

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM HENRY COLLIER, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41299

FILED

OCT 13 2003

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of burglary and two counts of robbery with the use of a deadly weapon. The district court adjudicated appellant William Henry Collier, Jr. a habitual criminal and sentenced him to serve three concurrent prison terms of 10 to 25 years.

The criminal charges against Collier arose from a robbery of a liquor store in Las Vegas. Jeffrey Clements, an employee of the liquor store, testified that on September 2, 2000, Collier, a regular customer, robbed the store at gunpoint. Subsequently, Clements identified Collier as the robber in a photographic lineup. Las Vegas Metropolitan Police Detective John Hanover testified that, after he informed Collier he was identified in a photographic lineup, Collier stated: "If I cop to the robbery, how much time will I get?" After a one-day jury trial, Collier was convicted of the criminal counts set forth above.

Collier's sole contention is that the district court engaged in misconduct at trial by accusing defense counsel of "making things up."¹

¹The judge stated: "You have to have argument based upon the evidence [defense counsel]. You can't be making things up. Where is this

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Collier argues that the "trial court's comments in the presence of the jury during the defense's closing argument belittled the defense theory and threw the entire weight of the bench against [him]." Relying on Manley v. State² and Turner v. State,³ Collier argues that the district judge's comments proved that he was not impartial and amounted to structural error requiring reversal of his conviction. We conclude that Collier's contention lacks merit.

Generally, the failure to object to judicial misconduct at the time of trial precludes appellate review unless the conduct amounts to plain error.⁴ In considering whether judicial misconduct amounts to plain error, the key inquiry is whether "the judge's remarks may have had a prejudicial impact on the verdict."⁵

In this case, we disagree with Collier that the alleged judicial misconduct amounted to structural error. Our review of the trial transcripts indicates that, overall, the trial judge acted impartially at trial. Likewise, in light of the isolated nature of the judicial commentary and the evidence presented at trial of Collier's guilt, we conclude that the judge's comments did not have a prejudicial impact on the jury's verdict.

... continued

conversation between [two witnesses] where [one witness] says come on, you have to help me."

²115 Nev. 114, 122, 979 P.2d 703, 708 (1999) (noting that an example of structural error includes "a judge who is not impartial").

³114 Nev. 682, 688, 962 P.2d 1223, 1226 (1998) (holding that a judge's improper failure to recuse himself mandated "automatic reversal").


⁴Oade v. State, 114 Nev. 619, 621-22, 960 P.2d 336, 338 (1998).

⁵Id. at 624, 960 P.2d at 339-40.


Accordingly, we conclude that the judge's comments during closing argument did not rise to the level of plain error.

Having considered Collier's contention and concluded that it lacks merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Rose


_____, J.
Leavitt


_____, J.
Maupin

cc: Hon. Joseph T. Bonaventure, District Judge
Clark County Public Defender
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk