


IN THE SUPREME COURT OF THE STATE OF NEVADA

KEVIN J. BIBBINS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53137

FILED

MAY 07 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction entered pursuant to a jury verdict of one count of possession of a firearm by an ex-felon.¹ Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge.

First, appellant Kevin Bibbins contends that there was insufficient evidence to support his conviction because the State failed to prove that he had the requisite criminal intent. Our review of the record reveals sufficient evidence to establish Bibbins' guilt beyond a reasonable doubt as determined by a rational trier of fact. See McNair v. State, 108

¹We note that the judgment of conviction contains a clerical error; it incorrectly states that the conviction is pursuant to a guilty plea. Following this court's issuance of its remittitur, the district court shall enter a corrected judgment of conviction. See NRS 176.565 (providing that clerical errors in judgments may be corrected at any time); Buffington v. State, 110 Nev. 124, 126, 868 P.2d 643, 644 (1994) (explaining that the district court does not regain jurisdiction following an appeal until the supreme court issues its remittitur).

Nev. 53, 56, 825 P.2d 571, 573 (1992). Possession of a firearm by an ex-felon is not a specific intent crime; rather, it is a strict liability offense that is completed when the ex-felon obtains possession of a firearm. NRS 202.360(1)(a). Here, the jury heard Bibbins' stipulation that he had "been convicted of two felonies in California in 1976 and of one felony in Wyoming in 1982;" a detective's testimony that Bibbins brought a black powder revolver to a gun show in 2007; and a master gunsmith's testimony that Bibbins' revolver was fully functional and designed to propel a projectile through the barrel by the force of an explosion. Given this evidence, we conclude that a rational juror could infer that Bibbins was guilty of possession of a firearm by an ex-felon. See id.; NRS 202.253(2) (defining firearm). The jury's verdict will not be disturbed where, as here, it is supported by substantial evidence. See Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981).

Second, Bibbins contends that the district court erred by rejecting his proposed instructions on his theory of the case. "A defendant in a criminal case is entitled, upon request, to a jury instruction on his theory of the case so long as there is some evidence, no matter how weak or incredible, to support it." Harris v. State, 106 Nev. 667, 670, 799 P.2d 1104, 1105-06 (1990) (internal quotation marks and brackets omitted). However, a defendant is not entitled to instructions that are "misleading, inaccurate or duplicitous." Carter v. State, 121 Nev. 759, 765, 121 P.3d 592, 596 (2005). We conclude that Bibbins' proposed instructions on (1) mistake of fact and (2) acts or omissions made through misfortune or accident are misleading because they present defenses that cannot be used for the crime of possession of a firearm by an ex-felon, see NRS 194.010(4),

(6); see generally Honeycutt v. State, 118 Nev. 660, 670, 56 P.3d 362, 369 (2002), overruled on other grounds by Carter, 121 Nev. at 765, 121 P.3d at 596, and therefore the district court did not err in rejecting them.

Third, Bibbins contends that the district court erred by improperly admitting his out-of-state arrest record and irrelevant, prejudicial, bad act evidence of a gun registration violation. “A district court’s decision to admit or exclude evidence of prior bad acts rests within its sound discretion and will not be reversed by this court absent manifest error.” Somee v. State, 124 Nev. ___, ___, 187 P.3d 152, 160 (2008). Bibbins objected to the evidence of his prior convictions and argued that the presentation of this evidence undermined his stipulation to ex-felon status. The evidence of Bibbins’ prior convictions did not reveal the nature of the prior convictions, and we conclude that its admission did not constitute manifest error because it was not admitted for the sole purpose of proving Bibbins’ ex-felon status. See Edwards v. State, 122 Nev. 378, 379, 132 P.3d 581, 582 (2006); Sanders v. State, 96 Nev. 341, 343, 609 P.2d 324, 326 (1980) (when the effectiveness of the State’s case is not impaired by a stipulation to the prior conviction, the State may only prove the fact, and not the nature, of the prior conviction). Because Bibbins did not object to the admission of evidence regarding gun registration requirements and it is not plain that this evidence constituted bad act evidence or that the district court should have given limiting instructions, we conclude that its admission did not constitute plain error. See Herman v. State, 122 Nev. 199, 204, 128 P.3d 469, 472 (2006).

Bibbins also contends that the district court erred by (1) allowing the detectives to offer legal conclusions without being qualified as

experts, (2) admitting evidence that many ex-felons attend gun shows carrying firearms in violation of the law, (3) allowing the State to suggest that the defense was hiding evidence of his prior arrest record from the jury, (4) admitting evidence that he had previously served time in prison, and (5) incorrectly instructing the jury on the definition of a firearm. Bibbins failed to object to any of these alleged errors. “Failure to object during trial generally precludes appellate consideration of an issue. Despite such failure, this court has the discretion to address an error if it was plain and affected the defendant’s substantial rights.” Gallego v. State, 117 Nev. 348, 365, 23 P.3d 227, 239 (2001) (footnote omitted); see also NRS 178.602. We conclude that the district court erred by allowing the detectives to offer legal opinions, see Elsayed Mukhtar v. Cal. State University, Hayward, 299 F.3d 1053, 1066 n.10 (9th Cir. 2002), admitting evidence that ex-felons attend gun shows carrying firearms, see NRS 48.025(2), and improperly broadening the statutory definition of a firearm, see NRS 202.253(2). However, because there is overwhelming evidence of Bibbins’ guilt, we conclude that his substantial rights were not affected and he is not entitled to relief.

Finally, Bibbins contends that cumulative error deprived him of a fair trial. Balancing the relevant factors, we conclude that the cumulative effect of the errors did not deprive Bibbins of a fair trial and that no relief is warranted. See Valdez v. State, 124 Nev. ___, ___, 196 P.3d 465 (2008) (when evaluating claims of cumulative error, we consider “(1) whether the issue of guilt is close, (2) the quantity and character of the error, and (3) the gravity of the crime charged” (quoting Mulder v. State, 116 Nev. 1, 17, 992 P.2d 845, 854-55 (2000))).

Having considered Bibbins' contentions and concluded that he is not entitled to relief, we

ORDER the judgment of conviction AFFIRMED.

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Pickering, J.
Pickering

cc: Eighth Judicial District Court Dept. 7, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk