

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOAN PENDERGRAFT,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 46171

FILED

JUN 12 2007

ORDER OF REVERSAL AND REMAND

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count each of gross misdemeanor child endangerment and misdemeanor coercion. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge. The district court sentenced appellant Joan Pendergraft to two concurrent jail terms of 6 months, but then suspended execution of the sentence and placed Pendergraft on probation for a time period not to exceed 18 months.

Pendergraft contends, among other things, that reversal of her conviction is warranted because the prosecutor engaged in misconduct.<sup>1</sup> Specifically, she argues that the prosecutor acted improperly by asking Pendergraft, on cross-examination, whether the case against her daughter and codefendant had been "adjudicated" and asking whether her daughter had been held "accountable" for the same crimes. In its appellate brief,

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<sup>1</sup>Pendergraft also argues that the prosecutor committed misconduct by implying, in rebuttal closing argument, that her daughter and codefendant was a bad mother. The alleged instance of misconduct was not objected to and does not rise to the level of plain error. See Williams v. State, 103 Nev. 106, 110-11, 734 P.2d 700, 703 (1987).

the State concedes error but argues that the prosecutorial misconduct was harmless given the overwhelming evidence of guilt.

Where a prosecutor has committed misconduct, "the relevant inquiry is whether the prosecutor's statements so infected the proceedings with unfairness as to make the results a denial of due process."<sup>2</sup>

In this case, we conclude that the prosecutorial misconduct resulted in a denial of due process. The prosecutor's line of inquiry was improper because it was an attempt to elicit highly prejudicial and inadmissible evidence.<sup>3</sup> Moreover, the misconduct in this case was particularly egregious because the prosecutor's line of inquiry violated the district court's express instructions to counsel that the only permissible reference to Pendergraft's daughter's criminal case was that it had been "resolved."<sup>4</sup> And the prejudicial nature of the prosecutorial misconduct was compounded by the district court's refusal to admonish the jurors not to consider in deliberations the prosecutor's statements that Pendergraft's daughter had been held "accountable" for the same crimes.<sup>5</sup>

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<sup>2</sup>Greene v. State, 113 Nev. 157, 169, 931 P.2d 54, 62 (1997), modified on other grounds by Byford v. State, 116 Nev. 215, 994 P.2d 700 (2000).

<sup>3</sup>See Hilt v. State, 91 Nev. 654, 662, 541 P.2d 645, 650 (1975) ("A guilty plea or conviction of one person is not admissible against another charged with the same offense.").

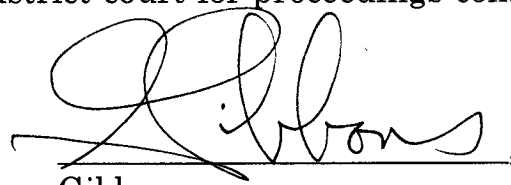
<sup>4</sup>Pendergraft also challenges the district court's ruling allowing evidence that her daughter's case had been "resolved." We conclude that the district court erred in allowing testimony about the "resolution" of the case of Pendergraft's codefendant. See id.

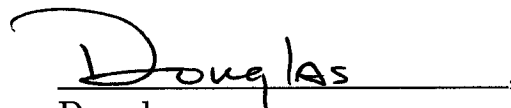
<sup>5</sup>Cf. Greene, 113 Nev. at 170, 931 P.2d at 62 (holding that jury admonishment sufficient to remove prejudice from prosecutorial


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While the State presented sufficient evidence in support of the convictions, under the particular circumstances of this case, we cannot say that the prosecutorial misconduct was harmless beyond a reasonable doubt. To the contrary, we conclude that the prosecutorial misconduct infected the proceedings with unfairness and, therefore, Pendergraft is entitled to a new trial. Accordingly, we

ORDER the judgment of conviction REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.

  
Gibbons, J.

  
Douglas, J.

  
Cherry, J.

cc: Hon. Steven P. Elliott, District Judge  
Hardy & Associates  
Attorney General Catherine Cortez Masto/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk

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*... continued*

misconduct and issuing a "stern warning to trial attorneys" that "failure to observe the admonitions of the trial judge will not be tolerated").