defendant has a history of violence against persons or that he is a person of bad character.

4 AA 836-837. In light of such the district court's limiting instruction, Glover fails to demonstrate prejudice. Leonard v. State, 117 Nev. 53, 66, 17 P.3d 397, 405 (2001) (explaining that jurors are presumed to follow the district court's instructions.).

Lastly, even if this Court were to find that the district court erred in admitting Miranda and Akira's testimony that they had knowledge of Glover's history of violence, it should find that this error was harmless. See Newman v. State, 129 Nev.

222, 236, 298 P.3d 1171, 1181 (explaining that an error is harmless unless it had a ‘substantial and injurious effect or influence in determining the jury’s verdict.’” (quoting Tavares v. State, 117 Nev. 725, 732, 30 P.3d 1128, 1132 (2001)). Here, any errors in admitting the so-called “bad act” evidence was harmless because the evidence of Glover’s guilt was overwhelming. As discussed in sections I and II, the jury heard eyewitness testimony from Miranda and Akira. Further, the medical examiner’s testimony corroborated Miranda’s and Akira’s testimonies and showed that the gunshots that entered Patrick’s body had a downward trajectory. This testimony was consistent with what the jury heard from Miranda and Akira. Specifically, that they observed Glover walking behind Patrick as they headed down the stairs before they heard gunshots. In light of this evidence of Glover’s guilt, an error in admitting the evidence of Miranda and Akira’s shared knowledge that he had been violent previously, was harmless beyond a reasonable doubt.

CONCLUSION

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

///

///

///

///

Dated this 16th day of May, 2019.

Respectfully submitted,

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

BY */s/ John T. Niman*

JOHN T. NIMAN
Deputy District Attorney
Nevada Bar #014408
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 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 2003 in 14 point font of the Times New Roman style.
2. **I further certify** that this brief complies with the page or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either proportionately spaced, has a typeface of 14 points or more, contains 5,162 words and 21 pages.
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 16th day of May, 2019.

Respectfully submitted

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

BY */s/ John T. Niman*

JOHN T. NIMAN
Deputy District Attorney
Nevada Bar #014408
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 16th day of May, 2019. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON D. FORD
Nevada Attorney General

KEDRIC A. BASSETT
Deputy Public Defender

JOHN T. NIMAN
Deputy District Attorney

/s/ J. Garcia

Employee, Clark County
District Attorney's Office

JTN/John Torre/jg