IN THE SUPREME COURT OF THE STATE OF NEVADA

SERVANDO ORTIZ-MONROY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44760

FILED

AUG 24 2005

CLERK OF SUPREME COURT
BY DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count each of principal to trafficking in a controlled substance in an amount of 28 grams or more and conspiracy to violate the Uniform Controlled Substances Act. Ninth Judicial District Court, Douglas County; Michael P. Gibbons, Judge. The district court sentenced appellant Servando Ortiz-Monroy to serve concurrent prison terms of 10-25 years and 2-5 years.

First, Ortiz-Monroy contends that the district court violated his right to due process at trial by allowing a group of sixth-grade schoolchildren to watch closing arguments. Defense counsel objected to the presence of the children and argued that the jury "maybe [sic] less likely to render a not guilty verdict according to their own beliefs and opinions with the children present." The district court overruled defense counsel's objection. When the jury returned, the district court explained the presence of the children to the jury, stating that the class was invited to watch court proceedings "when they are studying government." The district court also instructed the jury as follows:

> [N]one of the parties involved in this case knew anything about this until this morning. As I mentioned again, it's just a coincidence that they are here today. I don't want you to draw any inferences or conclusion from the fact that a class of students is watching today. That should not be part of your consideration in any way, shape or form in your deliberations which you will begin shortly.

The children were present during the reading of the jury instructions and the State's closing argument. Ortiz-Monroy claims that the presence of the children "was possibly enough in itself to cause [him] injury," and that the State "sought to exploit the children's presence with an emotional closing argument." We disagree with Ortiz-Monroy's contention.

Ortiz-Monroy's argument amounts to mere speculation and he fails to demonstrate that he was prejudiced in any way by the presence of the children.[1] Further, the district court explained the presence of the children to the jury and instructed them that their presence in the courtroom should not be considered during deliberations.[2] Finally, we note that Ortiz-Monroy's trial was open to the public.[3] Therefore, we

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[1]Cf. McKenna v. State, 114 Nev. 1044, 1049-51, 968 P.2d 739, 743-44 (1998) (holding that the presence of several security and SWAT officers in the courtroom during the penalty phase of a capital trial was not inherently prejudicial).

[2]See Allred v. State, 120 Nev. 410, 415, 92 P.3d 1246, 1250 (2004) (stating that this court presumes that a jury follows the orders and instructions of the district court).

[3]NRS 1.090 provides:

continued on next page . . .

conclude that the district court did not violate Ortiz-Monroy's right to due process by allowing the sixth-grade group of children to briefly watch and listen to the proceedings.

Second, Ortiz-Monroy contends that the State's "highly emotional" closing arguments amounted to prosecutorial misconduct. We disagree. Initially, our review of the trial transcript reveals that, despite Ortiz-Monroy's assertion to the contrary, defense counsel did not object at any point during the State's closing and rebuttal closing arguments. Further, Ortiz-Monroy has not challenged the accuracy of the certified transcripts filed in this court. This court has repeatedly stated that the failure to raise an objection with the district court generally precludes appellate consideration of an issue.[4] Nevertheless, this court may address an alleged error if it was plain and affected the appellant's substantial

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. . . *continued*

> The sitting of every court of justice shall be public except as otherwise provided by law; but the judge of any court may exclude any minor during any criminal trial therein except such minor be on trial, or when testifying as a witness, or when he shall be a law student preparing to apply for a license to practice law.

(Emphasis added.)

[4]See Parker v. State, 109 Nev. 383, 391, 849 P.2d 1062, 1067 (1993) (holding that the failure to object to prosecutorial misconduct generally precludes appellate consideration).

rights.[5] We conclude that no plain error occurred and that the State did not commit prosecutorial misconduct.

Third, Ortiz-Monroy contends that "[t]he prosecution's comments before the jury that the man seated in the row behind the Defendant was a member of the 'Ortiz drug cartel' caused further violence to Defendant's due process rights." (Emphasis added.) Once again, we note that Ortiz-Monroy's argument is belied by the record. Our review of the trial transcript reveals that the State, for security purposes, noted the proximity of a drug cartel member to Ortiz-Monroy prior to the jury's return to the courtroom. Therefore, Ortiz-Monroy cannot demonstrate that he was prejudiced in any way, and his contention is without merit.

Finally, Ortiz-Monroy makes the following assertion: "Because an issue for appellate review is the certainty of defendant's conviction, a review of the trial transcript in its entirety may be beneficial." Although it is not clear what Ortiz-Monroy is alleging by this blanket statement, to the extent that he is challenging the sufficiency of the evidence, he has failed to support his contention with any cogent argument whatsoever. This court has repeatedly stated that "[i]t is appellant's responsibility to present relevant authority and cogent argument; issues not so presented need not be addressed by this court."[6] Further, Ortiz-Monroy has not, in fact, provided this court with the "trial

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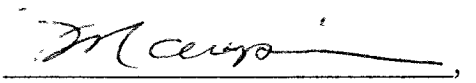
[5]See NRS 178.602 ("Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court."); Pray v. State, 114 Nev. 455, 459, 959 P.2d 530, 532 (1998).

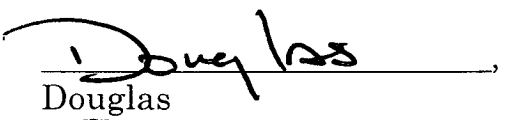
[6]Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987).

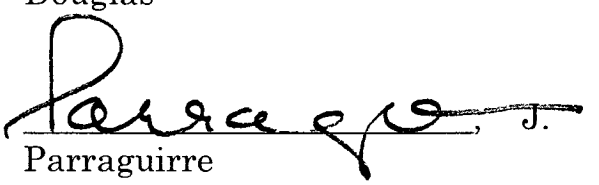
transcript in its entirety." This court has also repeatedly stated that "[a]ppellant has the ultimate responsibility to provide this court with 'portions of the record essential to determination of issues raised in appellant's appeal.'"[7] Therefore, we will not address this issue.

Having considered Ortiz-Monroy's contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.[8]

 , J.
Maupin

 , J.
Douglas

 , J.
Parraguirre

[7]Thomas v. State, 120 Nev. 37, 43 & n.4, 83 P.3d 818, 822 & n.4 (2004) (quoting NRAP 30(b)(3)).

[8]Ortiz-Monroy also contends that cumulative error violated his right to due process. Because we have rejected Ortiz-Monroy's assignments of error, we conclude that his contention is without merit. See U.S. v. Rivera, 900 F.2d 1462, 1471 (10th Cir. 1990) ("a cumulative-error analysis should evaluate only the effect of matters determined to be error, not the cumulative effect of non-errors").

cc: Hon. Michael P. Gibbons, District Judge
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Douglas County Clerk