

IN THE SUPREME COURT OF THE STATE OF NEVADA

SINOUANE SAM SISAVATH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49796

FILED

OCT 17 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count each of possession of a stolen vehicle, possession of a controlled substance, and possession of burglary tools. Eighth Judicial District Court, Clark County; Valerie Adair, Judge. The district court sentenced appellant Sinouane Sam Sisavath to serve concurrent prison terms of 16 to 72 months for the possession of a stolen vehicle, 12 to 32 months for the possession of a controlled substance, and 12 months for the possession of burglary tools.

Sisavath's sole contention is that the prosecutor committed misconduct during his rebuttal closing argument by "ridiculing and belittling" the defense theory. Specifically, Sisavath contends that the prosecutor ridiculed defense counsel's use of allegories in closing argument. The prosecutor stated that

[o]ver here we have, look at me, there's a hair in my Coke. Hey, fathers should not get arrested for giving their daughters money. Well, I don't know if it's 10:30, 10:40. All of these officers should sync their watches. We have a lot of distraction going on from the facts that are plain, sitting right in front of you.

Initially, we note that Sisavath did not object to the prosecutor's comments. The failure to raise an objection with the district court generally precludes appellate consideration of an issue.¹ This court may nevertheless address an alleged error if it was plain and affected appellant's substantial rights.²

We conclude that the record does not indicate that the prosecutor's comments amounted to plain error or affected Sisavath's substantial rights.³ The prosecutor's statements were made in response to assertions made by defense counsel during Sisavath's closing argument. The jury was properly instructed only to consider as evidence the testimony of witnesses, exhibits, and facts admitted or agreed to by counsel. The jury was also instructed that the statements, arguments, and opinions of counsel were not to be considered as evidence. Finally, even if the remarks were inappropriate, we conclude that the State presented overwhelming evidence of Sisavath's guilt.⁴

¹See 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).

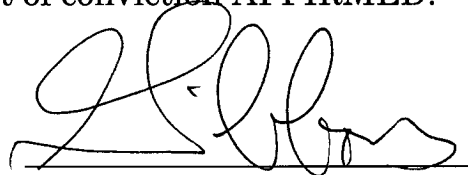
²See NRS 178.602 ("Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court").

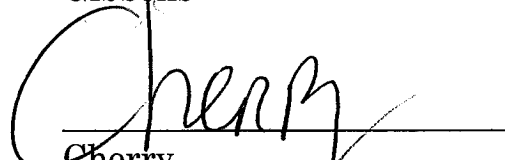
³See Green v. State, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003) (stating that when conducting a review for plain error, "the burden is on the defendant to show actual prejudice or a miscarriage of justice").


⁴King v. State, 116 Nev. 349, 356, 998 P.2d 1172, 1176 (2000) (stating that "where evidence of guilt is overwhelming, even aggravated prosecutorial misconduct may constitute harmless error").

Having considered Sisavath's contention and concluded that it lacks merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Gibbons


_____, J.
Cherry


_____, J.
Saitta

cc: Hon. Valerie Adair, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk