

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANGELLA WILLIAMS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 55052

FILED

JUN 21 2010

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 two counts of attempted murder with the use of a deadly weapon. Eighth Judicial District Court, Clark County; David B. Barker, Judge.

Appellant Angella Williams was convicted of two counts of attempted murder with use of a deadly weapon following a five-day trial. Williams was sentenced to 24-60 months to run concurrently for each count, plus 24-48 months for the use of a deadly weapon, to run consecutively. Williams claimed she shot her gun in self-defense, hitting the victims, Glenn Meafou and Sarai Lauvao.

In April 2008, Williams got into an argument with her neighbor Glenn Meafou and his family, who were having a barbecue at an apartment complex. After Williams complained several times that Meafou and his family were being too loud, Meafou argued with Williams that they were just having a family barbecue, and if she had a problem, she should go back to her apartment. The argument escalated and one of Meafou's friends held him back. Williams told Meafou, "I'm going to fuck you up," and then went up the stairs to her apartment. Williams returned from her apartment

waving a gun in the air at the top of the staircase. No one else had a weapon.

When Williams returned with the gun, she said, "I've got something for your ass." Meafou, who was at the bottom of the stairs, proceeded up the stairs towards Williams, yelling, "shoot me, shoot me." Witnesses testified he was trying to take the attention off everyone else. Williams then shot her gun, and Sarai Lauvoa, a four-year-old child, grabbed her stomach and fell to her knees. Sarai sustained injuries from a bullet that entered and exited her body. Williams fired two more shots and Meafou was hit twice, with the bullets barely missing his spinal cord.

Williams raises two issues on appeal. First, she claims that the district court erred by denying her request to give jury instructions regarding reverse transferred intent, right to arm, and aiming a firearm at a human being. We review the district court's jury instruction decisions for an abuse of discretion or judicial error. Crawford v. State, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005). While "a criminal defendant is entitled to have the jury instructed on [her] theory of the case, no matter how weak or incredible the evidence supporting the theory may be . . . the [jury] instruction must correctly state the law." Barron v. State, 105 Nev. 767, 773, 783 P.2d 444, 448 (1989) (citations omitted). Further, a proffered jury instruction need not be given if it "misstates the law or is adequately covered by other instructions." Id.

The district court did not abuse its discretion or commit judicial error in rejecting Williams' proposed jury instructions. First, the district court properly instructed the jury on transferred

intent, and the instruction on reverse transferred intent was a misstatement of law.¹ Barron, 105 Nev. at 773, 783 P.2d at 448. Second, Williams was not charged with illegal or unlawful possession of a weapon. Therefore, there was no need to instruct the jury on this because Williams' constitutional right to bear arms was not at issue. Third, defendants are not entitled to instruction on lesser-related offenses, as opposed to lesser-included offenses. Peck v. State, 116 Nev. 840, 845, 7 P.3d 470, 473 (2000), overruled on other grounds by Rosas v. State, 122 Nev. 1258, 147 P.3d 1101 (2006). Further, Williams' theory of the case is that she shot in self-defense and therefore did not commit any crime. An instruction on aiming a firearm at a human being was properly rejected.

Second, Williams argues that the State committed prosecutorial misconduct during its closing rebuttal by improperly submitting expert opinion evidence. Williams did not object at trial. Prejudicial prosecutorial misconduct occurs when "a prosecutor's statements so infected the proceedings with unfairness as to result in a denial of due process." Anderson v. State, 121 Nev. 511, 516, 118 P.3d 184, 187 (2005). As "a defendant is entitled to a fair trial, not a perfect one," Rudin v. State, 120 Nev. 121, 136, 86 P.3d 572,

¹Williams cited to People v. Mathews, 154 Cal. Rptr. 628 (Cal. Ct. App. 1979), for the proposed reverse transferred intent. However, she misstates what the Mathews court held. In Mathews, the court did not discuss reverse transferred intent, it simply stated that "the lack of criminal intent to the unintended consequences" would preclude criminal responsibility. Id. at 631.

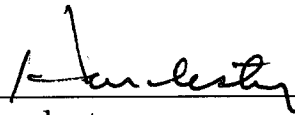
582 (2004), this court examines the context in which statements were made and will not overturn a conviction “unless the misconduct is ‘clearly demonstrated to be substantial and prejudicial.’” Miller v. State, 121 Nev. 92, 99, 110 P.3d 53, 58 (2005) (quoting Sheriff v. Fullerton, 112 Nev. 1084, 1098, 924 P.2d 702, 711 (1996)).

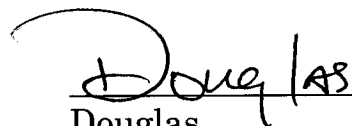
Generally, the failure to object to prosecutorial misconduct precludes appellate review. Gaxiola v. State, 121 Nev. 638, 654, 119 P.3d 1225, 1236 (2005). However, this court will consider prosecutorial misconduct, under plain error review, “if the error either: (1) had a prejudicial impact on the verdict when viewed in context of the trial as a whole, or (2) seriously affects the integrity or public reputation of the judicial proceedings.” Id. (quoting Rowland v. State, 118 Nev. 31, 38, 39 P.3d 114, 118 (2002)); NRS 178.602. The defendant carries the burden of demonstrating “actual prejudice or a miscarriage of justice.” Green v. State, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003).

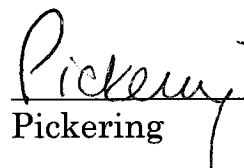
The State did not commit prosecutorial misconduct in its rebuttal statement. Williams argues that it was improper for the State to claim the bullet hit Sarai’s hip bone without expert testimony, rather than Williams’ theory that Sarai was injured by a ricocheting bullet since she did not aim the gun at Sarai. However, it does not matter whether Williams meant to hit Sarai or not given the theory of transferred intent. Thus, under plain error review, the error did not have a prejudicial impact on the verdict and did not seriously affect the integrity of the judicial proceeding.

Having considered Williams' contentions, we conclude that they lack merit. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Pickering

cc: Hon. David B. Barker, District Judge
Law Offices of C. Conrad Claus
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk