

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDGAR JOE AVILES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47658

FILED

JUN 12 2007

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, entered pursuant to a jury verdict, of two counts of possession or sale of a document or personal identifying information to establish a false status or identity. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge. The district court sentenced appellant Edgar Joe Aviles to serve two consecutive prison terms of 12 to 48 months.

First, Aviles contends that the district court abused its discretion by admitting evidence of his prior offenses and probation into evidence. He claims that he had "not suffered any felony convictions and thus the reference to his gross misdemeanor convictions was improper." And he argues that the prosecutor improperly used evidence of his other crimes to prove character.

The district court has considerable discretion in determining the relevance and admissibility of evidence, and this court will not disturb the trial court's decision to admit evidence absent manifest error.¹ Here,

¹See Lucas v. State, 96 Nev. 428, 431-32, 610 P.2d 727, 730 (1980).

during a pretrial hearing on Aviles' motion to suppress evidence of his probationer status and criminal history, the district court ruled that the State could present evidence that Aviles was arrested for probation violations and that he was searched incident to the arrest. At Aviles' request, the district court ruled that evidence that Aviles had been convicted of two gross misdemeanors could be admitted to show that he was not on probation for a felony conviction. The district court also ruled that the State could not use the evidence of Aviles' gross misdemeanor convictions to challenge the veracity of defense witnesses. We conclude that the district court acted within its discretion, there was no manifest error, and the State's use of the prior offense and probation evidence conformed to the district court's rulings.²

Second, Aviles contends that the district court erred by refusing to allow him to quote biblical passages. He claims that the district court's restriction improperly interfered with his ability to present his theory of the case. Aviles does not support this contention with citations to relevant legal authority.³ Nonetheless, the record reveals that prior to closing argument, the State moved to prohibit Aviles from making

²See NRS 48.035(3); Bellon v. State, 121 Nev. ___, ___, 117 P.3d 176, 181 (2005) ("a witness may only testify to another uncharged act or crime if it is so closely related to the act in controversy that the witness cannot describe the act without referring to the other uncharged act or crime").

³See 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.").

biblical references. Aviles objected and argued that the biblical passages represent his whole defense, they go to his state of mind, and they go to the issue of intent. The district court observed that no evidence had been presented regarding Aviles' religious beliefs, and it ruled that Aviles could quote a biblical passage for the proposition that God directs us to return things to our neighbors, but he could not quote a biblical passage for the proposition that "there's authorization in the Bible to represent yourself to be someone other than your true identity." We conclude that the district court did not err.⁴

Third, Aviles contends that the prosecutor committed misconduct by characterizing his witnesses as liars. He points to the following colloquy, which occurred during the prosecutor's closing argument:

MS. SMITH [PROSECUTOR]: Ladies and Gentlemen, if you can find that the witness lied about one material fact you can disregard their entire testimony.

I would submit to you that [Jose Aviles] lied about the circumstances surrounding the licenses. I would also submit to you that he lied about seeing the license his son had made from the officer, from Officer Garrick.

⁴See Young v. State, 120 Nev. 963, 972, 102 P.3d 572, 578 (2004) ("There is ample opportunity for quotation of biblical passages in the courtroom, but not when the passage directs the finding that the jury is considering.").

MR. LIKER [DEFENSE COUNSEL]: I object to her calling my witnesses liars.

THE COURT: I must have missed that. Did you call them a liar?

MS. SMITH: I did not call him a liar. I said I would submit he --

THE COURT: Go ahead.

We have long held that a prosecutor is prohibited from calling a witness a "liar."⁵ In Rowland v. State, we relaxed this prohibition and set a new standard for determining when the prosecutor's characterization of the credibility of a witness amounts to misconduct.⁶ We explained that

A prosecutor's use of the words 'lying' or 'truth' should not automatically mean that prosecutorial misconduct has occurred. But condemning a defendant as a 'liar' should be considered prosecutorial misconduct. For those situations that fall in between these two examples, we must look to the attorney for the defendant to object and the district judge to make his or her ruling on a case-by-case basis.

Here, the prosecutor committed misconduct by stating that the defense witness had lied. Nonetheless, given the strength of the evidence presented by the State, we conclude that the prosecutor's misconduct was harmless.⁷ We nonetheless admonish prosecutor Sarah Smith for

⁵See Ross v. State, 106 Nev. 924, 927-28, 803 P.2d 1104, 1106 (1990).

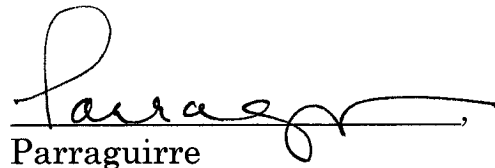
⁶118 Nev. 31, 40, 39 P.3d 114, 119 (2002).


⁷See Riley v. State, 107 Nev. 205, 213, 808 P.2d 551, 556 (1991).


suggesting to the jury that the defendant had lied, and we caution Ms. Smith that similar misconduct in the future may result in this court referring her to the State Bar of Nevada for disciplinary proceedings.

Having considered Aviles' contentions and concluded that they are without merit,⁸ we

ORDER the judgment of conviction AFFIRMED.

 J.
Parraguirre

 J.
Hardesty

 J.
Saitta

cc: Hon. Donald M. Mosley, District Judge
Law Offices of Tony Liker
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

⁸To the extent that Aviles contends that the district court abused its discretion by denying his motion for a continuance, we conclude that he has not presented a cogent argument and decline to consider his contention. See Maresca, 103 Nev. at 673, 748 P.2d at 6.