

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIE J. SMITH, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41309

FILED

MAR 22 2006

JANET M. BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, upon a jury verdict, of one count of possession of stolen property. Eighth Judicial District Court, Clark County; John S. McGroarty, Judge. The district court adjudicated appellant Willie J. Smith, Jr. as an habitual criminal and sentenced him to a prison term of 10 to 25 years.¹

Smith presents three issues for our review: (1) whether the district court erred by denying his motion for a continuance, (2) whether the district court erred by overruling his objection based on Batson v. Kentucky,² and (3) whether the district court erred by permitting argument from the prosecutor that Smith contends amounted to prosecutorial misconduct. We conclude that each of Smith's arguments is without merit, and we affirm the district court's judgment.

Continuance

Smith argues that the district court erred by denying his requested continuance. The decision of whether to grant a continuance is

¹Smith does not raise on appeal the issues of his adjudication as an habitual criminal or his resulting sentence. We therefore do not address these issues.

²476 U.S. 79 (1986).

within the district court's discretion.³ We conclude that Smith failed to show good cause for a continuance because the court ensured that Smith would have ample time to meet with his counsel prior to the commencement of trial. Therefore, the district court did not abuse its discretion.

Batson objection

Smith first raised his Batson objection on various grounds after the district court had empaneled the jury and dismissed the remaining venire. A Batson objection should be made before empanelment of the jury; failure to do so precludes review of this issue on appeal.⁴ Therefore, we do not need to address Smith's specific objections pursuant to Batson.

Prosecutor's argument

Smith contends that the district court erred by permitting the State to make certain statements during closing argument that Smith claims amounted to misconduct. To determine whether prosecutorial misconduct occurred, "[t]he relevant inquiry is whether a prosecutor's statements so infected the proceedings with unfairness as to make the results a denial of due process."⁵ We consider the prosecutor's statements in context, and we do not lightly overturn a criminal conviction based on a prosecutor's comments standing alone.⁶

³See Zessman v. State, 94 Nev. 28, 31, 573 P.2d 1174, 1177 (1978).

⁴Rhyne v. State, 118 Nev. 1, 11-12 n.26, 38 P.3d 163, 170 n.26 (2002).

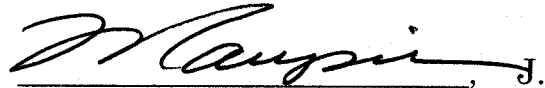
⁵Hernandez v. State, 118 Nev. 513, 525, 50 P.3d 1100, 1108 (2002).

⁶Id. (citing United States v. Young, 470 U.S. 1, 11 (1985)).

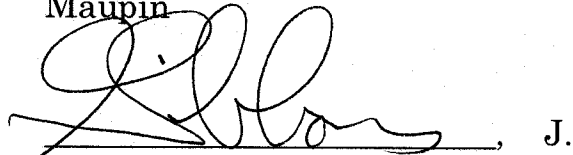
Smith objected to some of the statements about which he complains, but not others. Generally, the defendant must object to the prosecutor's remarks at the time, allowing the district court to rule upon the objection, admonish the prosecutor, and instruct the jury.⁷ Nevertheless, we conclude that none of the prosecutor's statements during closing argument amounted to misconduct. All the State's arguments had evidentiary bases, and they did not so infect the proceedings with unfairness as to deprive Smith of due process. Therefore, the district court did not err by permitting the prosecutor's statements during closing argument.

Having considered Smith's contentions and concluded that they lack merit, we

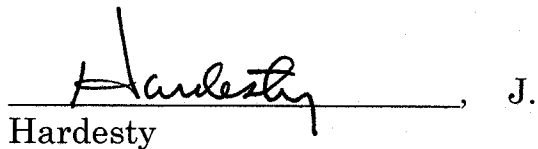
ORDER the judgment of the district court AFFIRMED.

 J.

Maupin

 J.

Gibbons

 J.

Hardesty

⁷See *id.*, at 525, 50 P.3d at 1109.

cc: Eighth Judicial District Court Dept. 16, District Judge
Longabaugh Law Offices
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk