

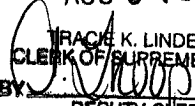
IN THE SUPREME COURT OF THE STATE OF NEVADA

EDWARD PHILIP RANDOLPH, IV,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 50397

**FILED**

AUG 04 2008

TRACEE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY:   
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, entered pursuant to a jury verdict, of one count of assault with a deadly weapon. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge. The district court sentenced appellant Edward Philip Randolph, IV, to serve a prison term of 12 to 48 months, ordered the sentence suspended, and placed Randolph on probation for a period not to exceed 24 months.

Randolph contends that he was denied a fair trial due to prosecutorial misconduct. Randolph claims that during closing and rebuttal arguments the prosecutor improperly commented on the standard of reasonable doubt, the presumption of innocence, and the function of the jury. Randolph acknowledges that he failed to object to the prosecutor's comments on reasonable doubt and the presumption of innocence, but maintains that he objected to the prosecutor's comment on the jury's function. Our review of the record on appeal, however, reveals that

Randolph's objection was that the prosecutor had exceeded "the scope of rebuttal." Accordingly, this issue was not preserved for our review.

"Generally, [before we will] consider whether a prosecutor's remarks were improper, the defendant must have objected to them at the time, allowing the district court to rule upon the objection, admonish the prosecutor, and instruct the jury."<sup>1</sup> Nonetheless, "we may consider sua sponte plain error which affects the defendant's substantial rights, if the error either: (1) had a prejudicial impact on the verdict when viewed in the context of the trial as a whole, or (2) seriously affects the integrity or public reputation of the judicial proceedings."<sup>2</sup>

We note that the jury was properly instructed on the presumption of innocence, the prosecution's burden of proof, reasonable doubt, and its duty to weigh evidence and determine the credibility of witnesses. We have considered the prosecutor's comments in context and, to the extent that they may be wrong or inaccurate, we conclude that they do "not rise to the level of improper argument that would justify overturning [Randolph's] conviction."<sup>3</sup>

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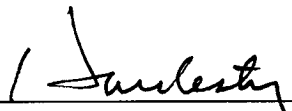
<sup>1</sup>Young v. State, 120 Nev. 963, 971-72, 102 P.3d 572, 578 (2004).

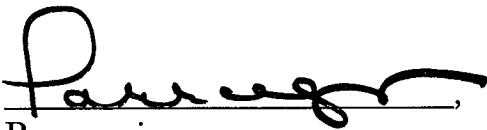
<sup>2</sup>Rowland v. State, 118 Nev. 31, 38, 39 P.3d 114, 118 (2002) (internal quotation marks and citations omitted).

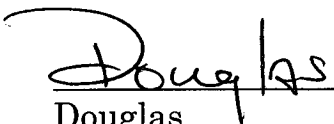
<sup>3</sup>Greene v. State, 113 Nev. 157, 169-70, 931 P.2d 54, 62 (1997) ("the relevant inquiry is whether the prosecutor's statements so infected the proceedings with unfairness as to make the results a denial of due  
*continued on next page . . .*

Having considered Randolph's contention and concluded that he is not entitled to relief, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, J.  
Douglas

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

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*... continued*

process”), modified on other grounds by *Byford v. State*, 116 Nev. 215, 994 P.2d 700 (2000).