

AUG 06 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

BERNARD KALILIKANE,

Defendant - Appellant.

No. 08-30334

D.C. No. 3:08-CR-00004-JWS

MEMORANDUM*

Appeal from the United States District Court
for the District of Alaska
John W. Sedwick, Chief District Judge, Presiding

Argued and Submitted August 3, 2009
Anchorage, Alaska

Before: FARRIS, THOMPSON and RAWLINSON, Circuit Judges.

Appellant Bernard Kalilikane (Kalilikane) appeals his convictions for armed bank robbery, armed credit union robbery, using a firearm during a crime of violence, and felon in possession of a firearm and ammunition. We affirm Kalilikane's convictions.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

1. The district court did not abuse its discretion in denying Kalilikane's motion to further substitute counsel. *See United States v. Mendez-Sanchez*, 563 F.3d 935, 942 (9th Cir. 2009) (discussing standards).
2. The district court properly held that Kalilikane failed to unequivocally waive his right to counsel as required for self-representation. *See id.* at 945-46.
3. The district court properly denied Kalilikane an opportunity to continue his testimony, because of Kalilikane's disruptive behavior and the inadmissibility of Kalilikane's proffered testimony. *See United States v. Pino-Noriega*, 189 F.3d 1089, 1095 (9th Cir. 1999) (“[A] defendant’s right to testify is not unduly restricted by rules limiting a defendant’s testimony to *relevant* matters . . .”) (citation omitted) (emphasis in the original); *see also United States v. Johnson*, 820 F.2d 1065, 1074 (9th Cir. 1987) (“[A] defendant can waive [the] right to testify through contumacious conduct.”) (citation omitted).
4. Any error resulting from the shackles and prison attire was harmless, because Kalilikane brought the shackles to the jury’s attention; the district court instructed the jury to disregard Kalilikane’s remarks concerning the shackles;

Kalilikane chose to dress in prison attire; and there was overwhelming evidence of Kalilikane's guilt. *See United States v. Olano*, 62 F.3d 1180, 1190 (9th Cir. 1995) (The defendant "must demonstrate actual prejudice to establish a constitutional violation.") (citation omitted); *see also Townsend v. Knowles*, 562 F.3d 1200, 1209 (9th Cir. 2009) ("The law presumes that the jury follows the instructions given.") (citation omitted).

5. Kalilikane's disruptive behavior warranted his removal from the courtroom. *See Kulas v. Flores*, 255 F.3d 780, 786 (9th Cir. 2001) ("A defendant can lose his right to be present at trial if, after he has been warned[] by the judge that he will be removed if he continues his disruptive behavior, he nevertheless insists on conducting himself in a manner so disorderly, disruptive, and disrespectful of the court that his trial cannot be carried on with him in the courtroom.") (citation and alteration omitted).

AFFIRMED.