

IN THE SUPREME COURT OF THE STATE OF NEVADA

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SASHA WILLIAMS,  
Appellant,

v.

THE STATE OF NEVADA,  
Respondent.

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Case No. 78769

**RESPONDENT'S ANSWERING BRIEF**

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

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## **TABLE OF CONTENTS**

TABLE OF AUTHORITIES .....	ii
STATEMENT OF THE ISSUE.....	1
STATEMENT OF THE CASE.....	1
STATEMENT OF THE FACTS .....	3
SUMMARY OF THE ARGUMENT .....	4
ARGUMENT .....	4
I.    APPELLANT DID NOT HAVE THE RIGHT TO CROSS- EXAMINE THE VICTIM SPEAKERS AT HER SENTENCING BECAUSE THEY DID NOT DISCUSS ANY SPECIFIC PRIOR ACTS OF THE APPELLANT.....	4
CONCLUSION .....	8
CERTIFICATE OF COMPLIANCE.....	9
CERTIFICATE OF SERVICE .....	10

## **TABLE OF AUTHORITIES**

Page Number:

### **Cases**

#### Buschauer v. State,

106 Nev. 890, 894, 804 P.2d 1046, 1048 (1990) .....6

#### Davis v. State,

107 Nev. 600, 606, 817 P.2d 1169, 1173 (1991) .....5

#### Dermody v. City of Reno,

113 Nev. 207, 210-11, 931 P.2d 1354, 1357 (1997).....5

#### Guy v. State,

108 Nev. 770, 780, 839 P.2d 578, 58 (1992), cert. denied, 507 U.S. 1009, 113 S.  
Ct. 1656 (1993).....5

#### Martinorellan v. State,

131 Nev. \_\_, \_\_, 343 P.3d, 590, 594 (2015) .....5

### **Statutes**

NRS 176.012(3)(b).....5

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**ROUTING STATEMENT**

This appeal is presumptively retained by the Supreme Court because it relates to a conviction for a Category B felony based on Appellant's plea of guilty. NRAP 17(b)(1).

**STATEMENT OF THE ISSUE**

1. Whether Appellant should have been allowed to cross-examine the three victim speakers at her sentencing hearing.

**STATEMENT OF THE CASE**

On February 13, 2013, the State charged Appellant and her co-conspirators, Maurice Sims, Brandon Range, and Darron Morris by way of Indictment. I Respondent's Appendix (RA) 001. Appellant was charged with the following: Count 3 – Conspiracy to Commit Burglary (Gross Misdemeanor – NRS 100.480, 205.060),

Count 4 – Burglary While in Possession of a Firearm (Category B Felony – NRS 205.060), Count 5 – Conspiracy to Commit Robbery (Category B Felony – NRS 199.480, 200.380), Count 6 – Robbery with Use of a Deadly Weapon (Category B Felony – NRS 200.380, 193.165), Count 7 – Robbery with Use of a Deadly Weapon (Category B Felony – NRS 200.380, 193.165), Count 8 – Robbery with Use of a Deadly Weapon (Category B Felony – NRS 200.380, 193.165), Count 9 – Conspiracy to Commit Murder (Category B Felony – NRS 199.480, 200.010), Count 10 – Murder with Use of a Deadly Weapon (Category A Felony – NRS 200.010, 200.030, 193.165) Count 11 – Murder with Use of a Deadly Weapon (Category A Felony – NRS 200.010, 200.030, 193.165), and Count 12 – Attempt Murder with Use of a Deadly Weapon (Category B Felony – NRS 200.010, 200.030, 193.330, 193.165). I RA 003-007.

On April 13, 2016, Appellant pled guilty in District Court and signed a Guilty Plea Agreement. I RA 010. The Guilty Plea Agreement and Plea Transcript were filed under seal. Id. Appellant was arraigned and pled guilty to the following: Count 5 – Conspiracy to Commit Robbery, Count 6 – Robbery with Use of a Deadly Weapon, Count 7 – Robbery with Use of a Deadly Weapon, and Count 8 – Robbery with Use of a Deadly Weapon. Id.

On April 3, 2019, the district court sentenced Appellant as follows: Count 5 – Conspiracy to Commit Robbery, to a minimum of twenty-four (24) months and a

maximum of seventy-two (72) months in the Nevada Department of Corrections; Count 6 – Robbery with Use of a Deadly Weapon, to a minimum of forty-eight (48) months and a maximum of one hundred eighty (180) months in the Nevada Department of Corrections, consecutive to Count 5; Count 7 – Robbery with Use of a Deadly Weapon, to a minimum of forty-eight (48) months and a maximum of one hundred eighty (180) months in the Nevada Department of Corrections, concurrent to Count 6; and Count 8 – Robbery with Use of a Deadly Weapon, to a minimum of forty-eight (48) months and a maximum of one hundred eighty (180) months in the Nevada Department of Corrections, concurrent to Count 7. I AA 021. Appellant was sentenced to an overall aggregate sentence of a minimum of one hundred twenty (120) months and a maximum of three hundred sixty (360) months in the Nevada Department of Corrections, with 1,499 days credit for time served. Id.

The Judgment of Conviction was filed on April 10, 2019. I RA 011-012. An Amended Judgment of Conviction was filed on June 11, 2019. I RA 013-015. Appellant filed the instant Opening Brief on September 24, 2019.

### **STATEMENT OF THE FACTS**

On January 8, 2013, the Appellant and her co-conspirators entered Laurice Brightman (“Brightman”), Anthony Anderson (“Anderson”), and Evin Russell’s (“Russell”) apartment with the intent to take their personal property. I RA 003. Appellant and her co-conspirators entered the victims’ apartment with firearms. Id.

The co-conspirators threatened the victims by brandishing their firearms, and began to take the victims' television, Sony PlayStation, MacBook Pro, cellular telephones, jewelry, and money. I RA 004. During the commission of this robbery, one of the co-conspirators began shooting at the victims. I RA 006. Multiple shots went off in the apartment and both Russell and Anderson were killed. Id. The third victim, Brightman, was also shot, but survived. I RA 007.

### **SUMMARY OF THE ARGUMENT**

Appellant did not have the right to cross-examine the three victim impact speakers at her sentencing because they did not discuss any specific prior bad acts of the Appellant. Instead, they discussed how the crime impacted them and their families, the Appellant's involvement in the crime, and their desired sentences. Cross-examination is only warranted when the victim speakers discuss any of a defendant's specific prior bad acts that are not in the record or do not relate to the crime itself. Because the speakers did not discuss any of Appellant's acts outside of the crime itself, cross-examination was not warranted. Therefore, the conviction should be affirmed.

### **ARGUMENT**

#### **I. APPELLANT DID NOT HAVE THE RIGHT TO CROSS-EXAMINE THE VICTIM SPEAKERS AT HER SENTENCING BECAUSE THEY DID NOT DISCUSS ANY SPECIFIC PRIOR ACTS OF THE APPELLANT.**

Initially, if Appellant did not object or raise a specific issue and/or argument below, the claim is waived and reviewable only for plain error. Dermody v. City of Reno, 113 Nev. 207, 210-11, 931 P.2d 1354, 1357 (1997); Guy v. State, 108 Nev. 770, 780, 839 P.2d 578, 58 (1992), cert. denied, 507 U.S. 1009, 113 S. Ct. 1656 (1993); Davis v. State, 107 Nev. 600, 606, 817 P.2d 1169, 1173 (1991). Plain error review asks:

“To amount to plain error, the ‘error must be so unmistakable that it is apparent from a casual inspection of the record.’” Vega v. State, 126 Nev. \_\_\_, \_\_\_, 236 P.3d 632, 637 (2010) (quoting Nelson, 123 Nev. at 543, 170 P.3d at 524). In addition, “the defendant [must] demonstrate [] that the error affected his or her substantial rights, by causing ‘actual prejudice or a miscarriage of justice.’” Valdez, 124 Nev. at 1190, 196 P.3d at 477 (quoting Green v. State, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003))). Thus, reversal for plain error is only warranted if the error is readily apparent and the appellant demonstrates that the error was prejudicial to his substantial rights.

Martimorellan v. State, 131 Nev. \_\_\_, \_\_\_, 343 P.3d, 590, 594 (2015).

Given that Appellant never objected to the victim speakers at her sentencing hearing, this Court must find plain error to warrant reversal.

During a defendant’s sentencing hearing, the court shall allow a victim the opportunity to “reasonably express any views concerning the crime, the person responsible, the impact of the crime on the victim and the need for restitution.” NRS 176.012(3)(b). “Where the impact statement will refer to any specific prior acts of the defendant ... due process requires that the accuser be under oath, an opportunity for cross-examination and, perhaps must importantly, reasonable notice of the prior



acts which the impact statement will contain.” Buschauer v. State, 106 Nev. 890, 894, 804 P.2d 1046, 1048 (1990). In Buschauer, the victim’s mother made several allegations of previous spousal abuse by the defendant. Id. at 895. The allegations that she made were not in the record and were not related to any of the spousal abuse charges in the case. Id.

Here, Appellant had no need to cross-examine the three victim speakers, because none discussed any prior specific bad acts of the Appellant. The first speaker, Evelyn Anderson, was one victim Anthony’s mother. I AA 008. In response to Appellant’s counsel, she told the court that, “This was all planned that day from her. He said that all the things about the – she was supposed to be – he was making her do this and do that. No. It was boyfriend and her. She planned this.” I AA 009. She went into more detail about the crime itself, the Appellant’s role in the crime, the impact this had on her life, and that she hopes Appellant receives the maximum sentence. I AA 009-010. She never once mentions any prior specific bad acts about the Appellant.

The second speaker, Gwendolyn Tolbert, was the aunt of one of the victims. I AA 011. During her victim impact statement, she started to direct her attention towards the Appellant, and said, “So, I don’t feel like what you’re saying that you have changed all of that. They don’t get to show that.” I AA 013. The court, sua sponte, steps in and comments that the speaker needs to direct her statement to the

court and not the Appellant. Id. She also tells the court that this whole crime was senseless, that she wishes her son had his best friend back, and that she hopes justice is served. I AA 013-014. The victim speaker also never once mentions any specific bad acts about the Appellant unrelated to the instant case.

The final speaker, Vennie Tolbert-Rodgers, was the mother of one of the victims. I AA 014. She told the court, “But just like everyone else said, she’s not innocent in this situation. She did not have to go. She had several conversations with City prior to. She did not stop the situation from happening. She was just in there and didn’t stop the situation as it was unfolding.” I AA 015. She also told the court how the crime has impacted her and her children, the type of person her son was, and discussed the Appellant’s involvement in the crime. I AA 014-017. This speaker also only discussed the crime itself, and never mentioned any prior acts by the Appellant other than her acts related to the immediate incident.

As such, Appellant’s cross-examination of the victim impact speakers was not necessary because none of the three speakers ever discussed any specific prior acts by the Appellant. Instead, they only discussed the instant crime and the impact it had on themselves and their families. The instant case is unlike Buschauer, where cross-examination was warranted when the speaker discussed previous spousal abuse allegations of the defendant. Here, Appellant cites to absolutely no specifics of any allegations that would qualify as specific bad acts that would even warrant cross-

examination had the she requested it. The comments by the victim speakers only related to the crime itself and the Appellant's involvement. Therefore, this claim should be denied, and the conviction should be affirmed.

### **CONCLUSION**

Wherefore, the State respectfully requests that Appellant's Judgment of Conviction be AFFIRMED.

Dated this 16th day of October, 2019.

Respectfully submitted,

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BY */s/ Karen Mishler*

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## **CERTIFICATE OF COMPLIANCE**

1. **I hereby certify** that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in 14 point font of the Times New Roman style.
2. **I further certify** that this brief complies with the page and type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points, contains 1,632 words and does not exceed 30 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 October, 2019.

Respectfully submitted

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## **CERTIFICATE OF SERVICE**

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on October 16, 2019. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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