

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICKY VELL MASTERS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50334

FILED

DEC 03 2008

TRACIE K. LINDEMAN
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 attempted murder of a victim 60 years of age or older with the use of a deadly weapon. Eighth Judicial District Court, Clark County; James M. Bixler, Judge. The district court adjudicated appellant Ricky Vell Masters as a habitual criminal and sentenced him to serve a term of life in prison without the possibility of parole.

In this appeal, Masters raises a single issue: whether the trial court committed reversible error by failing to sua sponte strike and give a curative instruction regarding the prosecutor's alleged statement of a personal opinion during closing argument. We conclude that this issue lacks merit.

As this court has recognized, it is improper for prosecutors to "inject their personal beliefs and opinions into their arguments to the jury."¹ But "a criminal conviction is not to be lightly overturned on the

¹Aesoph v. State, 102 Nev. 316, 322, 721 P.2d 379, 383 (1986); see also Collier v. State, 101 Nev. 473, 705 P.2d 1126 (1985), modified on other
continued on next page . . .

basis of a prosecutor's comments standing alone, for the statements or conduct must be viewed in context; only by so doing can it be determined whether the prosecutor's conduct affected the fairness of the trial."² "[T]he relevant inquiry is whether the prosecutor's statements so infected the proceedings with unfairness as to make the results a denial of due process."³

Here, Masters complains that the following comment during the prosecutor's closing argument improperly injected the prosecutor's personal opinion as to his guilt: "He slashed her throat, barely missing the carotid artery. Folks, I don't think you slash somebody's throat meaning to miss that part. So he is guilty of attempt murder with use of a deadly weapon." Masters, however, did not object to this comment at trial. As a general rule, a defendant must object to alleged prosecutorial misconduct to preserve the issue for review by this court.⁴ However, NRS 178.602 provides that "[p]lain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court." Therefore, for this court to grant relief based on this claim,

... continued

grounds by Howard v. State, 106 Nev. 713, 719, 800 P.2d 175, 178 (1990); McGuire v. State, 100 Nev. 153, 677 P.2d 1060 (1984).

²United States v. Young, 470 U.S. 1, 11 (1985).

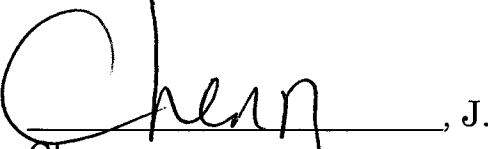
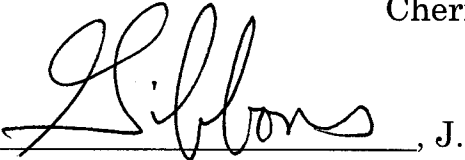
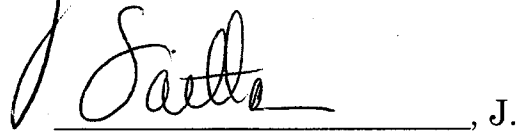
³Greene v. State, 113 Nev. 157, 169, 931 P.2d 54, 62 (1997), overruled on other grounds by Byford v. State, 116 Nev. 215, 235, 994 P.2d 700, 713 (2000).

⁴See Garner v. State, 78 Nev. 366, 372-73, 374 P.2d 525, 529 (1962).

Masters must demonstrate that (1) there was an error, (2) that the error is “plain,” and (3) that the error “affect[ed] [his] substantial rights.”⁵ To show that an error affected his substantial rights, Masters must demonstrate “actual prejudice or a miscarriage of justice.”⁶ In an effort to meet this burden, Masters asserts that “[t]he prosecutor’s argument so far exceeded the bounds of proper advocacy that it undermined the fundamental fairness of the trial itself, such as to cast serious doubt on the reliability of the judgment of conviction.” Based on our review of the record, we conclude that while the prosecutor’s comment arguably was improper, Masters has not demonstrated that the comment resulted in actual prejudice or a miscarriage of justice. Accordingly, we conclude that Masters has not demonstrated plain error as a result of the prosecutor’s comment.

Having considered Masters’ argument and concluded that it lacks merit, we

ORDER the judgment of conviction AFFIRMED.


Cherry, J.

Gibbons, J.

Saitta, J.

⁵NRS 178.602; Green v. State, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003).

⁶Green, 119 Nev. at 545, 80 P.3d at 95.

cc: Hon. James M. Bixler, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk