IN THE SUPREME COURT OF THE STATE OF NEVADA

LEONARD RAY WOODS, Appellant, vs. THE STATE OF NEVADA, Respondent.	)	Case No. 78816

PETITION FOR REHEARING

DARIN F. IMLAY
CLARK COUNTY PUBLIC DEF.
309 South Third Street, #226
Las Vegas, Nevada 89155-2610
(702) 455-4685

Attorney for Appellant

STEVEN B. WOLFSON
CLARK COUNTY DIST. ATTY.
200 Lewis Avenue, 3rd Floor
Las Vegas, Nevada 89155
(702) 455-4711

AARON D. FORD
Attorney General
100 North Carson Street
Carson City, Nevada 89701
(775) 684-1265

Counsel for Respondent

TABLE OF CONTENTS

PAGE NO.

TABLE OF AUTHORITIES

PAGE NO.

Cases

Misc. Citations

Statutes

IN THE SUPREME COURT OF THE STATE OF NEVADA

LEONARD RAY WOODS, Appellant, vs. THE STATE OF NEVADA, Respondent.	)	Case No. 78816

PETITION FOR REHEARING

COMES NOW Appellant LEONARD RAY WOODS, by and through Chief Deputy Public Defender DEBORAH. L. WESTBROOK, and petitions, pursuant to NRAP 40, this Honorable Court for a rehearing of the Order of Affirmance issued in this case on November 3, 2020.

This petition is based on the following Memorandum of Points and Authorities and all papers and pleadings on file in this case.

Dated this 19 day of November, 2020.

Respectfully submitted,

DARIN F. IMLAY
CLARK COUNTY PUBLIC DEFENDER

By: */s/ Deborah L. Westbrook*
DEBORAH L. WESTBROOK, #9285
Attorney for Appellant

MEMORANDUM OF POINTS AND AUTHORITIES

I. LEGAL ARGUMENT

A. THE COURT HAS JURISDICTION TO REHEAR AND RECONSIDER ITS ORDER OF AFFIRMANCE.

NRAP 40(c)(2) permits this Court to rehear and reconsider a panel decision under the following circumstances:

> (A) When the court has overlooked or misapprehended a material fact in the record or a material question of law in the case, or
>
> (B) When the court has overlooked, misapplied or failed to consider a statute, procedural rule, regulation or decision directly controlling a dispositive issue in the case.

A petition for rehearing is timely filed within 18 days after the filing of an appellate court's decision. NRAP 40(a)(1). Here, Leonard Woods' petition for rehearing has been timely filed within 18 days after entry of this Court's Order of Affirmance on November 3, 2020 and it should be granted for the reasons set forth herein. See **Exhibit A**, Order of Affirmance.

B. THIS COURT OVERLOOKED A MATERIAL QUESTION OF LAW IN THIS CASE: WHETHER THE DISTRICT COURT VIOLATED WOODS' CONSTITUTIONAL AND STATUTORY RIGHTS TO *PERSONALLY* CONDUCT VOIR DIRE.

In his Opening Brief, Leonard Woods raised a material question of first impression for the Nevada Supreme Court: whether NRS 175.031 afforded Mr. Woods, as a *pro se* litigant, the right to *personally participate*

in voir dire by directly questioning the jurors himself. See Appellant's Opening Brief (AOB) at 23-25.

In his Opening Brief, Mr. Woods argued that the district court violated NRS 175.031 when it prevented him from personally questioning *any* jurors during voir dire after promising him, during his Faretta canvas, that he *would* have that opportunity. Id. at 23-25 and 30-32. Mr. Woods argued that the denial of his right to *personally* conduct voir dire constituted a structural error under the Sixth Amendment and the Nevada Constitution because it abridged his rights to appear and personally defend himself as a *pro se* litigant. See AOB at 25-26. Mr. Woods further argued that the district court's refusal to allow him to personally question jurors violated his right to due process, and that the error was not harmless beyond a reasonable doubt. See AOB at 26-28.

Likewise, a *full third* of Mr. Woods' Reply Brief was focused on this question of whether he had a personal, substantive right to conduct voir dire as *pro se* litigant and whether the violation of *that* right warranted reversal. See Reply at 1-9.

Yet, the Court's Order of Affirmance failed to address this important and material legal question. Instead, without ever addressing whether Mr. Woods had a right to *personally* conduct voir dire, the Court concluded that

the district court did not "commit structural error by modifying Woods's proposed voir dire questions." **Exhibit A**, Order at 1-2. But by focusing solely on whether the district court "improperly rejected or modified his proposed questions", the Court wholly failed to consider whether Mr. Woods, as a *pro se* defendant, had the personal right to present *any* questions to the jury *himself*, and whether the denial of *that right* was a structural error. Rehearing is necessary to address this material question of law. See NRAP 40(c).

C. THIS COURT OVERLOOKED THE LONGSTANDING PRESUMPTION IN FAVOR OF SCIENTER TO FIND THAT KNOWLEDGE IS NOT AN ELEMENT OF THE STATUS CRIME OF FIREARM POSSESSION.

This Court found that that "[t]he district court did not err by not instructing the jury that Woods had to know that he belonged to the relevant category of persons barred from possessing a firearm." **Exhibit A**, Order at 10. Yet, the Court's conclusion overlooks a controlling legal doctrine that was presented in Mr. Woods' briefing that governs the interpretation of NRS 202.360: the presumption in favor of scienter. See Reply at 24-27.

The presumption in favor of scienter is the "presumption that criminal statutes require the degree of knowledge sufficient to 'mak[e] a person legally responsible for the consequences of his or her act or omission.'"

Rehaif v. United States, 139 S. Ct. 2191, 2195 (2019) (quoting Black's Law Dictionary 1547 (10th ed. 2014)).

As this Court recently explained in Hager v. State, 135 Nev. 246, 249, 447 P.3d 1063, 1066 (2019), Nevada's felon-in-possession statute is similar to its federal counterpart, 18 U.S.C. § 922(g), because both have three main elements: (1) a status element, (2) a possession element, and (3) a firearms element. In Rehaif v. United States, 139 S. Ct. 2191, the Supreme Court applied the longstanding "presumption in favor of scienter" to conclude that *each* of these three main elements in 18 U.S.C. § 922(g) requires knowledge on the part of the defendant:

> The cases in which we have emphasized scienter's importance in separating wrongful from innocent acts are legion. See, *e.g.*, *id.*, at 70, 115 S.Ct. 464; *Staples*, 511 U.S. at 610, 114 S.Ct. 1793; *Liparota v. United States*, 471 U.S. 419, 425, 105 S.Ct. 2084, 85 L.Ed.2d 434 (1985); *United States v. Bailey*, 444 U.S. 394, 406, n. 6, 100 S.Ct. 624, 62 L.Ed.2d 575 (1980); *United States v. United States Gypsum Co.*, 438 U.S. 422, 436, 98 S.Ct. 2864, 57 L.Ed.2d 854 (1978); *Morissette*, 342 U.S. at 250–251, 72 S.Ct. 240. We have interpreted statutes to include a scienter requirement even where the statutory text is silent on the question. *See Staples*, 511 U.S. at 605, 114 S.Ct. 1793. And we have interpreted statutes to include a scienter requirement even where "the most grammatical reading of the statute" does not support one. *X-Citement Video*, 513 U.S. at 70, 115 S.Ct. 464.
>
> Applying the word "knowingly" to the defendant's status in § 922(g) helps advance the purpose of scienter, for it helps to separate wrongful from innocent acts. Assuming compliance with ordinary licensing requirements, the possession of a gun can be entirely innocent. *See Staples*, 511 U.S. at 611, 114 S.Ct.

> 1793. It is therefore the defendant's status, and not his conduct alone, that makes the difference. Without knowledge of that status, the defendant may well lack the intent needed to make his behavior wrongful. His behavior may instead be an innocent mistake to which criminal sanctions normally do not attach. *Cf.* O. Holmes, The Common Law 3 (1881) ("even a dog distinguishes between being stumbled over and being kicked").

Rehaif, 139 S. Ct. at 2196-97 (emphasis added).

Importantly, Rehaif recognized that there is no need for the word "knowingly" to appear in a statute for the longstanding presumption in favor of scienter to apply. Yet, this Court concluded otherwise, rejecting Mr. Woods' argument for the sole reason that the word "knowingly" does not appear in Nevada's statute. **Exhibit A**, Order at 10 (distinguishing the outcome in Rehaif because a separate federal penalty statute, 18 U.S.C. § 924(a)(2), contained a knowledge requirement that is not present in Nevada's felon-in-possession statute, NRS 202.360).

This Court's decision to ignore the presumption in favor of scienter conflicts with United States Supreme Court *and* Nevada Supreme Court precedent. In Ford v. State, this Court applied the presumption to determine that Nevada's pandering statute included a specific intent requirement. Like NRS 202.360, Nevada's pandering statute did not explicitly mention mens rea. Yet, this Court was unwilling to deem pandering a strict liability crime based on the very same legal authority cited in Rehaif:

> While strict-liability offenses are not unknown to the criminal law and do not invariably offend constitutional requirements," they occupy a "generally disfavored status" and "[c]ertainly far more than the simple omission of the appropriate phrase from the statutory definition is necessary to justify dispensing with an intent requirement." *United States v. United States Gypsum Co.*, 438 U.S. 422, 437–38, 98 S.Ct. 2864, 57 L.Ed.2d 854 (1978); *Morissette v. United States*, 342 U.S. 246, 263, 72 S.Ct. 240, 96 L.Ed. 288 (1952) ("mere omission ... of intent [in a criminal statute] will not be construed as eliminating that element from the crimes denounced"); *see United States v. X–Citement Video, Inc.*, 513 U.S. 64, 70, 115 S.Ct. 464, 130 L.Ed.2d 372 (1994) (many "cases interpret[ ] criminal statutes to include broadly applicable scienter requirements, even where the statute by its terms does not contain them").

Ford v. State, 127 Nev. 608, 614, 262 P.3d 1123, 1127 (2011) (emphasis added). As this Court recognized in Ford, far more than the simple omission of the word "knowledge" from NRS 202.360 is required for this Court to reject Mr. Woods' argument outright.

Moreover, the presumption has been applied in Nevada to other possessory crimes where "knowledge" was not listed as a statutory element. See, e.g., Dougherty v. State, 86 Nev. 507, 508, 471 P.2d 212, 212–13 (1970) (finding reversible error "when the trial court declined to instruct the jury that knowledge of the narcotic character of marijuana is an element of the crime charged. Although the statute upon which the charge was based, NRS 453.030, and the preceding section, NRS 453.020, do not require such knowledge as an element, controlling case precedent does.").

Finally, this Court's holding conflicts with the general requirement, long established in this jurisdiction that every act of possession requires, at the very least, *knowledge* of the item possessed. See, e.g., Palmer v. State, 112 Nev. 763, 920 P.2d 112 (1996) (quoting Black's Law Dictionary 1163 (6th ed. 1990) ("A person who *knowingly* has direct physical control over a thing, at a given time, is then in actual possession of it. A person, who, although not in actual possession, *knowingly has both the power and the intention* at a given time to exercise dominion or control over a thing, either directly or through another person or persons, is then in constructive possession of it.") (emphasis added). Where this Court has already held as a general matter that the "possession" element of possessory crimes requires knowledge, this Court cannot logically conclude that knowledge does not also apply to the other elements as well, simply because the word "knowledge" is not in the statute.

At the end of the day, it does not matter that the word "knowingly" does not appear in NRS 202.360. The presumption in favor of scienter *required* that Mr. Woods have knowledge of that he belonged to the relevant category of persons barred from possessing a firearm. See Rehaif, 139 S. Ct. at 2196-97. Although Mr. Woods raised the presumption of scienter in his briefing to this Court, the Court failed to address whether the presumption

should apply in this case, and if not, then why not. Again, more is required to dispense with a scienter requirement than the absence of the word "knowingly" from a statute. Because the presumption in favor of scienter controls the interpretation of NRS 202.360 and was not addressed by the Court, rehearing is necessary.

II. CONCLUSION

Based on the foregoing, this Court should grant rehearing of its Order of Affirmance.

Respectfully submitted,

DARIN F. IMLAY
CLARK COUNTY PUBLIC DEFENDER

By: */s/ Deborah L. Westbrook*
DEBORAH L. WESTBROOK, #9285
Attorney for Appellant

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this petition for rehearing complies with the formatting requirements of NRAP32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6), because:

It has been prepared proportionally spaced typeface using Times New Roman in 14 font.

2. I further certify that this brief complies with the page or type-volume limitations of NRAP 40 or 40A because it is either:

Proportionately spaced, has a typeface of 14 points or more, and contains 9 pages which does not exceed the 10 page limit.

DATED this 19 day of November, 2020.

Respectfully submitted,

DARIN F. IMLAY
CLARK COUNTY PUBLIC DEFENDER

By: */s/ Deborah L. Westbrook*
DEBORAH L. WESTBROOK, #9285
Attorney for Appellant

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 19 day of November, 2020. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON D. FORD
ALEXANDER CHEN

DEBORAH L. WESTBROOK

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

LEONARD RAY WOODS
NDOC No: 1216972
c/o Ely State Prison
P.O. Box 1989
Ely, NV 89301

BY */s/ Carrie M. Connolly*
Employee, Clark County Public Defender's Office

EXHIBIT A

IN THE SUPREME COURT OF THE STATE OF NEVADA

LEONARD RAY WOODS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 78816

FILED

NOV 03 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of first-degree murder with use of a deadly weapon, two counts of capturing an image of the private area of another person, open or gross lewdness, and two counts of ownership or possession of a firearm by a prohibited person. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

Appellant Leonard Ray Woods argues that (1) the district court committed structural error during voir dire, (2) he did not knowingly and intelligently waive his right to counsel, (3) the district court abused its discretion in denying his motion to substitute counsel, (4) the State committed prosecutorial misconduct, (5) the district court erred in denying Woods's motion to suppress, (6) the district court allowed erroneous opinion testimony from a lay witness, (7) the district court failed to instruct the jury on all elements under NRS 202.360, and (8) cumulative error warrants reversal. We disagree and affirm the judgment of conviction.

The district court did not abuse its discretion or commit structural error by modifying Woods's proposed voir dire questions

Woods argues that the district court's modification or rejection of three of his proposed questions for the potential jurors was an abuse of

discretion. We review voir dire decisions for an abuse of discretion. *Morgan v. State*, 134 Nev. 200, 210, 416 P.3d 212, 223 (2018).

Woods proposed, among others, the following voir dire questions: (1) "What are your views on the [S]tate having no physical evidence for conviction?"; (2) "Do you believe someone who falsely accuses another should also be punished?"; and (3) "Do you believe officers who tamper with evidence or lie in trial should be punished?" The district court rejected the first question, reasoning that asking the prospective jurors their view on the State's evidence before trial commenced was improper. Further, the district court found that Woods's questions about punishment were irrelevant because the punishment of others did not pertain to his trial. Nonetheless, the court modified his proposed questions as follows: "Anybody have any disagreement with the statement that police officers could potentially do inappropriate things with evidence in a case?" and "Anybody have any disagreement with the statement that witnesses sometimes could lie or not be honest or falsely accuse people of things?"

Woods has presented no legal authority to show that the district court improperly rejected or modified his proposed questions, so he has not shown that the district court abused its discretion. *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."). Regardless, the record shows that Woods did not suffer prejudice because the district court asked the modified versions of Woods's questions. Moreover, the record belies Woods's claim that the district court did not ask all jurors what they thought about false accusations: it asked all 32 jurors whether they had ever been falsely

accused of a crime.[1] Thus, we conclude that the district court did not abuse its discretion or commit structural error.

Woods knowingly and intelligently waived his right to counsel

Woods argues that his conviction requires reversal because he did not knowingly and intelligently waive his right to counsel in violation of *Faretta v. California*, 422 U.S. 806, 835 (1975). He specifically contends that the district court did not advise him that he would waive his right to supplemental voir dire.

We review a district court's decision on a defendant's right to self-representation for an abuse of discretion. *Vanisi v. State*, 117 Nev. 330, 341, 22 P.3d 1164, 1171 (2001). We also "defer[ ] to the district court's decision to allow the defendant to waive his right to counsel." *Hooks v. State*, 124 Nev. 48, 55, 176 P.3d 1081, 1085 (2008).

> To knowingly, intelligently, and voluntarily waive the right to counsel, the defendant should, [during a *Faretta* canvass,] . . . "be made aware of the dangers and disadvantages of self-representation, so that the record will establish that he knows what he is doing and his choice is made with eyes wide open."

Id. at 54, 176 P.3d at 1084 (quoting *Faretta*, 422 U.S. at 835 (internal quotation marks omitted)).

Here, during the *Faretta* canvass, the district court explained to Woods the difficulties and nuances of jury selection and asked Woods whether he understood. He responded that he did. The district court also

---

[1]To the extent Woods is arguing that the district court erred by not asking other questions of prospective jurors who were eventually dismissed, he has not coherently explained how he was prejudiced by those alleged errors.

found that Woods was intelligent and capable of representing himself. Further, it explained to him the dangers and disadvantages of self-representation with respect to voir dire—and with self-representation in general—and he knowingly and intelligently waived his right to counsel. And contrary to Woods's contention, the district court at no point told him that he would be unable to conduct supplemental voir dire. Thus, we conclude that allowing Woods to represent himself was not an abuse of discretion.[2]

The State relied upon facts not in evidence but this misconduct was harmless

Woods contends that the State committed prosecutorial misconduct by relying upon facts not in evidence. We agree, but conclude that this misconduct was harmless.

We apply a two-step analysis to review prosecutorial misconduct claims. *Valdez v. State*, 124 Nev. 1172, 1188, 196 P.3d 465, 476 (2008). "First, we must determine whether the prosecutor's conduct was improper. Second, if the conduct was improper, we must determine whether the improper conduct warrants reversal." *Id.* (footnote omitted). "With respect to the second step of this analysis, this court will not reverse a conviction based on prosecutorial misconduct if it was harmless error." *Id.*

---

[2]Woods adds that the district court abused its discretion by denying his motion for substitution of counsel. We conclude that the district court did not abuse its discretion by denying Woods's motions because he did not show good cause for substitution of counsel, and his requests were based on the subjective belief that he and his attorney had a breakdown in communication. *See Gallego v. State*, 117 Nev. 348, 363, 23 P.3d 227, 237 (2001) (recognizing that good cause to establish a substitution of counsel is not determined by the defendant's subjective perceptions), *abrogated on other grounds by Nunnery v. State*, 127 Nev. 749, 776 n.12, 263 P.3d 235, 253 n.12 (2011).

"It is improper for the State to refer to facts not in evidence." *Rose v. State*, 123 Nev. 194, 209, 163 P.3d 408, 418 (2007).

Here, on cross-examination, the State asked a witness whether Woods was the only person who knew that Josie Jones's assailant drove a Ford Taurus, and the witness answered in the affirmative. Two previous witnesses, however, had testified that the assailant drove away from the murder scene in a Ford Taurus. Moreover, the State's closing argument misstated the precise testimony of D.L. and D.L.'s friend about threats Woods made to Jones, and the State mischaracterized D.L.'s testimony about Woods observing D.L. from a bathroom window while she undressed. Thus, by mischaracterizing the testimony, the State relied upon facts not in evidence, which constitutes misconduct.

"[T]his court will not reverse a conviction based on prosecutorial misconduct if it was harmless error." *Valdez*, 124 Nev. at 1188, 196 P.3d at 476. "If the error is not of constitutional dimension, we will reverse only if the error substantially affects the jury's verdict." *Id.* at 1189, 196 P.3d at 476. "The level of misconduct necessary to reverse a conviction depends upon how strong and convincing is the evidence of guilt. If the issue of guilt or innocence is close, if the [S]tate's case is not strong, prosecutor misconduct will probably be considered prejudicial." *Gaxiola v. State*, 121 Nev. 638, 654, 119 P.3d 1225, 1236 (2005).

The evidence of Woods's guilt was overwhelming. Crucially, Woods made a phone call from jail stating that he "did something to [Jones], but I don't think she's gonna make it." The jury listened to the audio recording of this call, and had the opportunity to compare Woods's voice with the person who made the phone call. Moreover, the phone number Woods dialed from jail was a contact in his cell phone. Three eyewitnesses

identified Woods as the perpetrator of Jones's murder, including D.L., who exclaimed during and after Jones's stabbing that Woods was the perpetrator. Two police officers testified that Woods approached them and admitted involvement with an incident at the same location where Jones was murdered. Thus, we conclude that the overwhelming strength of this evidence renders any prosecutorial misconduct harmless.

The district court did not err by denying Woods's motion to suppress

Woods contends that the district court erred by failing to suppress the contents of his cell phone. He avers that the State's 21-day delay between seizing his cell phone and applying for a warrant to search it was unreasonable under the Fourth Amendment.

"Suppression issues present mixed questions of law and fact. This court reviews findings of fact for clear error, but the legal consequences of those facts involve questions of law that we review de novo. The reasonableness of a seizure is a matter of law reviewed de novo." *State v. Beckman*, 129 Nev. 481, 485-86, 305 P.3d 912, 916 (2013) (citation omitted) (internal quotation marks omitted). The United States Court of Appeals for the Ninth Circuit has held that a 21-day delay between seizing an item and obtaining a search warrant was reasonable pursuant to the Fourth Amendment. *United States v. Sullivan*, 797 F.3d 623, 635 (9th Cir. 2015).

In *Sullivan*, the defendant was on parole and filmed a pornographic video with a 14-year-old victim. *Id.* at 628. During a parole search, officers seized the defendant's laptop, digital camera, and cell phone. *Id.* at 629. Officers, however, did not obtain a search warrant for the laptop until 21 days later, partially because they needed to transfer the laptop to a forensic investigator. *Id.* at 629-30, 635. The defendant cited *United States v. Mitchell*, 565 F.3d 1347 (11th Cir. 2009) (holding that a 21-day

delay between seizure and application for a search warrant was unreasonable), to argue that the 21-day delay was unreasonable. *Sullivan*, 797 F.3d at 634. In rejecting the defendant's argument based on *Mitchell*,[3] the Ninth Circuit reasoned as follows:

> During the entire time period when the laptop was retained by the government, [the defendant] was in custody on eight parole violation charges. He does not claim that he could have made use of the laptop while incarcerated or that he sought return of his laptop to himself or a third party. Where individuals are incarcerated and cannot make use of seized property, their possessory interest in that property is reduced.

Id. at 633 (citing *Segura v. United States*, 468 U.S. 796, 813 (1984) (plurality opinion)); *see also United States v. Johns*, 469 U.S. 478, 487 (1985) (holding that defendants who "never sought return of the property" failed to identify how "the delay in the search . . . adversely affected legitimate interests protected by the Fourth Amendment"). The Ninth Circuit also held that the 21-day delay was reasonable because the police needed to transfer the computer to a forensic investigator. *Sullivan*, 797 F.3d at 635. Thus, the Ninth Circuit held that evidence found on the laptop was properly admitted. *Id.*

---

[3]Other courts have declined to extend the holding in *Mitchell*. *See United States v. Christie*, 717 F.3d 1156, 1162-64 (10th Cir. 2013) (holding that a five-month delay was reasonable after an investigator obtained property lawfully "and retain[ed] it without objection"); *United States v. Stabile*, 633 F.3d 219, 235-36 (3d Cir. 2011) (holding that a three-month delay was reasonable under the totality of the circumstances).

Here, officers seized Woods's cell phone and 21 days later obtained a warrant to search it. The district court found that Woods never requested the return of his cell phone,[4] and that police officers initially seized the phone and then transferred it to detectives who performed a forensic investigation. Moreover, an officer declared in an affidavit that Woods's cell phone was impounded for transfer to detectives. The district court also found that Woods was in custody for four days following the seizure of his cell phone. He was arrested again following Jones's murder, which occurred before officers obtained the warrant to search his cell phone.

As in *Sullivan*, Woods's in-custody status for five days during the delay—and more importantly his failure to request the return of his cell phone—significantly reduced his possessory interest in it. *Id.* at 633; *see also Christie*, 717 F.3d at 1163 (holding that the defendant's failure to request the return of the property reduced his possessory interest in it). Also as in *Sullivan*, the delay here was partially because officers had to transfer the cell phone to detectives for a forensic examination. *See* 797 F.3d at 635. Thus, we conclude that the district court did not err by denying Woods's motion to suppress the contents of his cell phone.

The district court did not abuse its discretion by allowing lay testimony

Woods argues that an officer testified to an improper legal conclusion by affirming the State's question, "Is it illegal for someone who is a felon to possess firearms?"

---

[4]Although Woods stated that he had asked for the cell phone to be returned, the district court noted that Woods never alleged that in his written motions.

We review the decision to admit opinion testimony for an abuse of discretion. *See Watson v. State*, 94 Nev. 261, 264, 578 P.2d 753, 756 (1978) ("The admissibility and competency of opinion testimony, either expert or non-expert, is largely discretionary with the trial court . . . ."). "Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact." NRS 50.295. "[A] *direct* opinion on guilt in a criminal case [is] inadmissible . . . ." *Collins v. State*, 133 Nev. 717, 725, 405 P.3d 657, 665 (2017).

Here, the officer's testimony was not an improper legal conclusion, specifically because the testimony did not express a direct opinion on the guilt or innocence of Woods. The officer merely affirmed that the law prohibits a felon from possessing a firearm, so we conclude that the district court did not abuse its discretion by admitting his testimony.

The district court properly instructed the jury on NRS 202.360's elements

Woods argues that the district court failed to instruct the jury on an essential element of possession of a firearm by a prohibited person under NRS 202.360. He contends that the United States Supreme Court has held that, to secure a conviction for possession of a firearm by an ex-felon, the prosecution "must prove both that the defendant knew he possessed a firearm and that he knew he belonged to the relevant category of persons barred from possessing a firearm." *Rehaif v. United States*, ___ U.S. ___, ___, 139 S. Ct. 2191, 2200 (2019). Woods contends that we adopted all the elements of illegal firearm possession as articulated by *Rehaif* in *Hager v. State*, 135 Nev. 246, 447 P.3d 1063 (2019), and that the district

court did not instruct the jury on whether Woods knew he belonged to the class of persons barred from possessing a firearm.

"[W]e review de novo whether a particular [jury] instruction . . . comprises a correct statement of the law." *Cortinas v. State*, 124 Nev. 1013, 1019, 195 P.3d 315, 319 (2008).

In *Rehaif*, the Supreme Court concluded that a conviction for illegal firearm possession under 18 U.S.C.A. § 922(g) (West 2015) and U.S.C.A. § 924(a)(2) (West 2018) required the prosecution to prove that the defendant knew he possessed a firearm and that he knew he was barred from possessing a firearm." ___ U.S. at ___, 139 S. Ct. at 2200. In *Hager*, we explained the following with respect to Nevada's felon-in-possession statute:

> *Similar to its federal counterpart*, illegal firearm possession under NRS 202.360 has three main elements: (1) a status element (the defendant falls within one of the categories of person the statute prohibits from possessing a firearm); (2) a possession element ("[a] person shall not . . . have in his or her possession"); and (3) a firearms element ("any firearm").

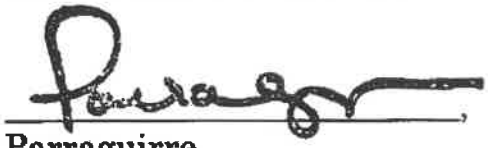
135 Nev. at 249, 447 P.3d at 1066 (emphasis added).

The district court did not err by not instructing the jury that Woods had to know that he belonged to the relevant category of persons barred from possessing a firearm. *Hager* did not interpret NRS 202.360 as requiring the State to prove an element of knowledge. *Id.* Further, unlike the federal statute, NRS 202.360 does not require the State to prove the defendant "knowingly" possessed a firearm during sentencing. *Compare* 18 U.S.C.A. § 924(a)(2) (West 2018), *with* NRS 202.360(1). Based on the record,

we conclude that the district court properly instructed the jury on the elements of NRS 202.360(1).

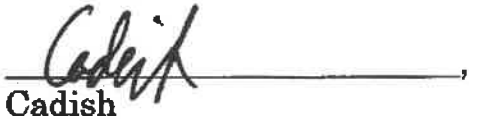
Accordingly, we

ORDER the judgment of conviction AFFIRMED.[5]



_____, J.
Parraguirre

_____, J.
Hardesty



_____, J.
Cadish

---

[5]Woods also raises other issues pertaining to supplemental voir dire, the State's opening statement and use of PowerPoint, golden-rule arguments, references to his in-custody status and criminal history, and the State's use of leading questions—but he failed to preserve these issues with objections at trial, or objected but did not state the specific grounds, so we review them for plain error. *Vega v. State*, 126 Nev. 332, 338, 236 P.3d 632, 636 (2010); *see also* NRS 47.040(1)(a) (stating that parties must state the specific ground for an objection). Under plain-error review, the "appellant must demonstrate that: (1) there was an error; (2) the error is plain, meaning that it is clear under current law from a casual inspection of the record; and (3) the error affected the defendant's substantial rights." *Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48 (internal quotation marks omitted), *cert. denied*, ___ U.S. ___, 139 S. Ct. 415 (2018). Woods has not shown that any of the alleged errors affected his substantial rights, so he fails to prove any plain error. Further, none of the alleged errors would have affected his substantial rights because, as we discussed, overwhelming evidence supported the verdict. *Green v. State*, 119 Nev. 542, 548, 80 P.3d 93, 97 (2003). Thus, we conclude that none warrant relief under the plain-error rule.

Finally, Woods contends that cumulative error warrants reversal. We disagree because, consistent with the foregoing analysis, the State presented overwhelming evidence of Woods's guilt.

cc: Hon. Douglas W. Herndon, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk