

IN THE SUPREME COURT OF THE STATE OF NEVADA

RONALD RICHARD ALVA-  
CASTILLON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 52307

**FILED**

SEP 23 2009

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *Tracy*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of grand larceny of a motor vehicle. Third Judicial District Court, Lyon County; David A. Huff, Judge. The district court sentenced appellant Ronald Richard Alva-Castillon to serve a prison term of 12 to 32 months, suspended execution of the sentence, placed him on probation for a period not to exceed three years, and ordered him to pay restitution in the amount of \$3,458.98.

Alva-Castillon contends that the prosecutor committed misconduct during rebuttal closing argument by interjecting his personal opinion disparaging the testimony of a defense witness. Specifically, Alva-Castillon asserts that the prosecutor's comment improperly insinuated the witness had lied on the stand. We conclude this claim lacks merit.

Defense counsel did not object to the prosecutor's comment. Failure to object during trial generally precludes appellate review of an issue; however, we may address an error sua sponte if it constitutes plain error. NRS 178.602; Leonard v. State, 117 Nev. 53, 63, 17 P.3d 397, 403-04 (2001). In conducting a plain error analysis, this court must consider

“whether there was error, whether the error was plain or clear, and whether the error affected the defendant's substantial rights.” Anderson v. State, 121 Nev. 511, 516, 118 P.3d 184, 187 (2005) (internal quotation marks omitted).

“To determine if prejudicial prosecutorial misconduct occurred, the relevant inquiry is whether a prosecutor's statements so infected the proceedings with unfairness as to result in a denial of due process.” Id. “This court must consider the context of such statements, and a criminal conviction is not to be lightly overturned on the basis of a prosecutor's comments standing alone.” Id. (internal quotation marks omitted). “We have held that the prosecutor calling a witness a liar is improper.” Rowland v. State, 118 Nev. 31, 39, 39 P.3d 114, 119 (2002). We have also held that it is improper argument for the prosecutor to state “that a witness has lied on the stand.” Witherow v. State, 104 Nev. 721, 724, 765 P.2d 1153, 1155 (1988). And “[w]e have consistently held that prosecutors must not inject their personal beliefs and opinions into their arguments to the jury.” Aesoph v. State, 102 Nev. 316, 322, 721 P.2d 379, 383 (1986). However, the prosecutor should be given reasonable latitude to argue witness credibility when the outcome of the case depends on which witnesses are telling the truth. Rowland, 118 Nev. at 39, 39 P.3d at 119.

At trial, Alva-Castillon's defense was that his taking of the vehicle was not larceny because he and the victim agreed that Alva-Castillon would arrange for the sale of the victim's truck to a third party. A witness for the defense, Tomas Cervantes, testified that he heard the victim ask Alva-Castillon to call the third party and arrange the sale and, that on a different occasion, he saw the victim and Alva-Castillon exchanging some kind of paperwork. Cervantes testified that he did not

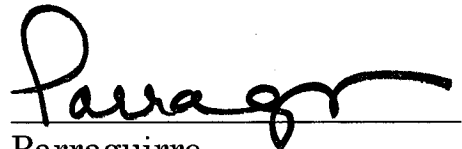
know the subject or contents of the paperwork, the truck's sale price, whether any money was exchanged, or when the third party was supposed to get the truck. In closing, defense counsel referred to Cervantes' testimony and suggested that the victim was not telling the truth and that he had a motive to lie because he did not want to disappoint his grandfather with news that he had sold his truck: "And then we have what I think supplies to you a little motive for [the victim] to do this." On rebuttal, the prosecutor stated: "Counsel mentioned Mr. Cervantes' testimony. That should go in the trash can where it belongs." Alva-Castillon argues that "there can only be one inference from the [prosecutor's] statement [and that] inference is that Mr. Cervantes is a liar." The prosecutor's statement, Alva-Castillon contends, warrants reversal because it was an expression of personal opinion that improperly interfered in the jury's exclusive domain to determine the credibility of the witnesses.


The prosecutor did not explicitly claim that Cervantes was a liar or state that he had lied on the stand, and the comment does not amount to an improper opinion as to the veracity of a witness. The prosecutor's statement was in response to earlier remarks by appellant's counsel who opened the door to arguments about witness credibility by suggesting that the victim was lying. We conclude that the statement, though needlessly sarcastic, was within the appropriate scope for argument regarding the credibility of a witness adopted in Rowland. 118 Nev. at 39, 39 P.3d at 119; see also People v. Nunez, 465 N.E.2d 581, 587 (Ill. App. Ct. 1984) ("[W]e do not believe that the prosecutor's reference to 'that garbage' was equivalent to calling defendant and his legal counsel a liar."). Further, we note that the jurors were informed by both counsel

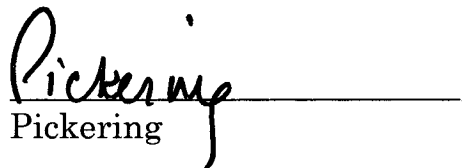
that they should disregard the beliefs of counsel and reach their own conclusions. Based on the foregoing, we conclude that no plain error occurred.

Having considered Alva-Castillon's contention and determined that it lacks merit, we

ORDER the judgment of conviction AFFIRMED.

 J.  
Parraguirre

 J.  
Douglas

 J.  
Pickering

cc: Hon. David A. Huff, District Judge  
Paul G. Yohey  
Attorney General Catherine Cortez Masto/Carson City  
Lyon County District Attorney  
Lyon County Clerk