

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,

No. 38335

Appellant,

vs.

BRIAN L. SMITH,

Respondent.

**FILED**

DEC 12 2001

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Bloom*  
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court granting respondent's motion for a new trial. The State contends that the district court erred in concluding that prosecutorial misconduct necessitated a new trial. We disagree.

During closing argument, the prosecutor stated: "So the person that is lying is Mr. Smith and [one of the defense witnesses]." "[P]revious decisions of this court clearly state that it is improper argument for counsel to characterize a witness as a liar."<sup>1</sup> Moreover, we note that the evidence against appellant was not overwhelming, and we cannot conclude that the error was harmless beyond a reasonable doubt.<sup>2</sup>

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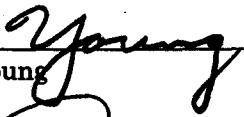
<sup>1</sup>Ross v. State, 106 Nev. 924, 927, 803 P.2d 1104, 1105 (1990) (citing Witherow v. State, 104 Nev. 721, 724, 765 P.2d 1153, 1155 (1988)).

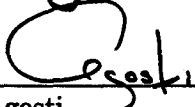
<sup>2</sup>See id. at 928, 803 P.2d at 1106.


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Accordingly, we conclude that the State's contention is without merit, and we

ORDER the judgment of the district court AFFIRMED.<sup>3</sup>

  
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Young J.

  
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Agosti J.

  
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Leavitt J.

cc: Hon. J. Michael Memeo, District Judge  
Attorney General/Carson City  
Elko County District Attorney  
Stringfield Law Office  
Elko County Clerk

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<sup>3</sup>Although this court has elected to file the fast track statement, appendix and response submitted, it is noted that none of these documents complies with the arrangement and form requirements of the Nevada Rules of Appellate Procedure. See NRAP 3C(e); NRAP 3C(f); NRAP 28(e); NRAP 30(c); NRAP 32(a). Specifically: the fast track statement is not printed on paper that is numbered and lined on the left; the pages in the appendix to the fast track statement are not numbered consecutively; the fast track response is not printed on paper that is numbered and lined on the left; portions of the fast track response are single-spaced; and counsel for respondent incorporated by reference documents filed in the district court. Counsel for appellant and respondent are cautioned that failure to comply with the requirements for documents in the future may result in the documents being returned, unfiled, to be correctly prepared. See NRAP 32(c). Failure to comply may also result in the imposition of sanctions by this court. NRAP 3C(n).