IN THE SUPREME COURT OF THE STATE OF NEVADA

JEROME WALTER ZEMKE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50461

FILED

MAR 04 2009

TRACIE K. LINDEMAN
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 robbery with the use of a deadly weapon, burglary while in the possession of a deadly weapon, and assault with a deadly weapon. Eighth Judicial District Court, Clark County; Michael Villani, Judge. The district court adjudicated appellant Jerome Walter Zemke as a habitual criminal and sentenced him to serve three concurrent prison terms of 80-240 months.

Zemke contends that the district court erred by allowing the admission of prejudicial character evidence. Specifically, Zemke challenges the following exchange between the prosecutor and his half-sister, Lisa Blaufuss, who was testifying during the State's case-in-chief:

> Q. And at some point . . . did somebody come from Minnesota to come stay with you?
>
> . . .
>
> A. I received a phone call from – it's complicated – another family member stating that [Zemke] was on a bus and on his way to Nevada.
>
> . . .
>
> Q. Okay. And at some point – I don't want to get into too much of the details, because we have

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> certain rules we have to follow, but at some point did he stop staying there?

Zemke claims that the testimony elicited from Blaufuss about his "dysfunctional family situation" was irrelevant, prejudicial and, alternatively, admitted in violation of NRS 48.035(1) ("Although relevant, evidence is not admissible if its probative value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues or of misleading the jury."). We disagree.

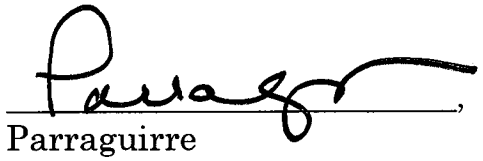
"It is within the district court's sound discretion to admit or exclude evidence, and 'this court will not overturn [the district court's] decision absent manifest error.'" Means v. State, 120 Nev. 1001, 1008, 103 P.3d 25, 29 (2004) (quoting Collman v. State, 116 Nev. 687, 702, 7 P.3d 426, 436 (2000)) (footnote omitted) (alteration in original). In this case, however, Zemke did not move to preclude Blaufuss' testimony, see NRS 174.125(1), or object to the challenged line of questioning. The failure to raise an objection with the district court generally precludes appellate consideration of an issue. See Rippo v. State, 113 Nev. 1239, 1259, 946 P.2d 1017, 1030 (1997). This court may nevertheless address an alleged error if it was plain and affected the appellant's substantial rights. 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."); Flores v. State, 121 Nev. 706, 722, 120 P.3d 1170, 1180-81 (2005). "To be plain, an error must be so unmistakable that it is apparent from a casual inspection of the record." Garner v. State, 116 Nev. 770, 783, 6 P.3d 1013, 1022 (2000), overruled on other grounds by Sharma v. State, 118 Nev. 648, 56 P.3d 868 (2002).

We conclude that the district court did not err by failing to sua sponte preclude or strike Blaufuss' testimony. Zemke has failed to

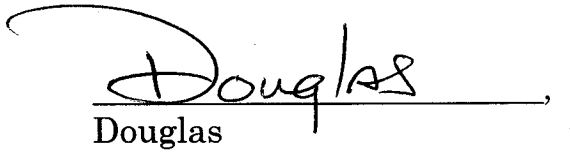
demonstrate that his substantial rights were affected or that Blaufuss' testimony had a prejudicial impact on the jury's verdict. Therefore, we conclude that the admission of Blaufuss' testimony did not amount to reversible plain error.

Having considered Zemke's contention and concluded that it is without merit, we

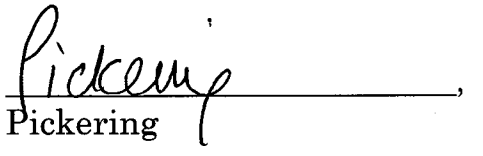
ORDER the judgment of conviction AFFIRMED.



_____, J.
Parraguirre



_____, J.
Douglas



_____, J.
Pickering

cc: Hon. Michael Villani, District Judge
Joel M. Mann, Chtd.
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk