

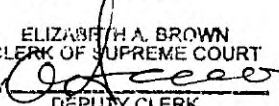
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DUSTIN MILLER, A/K/A DUSTON  
MILLER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 83883-COA

**FILED**

AUG 08 2022

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Dustin Miller appeals, pursuant to NRAP 4(c), from a judgment of conviction entered pursuant to a jury verdict of six counts of burglary, five counts of grand larceny, three counts of robbery, and one count each of conspiracy to commit robbery and battery resulting in substantial bodily harm. Eighth Judicial District Court, Clark County; Kathleen E. Delaney, Judge.

Miller argues that the State failed to present sufficient evidence to convict him “on many of the charges.” Miller fails to identify which of the charges he believes the State presented insufficient evidence for, nor does he provide any argument as to how the evidence presented at trial was insufficient. Further, to the extent that Miller claims that counsel was ineffective with regard to the sufficiency of the evidence, this claim is not properly raised on direct appeal. *See Pellegrini v. State*, 117 Nev. 860, 883, 34 P.3d 519, 534 (2001) (“[W]e have generally declined to address claims of ineffective assistance of counsel on direct appeal unless there has already been an evidentiary hearing or where an evidentiary hearing would be unnecessary.”), *abrogated on other grounds by Rippo v. State*, 134 Nev. 411,

423 n.12, 423 P.3d 1084, 1097 n.12 (2018). Therefore, Miller fails to demonstrate he is entitled to relief.

Next, Miller claims the district court erred when it admitted at trial his statement made to police. He raises three arguments in support of this claim.

First, Miller argues his statement should not have been admitted because he had a limited education and was not sophisticated in legal matters, he was in a hostile and coercive environment, the police used questionable tactics to manipulate him into waiving his rights, and counsel was not present. These claims were not raised in the motion to suppress filed below, and therefore, Miller is not entitled to relief absent a demonstration of plain error. *See Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48-49 (2018). To demonstrate plain error, an appellant must show there was an error, the error was plain or clear, and the error affected appellant's substantial rights. *Id.* at 50, 412 P.3d at 48.

Miller fails to demonstrate any error because he fails to allege what his education was and how it affected his ability to understand the interview, how the environment was hostile and coercive, or what questionable tactics were used by the police. Further, Miller was given his *Miranda*<sup>1</sup> warnings and waived the right to counsel.

Second, Miller argues his statement should not have been admitted because the police did not inform Miller he was being recorded. He claims NRS 200.640 "limits the use of unauthorized wire or radio communication." However, that statute is not applicable in this case because the police did not make "any connection, either physically or by

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<sup>1</sup>*Miranda v. Arizona*, 384 U.S. 436 (1966).

induction, with the wire or radio communication facilities of any person engaged in the business of providing service and facilities for communication.” NRS 200.640. To the extent Miller implies that the recording was an illegal wiretap, this court has previously concluded the recording did not constitute an illegal wiretap, *see Miller v. State*, No. 79795-COA, 2020 WL 601373, \*5 (Nev. Ct. App. Oct. 9, 2020) (Order Affirming in Part, Reversing in Part and Remanding), and further litigation of this claim is barred by the doctrine of law of the case, *see Hall v. State*, 91 Nev. 314, 315-16, 535 P.2d 797, 798-99 (1975).

Third, Miller argues his statement should not have been admitted because, had he known he was being recorded, it “would likely have influenced his decision on whether he should have made the lengthy statement he made.” Miller did not explain how recording his statement without his knowledge influenced his decision. For these reasons, we conclude Miller fails to demonstrate he is entitled to relief.

Next, Miller argues that trial counsel was ineffective for failing to supplement his pro se motion to suppress.<sup>2</sup> This claim is not properly raised on direct appeal. *See Pellegrini*, 117 Nev. at 883, 34 P.3d at 534. Therefore, we conclude Miller fails to demonstrate he is entitled to relief.

Next, Miller claims the district court erred when it denied Miller the right to full and effective cross-examination. Miller failed to allege how the district court erred. Therefore, we decline to consider this claim on appeal. *See Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987). To the extent that Miller argues that counsel was ineffective for failing to impeach witnesses, this claim was not properly raised on direct

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<sup>2</sup>Miller represented himself at the time he filed his motion. Counsel was later appointed for trial.

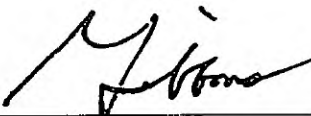
appeal. *See Pellegrini*, 117 Nev. at 883, 34 P.3d at 531. Therefore, we conclude Miller fails to demonstrate he is entitled to relief.

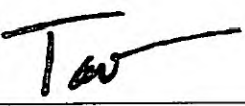
Next, Miller claims the State committed prosecutorial misconduct during closing argument. Miller argues that the State improperly identified him on video surveillance tapes on three occasions and at another time stated that the victim was still in pain and was not able to work. Miller argues these were improper personal comments and constituted the prosecutor acting as a witness.

Because Miller did not object below, he is not entitled to relief absent a demonstration of plain error. *See Jeremias*, 134 Nev. at 50, 412 P.3d at 48-49. The prosecutor was arguing reasonable inferences from the evidence presented at trial, and Miller thus failed to demonstrate any error by the prosecutor. *See Truesdell v. State*, 129 Nev. 194, 203, 304 P.3d 396, 402 (2013) (holding that a prosecutor may “assert inferences from the evidence and argue conclusions on disputed issues”). Therefore, we conclude Miller fails to demonstrate he is entitled to relief.

Finally, Miller claims the cumulative errors at trial entitled him to relief. Because Miller failed to demonstrate any error he is not entitled to relief. *See Chaparro v. State*, 137 Nev., Adv. Op. 68, 497 P.3d 1187, 1195 (2021). Accordingly, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Kathleen E. Delaney, District Judge  
Terrence M. Jackson  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk