

IN THE SUPREME COURT OF THE STATE OF NEVADA

XAY KHANG,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42257

FILED

MAY 23 2006

BY Janette M. Bloom
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction of one count each of possession of a firearm by an ex-felon and possession of a stolen vehicle. Eighth Judicial District Court, Clark County; Kathy A. Hardcastle, Judge. The district court bifurcated the counts for trial. A jury found appellant Xay Khang guilty of possession of a stolen vehicle. Prior to the start of the trial on the count of possession of a firearm by an ex-felon, Khang pleaded guilty. The district court adjudicated Khang as a habitual criminal and sentenced him to serve two concurrent prison terms of 5-20 years.

First, Khang contends that the district court erred during his trial by allowing the admission of two photographs of a gun found inside the stolen vehicle. The victim identified her vehicle from the photographs, and stated that the gun in the photographs did not belong to her. Detective Wesley Britt testified that Khang admitted to him during questioning that the gun belonged to him. Khang argues that the photographs were unduly prejudicial and not relevant to the charge of

possession of a stolen vehicle.¹ In a related argument, Khang contends that the district court erred in allowing Detective Britt's testimony regarding his discovery of the gun and Khang's admissions. We disagree.

The decision to admit or exclude evidence rests within the discretion of the district court.² "We will not disturb a district court's decision to admit photographic evidence unless the district court abused its discretion."³

Initially, we note that Khang failed to object to the admission of the photographs, even after the district court expressly asked defense counsel if he wished to object. Khang also failed to object to Detective Britt's testimony. Failure to raise an objection with the district court generally precludes appellate consideration of an issue.⁴ This court may nevertheless address alleged error if it was plain and affected the appellant's substantial rights.⁵ We conclude that no plain error occurred.

¹See 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.").

²See Greene v. State, 113 Nev. 157, 166, 931 P.2d 54, 60 (1997), overruled on other grounds by Byford v. State, 116 Nev. 215, 994 P.2d 700 (2000).

³West v. State, 119 Nev. 410, 420, 75 P.3d 808, 815 (2003).

⁴See Rippo v. State, 113 Nev. 1239, 1259, 946 P.2d 1017, 1030 (1997).

⁵See NRS 178.602 ("Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.").

The State presented overwhelming evidence of Khang's guilt. Detective Britt testified that Khang told him that he knew the vehicle was stolen, and that he purchased the vehicle from "Lucky Lou" for a "teener" of methamphetamine. We also note that later at trial, during an unrelated discussion, the district court stated that in light of Khang's own admission about the gun being his, the photographs were relevant to establish "identity as to the person who had the car." Therefore, we conclude that the district court did not abuse its discretion by admitting the photographs and allowing Detective Britt's testimony without any objection by Khang.

Second, Khang contends that the district court abused its discretion by denying his motion for a short continuance in order to obtain and wear shoes other than the orange shoes issued to Clark County inmates. Khang concedes that, other than for the orange shoes, he was "fully dressed in civilian clothing." In a related argument, Khang contends that the district abused its discretion by denying his motion for a mistrial after two testifying police officers identified Khang at trial by stating that he was the individual wearing orange shoes. We disagree.⁶

A defendant has the right to appear before the jury in the clothing of an innocent person because "[t]he presumption of innocence is incompatible with the garb of guilt."⁷ The State cannot compel a

⁶We note that Khang's argument is devoid of any citation to relevant legal authority or case law. See Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) ("It is appellant's responsibility to present relevant authority and cogent argument; issues not so presented need not be addressed by this court.").

⁷Grooms v. State, 96 Nev. 142, 144, 605 P.2d 1145, 1146 (1980).

defendant to stand trial before a jury while dressed in identifiable prison clothing.⁸

We conclude that the district court did not abuse its discretion in denying Khang's motions for a continuance and mistrial.⁹ Only Khang's shoes were prison issued, there were no markings on the shoes identifying them as prison clothing, the district court did not compel him to wear the shoes, stating that he could take them off, and most importantly, the district court noted that the shoes were not visible to the jury. Khang cannot demonstrate that the jury knew his shoes were prison issued or that he was prejudiced by the testifying police officers identifying him in the courtroom by his shoes. When asked to identify Khang, Officer William Horne stated, "The gentleman sitting there in the middle, the orange sneakers on." When Detective Britt was asked to point out Khang in the courtroom, he stated, "Light blue collared shirt with orange shoes." And finally, even assuming that a juror did see Khang's shoes and believed they were prison-issued, any error was harmless beyond a reasonable doubt in light of the overwhelming evidence of Khang's guilt.¹⁰

⁸See Estelle v. Williams, 425 U.S. 501, 512 (1976).

⁹See Batson v. State, 113 Nev. 669, 674, 941 P.2d 478, 482 (1997) (the decision to grant or deny a motion for a continuance is within the sound discretion of the district court); Rudin v. State, 120 Nev. 121, 142, 86 P.3d 572, 586 (2004) (the decision to grant or deny a motion for a mistrial is within the discretion of the district court and will not be reversed absent an abuse of discretion).

¹⁰See NRS 178.598 ("Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded."); Haywood v. State, 107 Nev. 285, 288, 809 P.2d 1272, 1273 (1991) ("When the
continued on next page . . .

Finally, Khang contends that the district court committed reversible error by refusing to allow him to stipulate to his status as an ex-felon. Khang requested that the word, "ex-felon," be excised from the criminal information. The district court refused, stating, "They have to hear that he's an ex-felon in order to be able to determine the essential element of the charge." Khang claims that as a result of the district court's ruling, he was denied his right to a fair trial, and therefore, decided to plead guilty to the count of possession of a firearm by an ex-felon. We conclude that Khang is not entitled to any relief.¹¹

This court has repeatedly stated that, generally, the entry of a guilty plea waives any right to appeal from events occurring prior to the entry of the plea.¹² "[A] guilty plea represents a break in the chain of events which has preceded it in the criminal process. . . . [A defendant] may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea."¹³ And finally, there is no indication in the record that Khang expressly

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evidence of guilt is overwhelming, even a constitutional error can be comparatively insignificant.").

¹¹But see Edwards v. State, 122 Nev. ___, ___ P.3d ___ (Adv. Op. No. 34, April 27, 2006) (holding that the district court abused its discretion in rejecting defendant's offer to stipulate to ex-felon status in a trial charging possession of a firearm by an ex-felon).

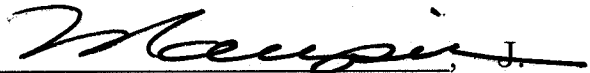
¹²See Webb v. State, 91 Nev. 469, 538 P.2d 164 (1975).

¹³Id. (quoting Tollett v. Henderson, 411 U.S. 258, 267 (1973)).

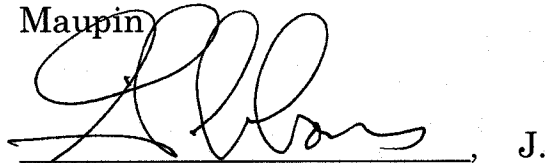
preserved this issue for review on appeal.¹⁴ Therefore, we conclude that Khang has waived his right to challenge the district court's ruling.

Having considered Khang's contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.¹⁵

 J.

Maupin

 J.

Gibbons

 J.

Hardesty

cc: Hon. Kathy A. Hardcastle, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

¹⁴See NRS 174.035(3).

¹⁵We also reject Khang's claim that cumulative error denied him his right to a fair trial. See generally Leonard v. State, 114 Nev. 1196, 1216, 969 P.2d 288, 301 (1998) (noting that factors relevant to a claim of cumulative error "include whether 'the issue of innocence or guilt is close, the quantity and character of the error, and the gravity of the crime charged'" (internal citation omitted)).