

IN THE SUPREME COURT OF THE STATE OF NEVADA

RONALD ROMAIN HAMLER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 51562

**FILED**

**JAN 29 2010**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of burglary while in possession of a deadly weapon, robbery with the use of a deadly weapon, and battery with the use of a deadly weapon. Eighth Judicial District Court, Clark County; David B. Barker, Judge.

This case arises out of an altercation between appellant Ronald Hamler and the victim, Richard Farris. Farris is deaf and lived in the same housing project as Hamler. One evening, Hamler went to Farris's apartment and the two ended up having a physical altercation. Farris sustained minor cuts and he stabbed Hamler in the back twice. Farris's and Hamler's stories are divergent. Farris claims that Hamler robbed him and he used self-defense, whereas Hamler told several versions of the event. The following day, Farris contacted the police. After interviewing Farris and Hamler and finding Farris's laptop computer where Hamler had spent the night, the police arrested Hamler. After a two-day trial, the jury convicted Hamler of burglary while in possession of a deadly weapon, robbery with the use of a deadly weapon, and battery with the use of a deadly weapon.

Hamler appeals, arguing: (1) the district court erred by refusing to admit impeachment evidence with respect to Farris and by unreasonably restricting cross-examination of Farris, (2) the prosecutor

committed misconduct in commenting about blood on the laptop, and (3) cumulative error warrants a new trial.<sup>1</sup>

We conclude that the district court committed reversible error by preventing defense counsel from cross-examining Farris regarding his possible racial bias. We further conclude that it was misconduct for the prosecutor to argue that there was blood on the laptop when the substance on the laptop was never tested, and that the district court erred in determining that the prosecutor could refer to the substance as “blood-like.” Cumulative error also warrants a new trial. Accordingly, we reverse and remand to the district court for proceedings consistent with this order. The parties are familiar with the facts and history of this case, and we do not recount them further here except as necessary to our disposition.

---

<sup>1</sup>Hamler also argues that: (1) the district court erred by denying his motion to dismiss based on its improper continuance of the preliminary hearing; (2) his constitutional rights were violated by the State’s failure to preserve and produce exculpatory evidence, the district court’s denial of his motion to dismiss regarding the evidence, and the district court’s rejection of his requested jury instructions on the issue; (3) the State violated Brady by not producing Farris’s medical records; (4) the district court erroneously instructed the jury, and the verdict form was improper; (5) the district court erred in denying his motion for a new trial based on conflicting evidence; (6) the district court erred in denying his challenge to the makeup of the jury venire; (7) the district court erred in denying his motion to dismiss the burglary while in possession of a deadly weapon charge based on the burglary statute being overbroad; (8) the district court erred by denying his motion to strike Farris’s testimony; (9) the district court erred by failing to verify juror unanimity; and (10) the convictions of robbery with the use of a deadly weapon and battery with the use of a deadly weapon are redundant and violate double jeopardy. We decline to address these arguments.

The district court committed reversible error by preventing defense counsel from cross-examining Farris regarding his racial bias

Hamler argues that the district court violated his due process and Confrontation Clause rights when it limited his cross-examination of Farris by excluding the defense's line of questioning and impeachment by extrinsic evidence regarding Farris's prior reports of being robbed by black men.<sup>2</sup> The State argues that the evidence was improper impeachment by extrinsic evidence of a collateral matter that was immaterial to whether Hamler robbed Farris. We conclude that the district court erred by preventing defense counsel from cross-examining Farris regarding racial bias, violating Hamler's Confrontation Clause rights.

The collateral fact rule prohibits impeachment of a witness with extrinsic evidence that is collateral to the proceedings. Lobato v. State, 120 Nev. 512, 518, 96 P.3d 765, 770 (2004). Collateral facts are "outside the controversy, or are not directly connected with the principal matter or issue in dispute." Id. (internal quotations omitted). However, the collateral fact rule does not apply to some types of impeachment. Id. at 518-19, 96 P.3d at 770. For example, extrinsic evidence to show motive of the witness to testify in a certain way, such as bias or prejudice, is never collateral. Id. at 519, 96 P.3d at 770.

Under the Sixth Amendment Confrontation Clause, the defendant has a right to cross-examine a witness regarding bias. Ransey v. State, 100 Nev. 277, 279, 680 P.2d 596, 597 (1984). Although district courts generally have broad discretion in limiting cross-examination that

---

<sup>2</sup>Hamler also argues that the district court improperly excluded Farris's prior arrest and convictions and Farris's interview with Detective Cain. We conclude that these arguments lack merit.

attacks a witness' credibility, this discretion is limited when the purpose of the cross-examination is to establish the witness' bias. Lobato, 120 Nev. at 520, 96 P.3d at 771. "Generally, '[t]he only proper restriction should be those inquiries which are repetitive, irrelevant, vague, speculative, or designed merely to harass, annoy or humiliate the witness.'" Id. (quoting Bushnell v. State, 95 Nev. 570, 573, 599 P.2d 1038, 1040 (1979)).

In this case, the defense's theory was that the altercation between Hamler and Farris was a drug deal that turned into a fight. The defense theorized that Farris fabricated the robbery story to prevent a drug conviction, which would bar him from his public housing. The defense asked Farris whether he made reports to the police in 2005 and 2006 about being robbed by a black man, making his allegation against Hamler the third of such reports. The district court sustained the State's relevance objections and struck the questions. Hamler objected outside the presence of the jury and argued that these events were relevant to Farris's credibility, veracity, and motive. Hamler also argues it is evidence of Farris's modus operandi and bias against blacks. The district court ruled that the prior incidents were collateral and could not be used as impeachment evidence. We disagree.

Hamler argues that if Farris was biased because Hamler is black he may have been more likely to lie about Hamler's role in the altercation which puts Farris's credibility at issue. The district court erred in finding that this was inadmissible extrinsic evidence on a collateral issue. This case is analogous to Ransey, 100 Nev. 277, 680 P.2d 596. In Ransey, the black defendant attempted to admit the victim's use of the word "nigger" and to cross-examine her regarding her bias against blacks. Id. at 278-79, 680 P.2d at 597. The district court excluded the victim's use of the word "nigger" and prevented defense counsel from

cross-examining her regarding any bias. Id. This court held that the district court's complete preclusion of cross-examination of the victim regarding bias violated the defendant's Confrontation Clause rights, but still upheld the conviction in light of overwhelming evidence of guilt. Id. at 279-80, 680 P.2d at 597.

Similarly, in this case, the district court completely prevented Hamler from exploring Farris's bias through cross-examination. Therefore, we conclude that the district court violated Hamler's Confrontation Clause rights. Further, the evidence here is not overwhelming. Hamler and Farris were the only witnesses to the altercation, the evidence supported both parties' theory of the case, and the jury's decision was necessarily based on the version of events it believed. Because this is a classic case consisting of two competing stories from the only witnesses to the incident, credibility is key to the jury's decision. We conclude that there is a reasonable probability that evidence of Farris's racial bias against Hamler would have hurt his credibility and impacted the outcome of the trial. Lobato, 120 Nev. at 521, 96 P.3d at 772. Thus the error affected Hamler's substantial rights and requires reversal. The prosecutor committed misconduct by arguing that there was blood on the laptop computer

Hamler argues that the prosecutor committed misconduct by referring to a substance that had not been tested as blood and that the district court further erred when it permitted the prosecution to refer to the substance as blood-like. Defense counsel previously objected to the untested substance being referred to as blood. Thus, Hamler preserved this issue for appeal.

This court analyzes allegations of prosecutorial misconduct by determining whether the prosecutor's conduct was improper, and if so, whether it warrants reversal or is harmless error. Valdez v. State, 124

Nev. \_\_\_, \_\_\_, 196 P.3d 465, 476 (2008). Whether an error is harmless depends on whether the misconduct affects the defendant's constitutional rights. Id. at \_\_\_, 196 P.3d at 476. If the misconduct affects the defendant's constitutional rights, then the State must demonstrate beyond a reasonable doubt that the error did not contribute to the verdict. Id. For nonconstitutional errors, this court "will reverse only if the error substantially affects the jury's verdict." Id.

Prosecutorial misconduct may be of a constitutional dimension if the misconduct infected the trial with unfairness so that a conviction amounts to a denial of due process. Id. at \_\_\_, 196 P.3d at 477. The misconduct during Hamler's trial is not of constitutional dimension, so we reverse only if the error substantially affected the jury's verdict.

Early in the trial, Officer Williams referred to the substance on the laptop as blood. Defense counsel objected and the court sustained the objection. Later, the prosecutor said, "Those are blood marks on the laptop." The defense objected, and the court sustained it, stating, "it's a blood-like substance." The prosecutor went on to argue that the pictures showed a blood-like substance on the laptop that Hamler hastily wiped off. Because the laptop was not recovered until the following day, the prosecutor argued that it was impossible to know what Hamler might have done with the laptop during that time period.

Hamler initially argued that the prosecutorial misconduct involving the laptop was that the prosecutor shifted the burden of proof to Hamler by inferring that Hamler needed to show what happened to the laptop during that time period.<sup>3</sup> Problematically, however, the substance

---

<sup>3</sup>We do not address the burden-shifting claim, deciding it is without merit.

on the laptop was never tested, so there is no evidence that confirms this substance was blood or even blood-like.

A prosecutor may not misstate the evidence or make a statement unsupported by the evidence. Williams v. State, 103 Nev. 106, 110, 734 P.2d 700, 703 (1987). Here, the prosecutor's argument that there was blood on the laptop, and the district court's instruction to call the substance blood-like, was not supported by evidence because the substance was never tested. We conclude that the prosecutor committed misconduct by arguing that the substance was blood or blood-like without any evidentiary confirmation of that fact. While we conclude that this error standing alone did not affect Hamler's constitutional rights, we are convinced that the error does contribute to the cumulative error analysis.

#### Cumulative error warrants reversal

Cumulative error may deny a defendant a fair trial even if the errors, standing alone, would be harmless. Valdez, 124 Nev. at \_\_\_, 196 P.3d at 481. "When evaluating a claim of cumulative error, we consider the following factors: '(1) whether the issue of guilt is close, (2) the quantity and character of the error, and (3) the gravity of the crime charged.'" Id. (quoting Mulder v. State, 116 Nev. 1, 17, 992 P.2d 845, 854-55 (2000)).

In addition to the trial errors discussed above, two other instances where the prosecutors misstated the evidence occurred.

#### Hamler's ability to communicate with Farris

The prosecutor committed misconduct when, during closing argument, he questioned Hamler's ability to communicate with Farris without an interpreter when Detective Cain needed to use one. The prosecutor was discussing one of Hamler's versions of the events, when Hamler said he played poker with Farris and Farris told him about getting beat up. The prosecutor said, "[Detective] Cain couldn't talk to

[Farris] without a sign language interpreter but the Defendant could?" This misstated the evidence, because Detective Cain testified he could communicate minimally with Farris without an interpreter.

As discussed above regarding the substance on the laptop, a prosecutor must not misstate evidence or make a statement unsupported by the evidence. Williams, 103 Nev. at 110, 734 P.2d at 703. The defense counsel objected in this instance, and the district court directed the prosecutor to rephrase the comment. While this misconduct does not so infect the trial to make the result a denial of due process, this misconduct does contribute to the cumulative error analysis. Valdez, 124 Nev. at \_\_\_, 196 P.3d at 476.

#### Farris's disability checks

The prosecutor also misstated evidence when she said "the only person saying there is any issue of a disability check is defense counsel." The defense counsel objected and argued that Farris's mother also testified about the disability check. Hamler also recalled, in his statement to police, that he walked to the store with Farris to get a check. Again, the district court sustained the objection and asked the prosecutor to rephrase the comment. This instance of misconduct, analyzed alone, is harmless but contributed to the overall error and denied Hamler a fair trial.

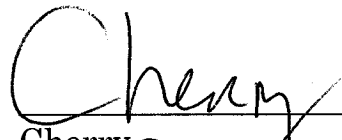
#### Cumulative error impact


Here, because two equally plausible but different theories of the alleged crime were offered by appellant and by the victim, the issue of Hamler's guilt was close. As discussed, Hamler and Farris were the only witnesses to their altercation. The evidence in the case was not overwhelming in favor of Hamler's guilt, but supported both Hamler's and Farris's version of events. Therefore, the jury's verdict rested heavily on its determination of the credibility of both men. The prosecutors'

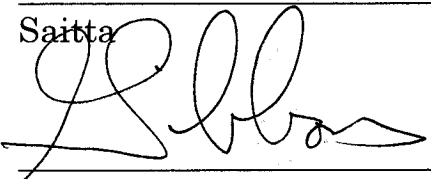


comments, which misstated the evidence on three occasions, contributed to Hamler's lack of credibility in the eyes of the jury. As addressed above, the district court also denied Hamler the opportunity to attack Farris's credibility and explore Farris's possible racial bias. Thus, with the issue of guilt close and credibility as a large factor in the verdict, we conclude that cumulative error also warrants reversal.

Accordingly, we ORDER the judgment of the district court REVERSED and we REMAND this matter to the district court for proceedings consistent with this order<sup>4</sup>.

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Saitta

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. David B. Barker, 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

---

<sup>4</sup>The motion filed on December 17, 2009 to supplement the record is denied as moot. The Clerk of this Court shall return the JAVS recording received on that date.