

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTIAN DOMINIQUE WILLIAMS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 67859

FILED

OCT 14 2016

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of robbery with use of a deadly weapon with the intent to promote, further or assist a criminal gang, and one count of first-degree murder with use of a deadly weapon with the intent to promote, further or assist a criminal gang. Eighth Judicial District Court, Clark County; Michael Villani, Judge. Appellant Christian Dominique Williams contends that the State engaged in several instances of prosecutorial misconduct during rebuttal argument that, alone and cumulatively, warrant reversal of his convictions.

In reviewing prosecutorial-misconduct claims, we first determine whether the prosecutor's conduct was improper and, if so, whether the misconduct requires reversal. *Valdez v. State*, 124 Nev. 1172, 1188, 196 P.3d 465, 476 (2008). Where an appellant did not object below, we review the claim for plain error and will not reverse "unless the defendant demonstrates that the error affected his or her substantial rights, by causing 'actual prejudice or a miscarriage of justice.'" *Id.* at 1190, 196 P.3d at 477 (quoting *Green v. State*, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003)). Where an appellant preserved his claim by objecting below,

we will reverse for nonconstitutional errors¹ “only if the error substantially affects the jury’s verdict.” *Id.*

First, Williams contends that the prosecutor improperly disparaged the defense when it suggested the defense was advocating for jury nullification. Williams did not object below, and we conclude that the prosecutor’s comments were not error plain from the record. When viewed in context, the prosecutor was simply asking the jury to consider evidence that the defense had argued should not be considered.

Second, Williams contends that the prosecutor’s arguments improperly put Williams on trial for gang violence in general. Williams did not object below, and we conclude that the prosecutor’s comments were not error plain from the record. The prosecutor was reminding the jurors to perform their duties even if they were not concerned about or directly affected by the violence in the apartment complex where the crimes were committed.

Third, Williams contends that the prosecutor mischaracterized his prior conviction for discharge of a firearm from a vehicle as murder and implied that Williams got a “break” when he did not get a murder conviction. This was misconduct. The prosecutor’s statements that Williams was “on murder number two” and that Williams was given a break while someone else was convicted of the prior murder implied that Williams had already committed one murder and gotten away with it. This implication is belied by the record before this court as Williams was neither charged with nor convicted of murder in the prior case. However,

¹Constitutional errors are reviewed under a different standard, *see id.* at 1189, 196 P.3d at 476, but Williams does not allege that any single instance of misconduct was constitutional in nature, and we conclude that they were not.

Williams has failed to demonstrate that the error substantially affected the verdict. He argues that the comments improperly urged the jury to punish him for both murders, but that was not their purpose. Rather, the prosecutor was specifically rebutting the defense suggestion that Williams' youth made him less culpable by emphasizing that he had been involved in violent crimes in the past. Further, the prosecutor admitted after Williams objected that someone other than Williams had been convicted of the earlier murder, although the impact of this admission was weakened by the comment that Williams got a break.

Fourth, Williams contends that the prosecutor impugned the integrity of defense counsel when he stated that counsel had manipulated witness C. Thomas. This was misconduct as it impugned the integrity of defense counsel and was not supported by evidence in the record. See *Browning v. State*, 124 Nev. 517, 534, 188 P.3d 60, 72 (2008) ("It is improper for a prosecutor to disparage defense counsel or legitimate defense tactics."); *Williams v. State*, 103 Nev. 106, 110, 734 P.2d 700, 703 (1987) ("A prosecutor may not argue facts or inferences not supported by the evidence."). The State's argument on appeal that the witness was manipulated because he responded "yes" to most cross-examination questions is unsupported by any explanation or authority and is belied by the record. However, Williams has failed to demonstrate that the error substantially affected the verdict. Although the district court overruled counsel's objection, the prosecutor nevertheless immediately changed course, and it was clear that defense counsel did not manipulate the witness.

Fifth, Williams contends that the prosecutor improperly misrepresented Williams' defense. Williams sought medical treatment for the gunshot wound the victim inflicted on him, and when officers

responded, Williams told them he was shot by others in a different part of town. His defense at trial was that he shot the victim in self-defense. The prosecutor's rebuttal argument that Williams' defense was not self-defense was thus not supported by evidence in the record and was misconduct. However, Williams has failed to demonstrate that the error substantially affected the verdict. He argues that the comment affected the verdict because it "muddied" the defense strategy, but after counsel objected, the prosecutor clarified that he was referring to Williams' initial statements to police. The defense strategy thus remained intact.


Sixth, Williams contends that the prosecutor improperly accused the defense of advocating the execution of snitches. This was misconduct. However, the district court sustained Williams' objection, and Williams has thus failed to demonstrate that the error substantially affected the verdict. *See Valdez*, 124 Nev. at 1192, 196 P.3d at 478. To the extent Williams challenges the prosecutor's subsequent argument about the defense arguing that the victim had done something wrong, we conclude that the comment was not error plain from the record. The prosecutor's argument was in response to the defense argument that the victim's actions prior to the shooting demonstrated that he was an aggressor.

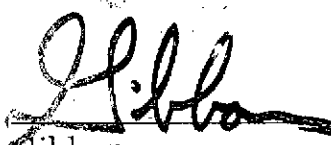
Finally, Williams contends that even if the above errors were not individually prejudicial, their cumulative effect warrants reversal of his convictions. *See id.* at 1195, 196 P.3d at 481 ("The cumulative effect of errors may violate a defendant's constitutional right to a fair trial even though errors are harmless individually." (quotation marks omitted)). In determining whether the cumulative effect of multiple errors warrants reversal, this court considers "(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.* (quotation marks omitted). Beginning with the final factor, the gravity of the crimes is severe. There were several errors in the prosecution’s rebuttal arguments, but none were of a particularly egregious character. Finally, there was substantial evidence of guilt presented at trial. Williams claims he shot and killed the victim in self-defense. Yet the jury heard evidence that Williams left the victim and the dice game and then returned shortly thereafter with a gun, the single bullet Williams fired entered the victim from behind and from a range of one-half to two inches away, and he had motive, all of which shows that the killing was not in self-defense. Accordingly, we cannot conclude that the “prosecutor’s statements so infected the proceedings with unfairness as to make the results a denial of due process” warranting reversal. *Butler v. State*, 120 Nev. 879, 896, 102 P.3d 71, 83 (2004) (quotation marks omitted).

For the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED.²


_____, J.
Douglas


_____, J.
Gibbons

²We note that Williams failed to provide this court with complete trial transcripts necessary for our review. *See* NRAP 30. Review of Williams’ claims was only possible because the State provided the necessary transcripts.

CHERRY, J., dissenting:

I respectfully dissent from my colleagues' conclusion that cumulative error does not warrant reversal. The prosecutor engaged in four instances of misconduct that, when considered as a whole and in the context of the trial overall, are plainly egregious.

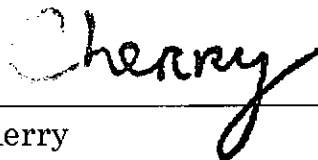
The prosecutor first accused Williams of being "on murder number two" and claimed he was "cut . . . a break" on a prior murder. The State defends this statement, claiming that Williams was *charged* with another murder. Both statements are patently false as demonstrated by the State's own exhibit to the motion to admit evidence of Williams' prior bad acts, an exhibit which shows Williams was charged with attempted murder and discharging a firearm from a vehicle but not with murder.

The prosecutor then disparaged the defense. He accused defense counsel of "manipulat[ing]" a witness where there was no evidence presented to support such an assertion. The State's suggestion on appeal that eliciting "yes" responses is somehow witness manipulation only reinforces the impropriety of the comment.

The prosecutor also misled the jury about Williams' defense, claiming that counsel's "defense of this case is that it's self-defense" while Williams' "is it wasn't me." Any prior statements he made to police notwithstanding, Williams presented a single defense at trial: self-defense.

Finally, the prosecutor again disparaged the defense, in a particularly egregious manner. He accused the defense of advocating for the execution of snitches, stating, "I mean, that's really the argument here. That it is okay to execute [the victim] in the middle of this apartment complex because hey, it's not that bad[,] that he's a snitch." Again the comment is unsupported by the record and was designed only to inflame the jurors' passions against Williams.

The majority concludes no relief is warranted because there was substantial evidence of guilt. However, where there is indeed substantial evidence of guilt, a prosecutor does not need to sink to such levels to secure a conviction. Justice requires that we reverse Williams' conviction and remand for a new, fair jury trial.


_____, J.
Cherry

cc: Hon. Michael Villani, District Judge
Justice Law Center
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk