

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

No. 42020 **FILED**

APR 26 2004

JANETTE M. BLONK
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE AND LIMITED REMAND TO CORRECT
THE JUDGMENT OF CONVICTION

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of grand larceny auto. The district court sentenced appellant Doreli Williams to a prison term of 18-48 months, suspended execution of the sentence and placed her on a term of probation with several conditions for an indeterminate period not to exceed 3 years.

First, Williams contends that the district court committed reversible error and violated her constitutional right to confrontation by limiting her cross-examination of a State witness.¹ The witness in question, Charles Fenner, apprehended Williams prior to the arrival of the police, and prevented her from stealing a neighbor's recreational vehicle. During her cross-examination of the witness, Williams attempted to question Fenner about whether he was aware that a person could be sued for the use of excessive force in a civil action. The State objected and the district court ruled that the line of questioning was not relevant. Williams argues that she should have been allowed to ask that and other similar

¹See U.S. Const. amend. VI, XIV; Nev. Const. art. 1, § 8.

questions of Fenner in order to prove bias. We disagree with Williams' contention.

The constitutional right to confrontation requires that a defendant must be able to expose facts from which the jury can draw inferences regarding the reliability of a witness.² A trial court's discretion to restrict the scope of cross-examination is "limited . . . when the purpose of cross-examination is to expose bias, and counsel must be permitted to elicit any facts which might color a witness's testimony."³ Moreover, the trial court's discretion "only comes into play if as a matter of right sufficient cross-examination has been permitted to satisfy the sixth amendment."⁴ Nevertheless, a trial court "retains wide latitude" to limit cross-examination based on considerations such as harassment, prejudice, confusion of the issues, and relevancy.⁵

As noted above, the district court ruled that the attempted line of questioning was not relevant to proving Fenner's alleged bias.⁶ Later that same day, outside the presence of the jury, the district court allowed

²See Davis v. Alaska, 415 U.S. 308, 318 (1974).

³Crew v. State, 100 Nev. 38, 45, 675 P.2d 986, 991 (1984); see also Buff v. State, 114 Nev. 1237, 1247, 970 P.2d 564, 570 (1998).

⁴Crew, 100 Nev. at 45, 675 P.2d at 990.

⁵See Delaware v. Van Arsdall, 475 U.S. 673, 679 (1986); Leonard v. State, 117 Nev. 53, 72, 17 P.3d 397, 409 (2001); Bridges v. State, 116 Nev. 752, 761, 6 P.3d 1000, 1007 (2000).

⁶See NRS 48.015 (providing that "relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence").

defense counsel to make an offer of proof for the record, and again ruled that the questions were not relevant. We also note that any civil action, that is, the possibility that Williams might sue Fenner for his actions in apprehending her, was merely hypothetical at the time of trial. Further, Williams otherwise had ample opportunity to and sufficiently cross-examined Fenner about the discrepancy in the statements Fenner made to the police arriving at the scene, during the preliminary hearing, and at trial. Accordingly, we conclude that the district court did not err in limiting Williams' cross-examination of Fenner.

Second, Williams contends that the district court committed reversible error by improperly vouching for a State witness – the victim. Williams complains about the following exchange which occurred at the end of the victim's testimony:

THE COURT: I have a question. How old are you?

THE WITNESS: Age 79.

THE COURT: 79 – in October, next October you'll be 79. God bless you. All right. Now, how do you spell your last name?

THE WITNESS: K-O-V-A-R-I-K.

THE COURT: Thank you very much. You're excused. Thank you.

THE WITNESS: Okay.

Williams argues that the district court's statement, "God bless you," amounted to "invoking a blessing from deity upon State's witness," and considering the conflicting statements made by the witness throughout the proceedings, the comment injected "a highly improper and unfair endorsement of [the witness]." Williams concedes that he failed to contemporaneously object, but requests that this court review the matter

because the district court's statement constitutes both plain error and constitutional error. We conclude that Williams' contention is without merit.

"That judges may not comment to the jury on the credibility of witnesses is a settled matter of Nevada constitutional law, case law, and statute."⁷ Nevertheless, this court has acknowledged that "few trials are totally devoid of inadvertent remarks or actions by a trial judge which may seem inappropriate 'when later examined in the calm cloisters of the appellate court.'"⁸ In the instant case, the complained-of exchange above does not include an endorsement of the witness' testimony or a comment on the evidence, and was not a charge to the jury or even addressed to the jury. Williams cannot demonstrate that he was prejudiced by the district court's inadvertent statement. Therefore, we conclude that the district court did not inappropriately vouch for the credibility of the witness or commit reversible plain and/or constitutional error.

Having considered Williams' contentions and concluded that they are without merit, we affirm the judgment of conviction. Our review of the judgment of conviction, however, reveals a clerical error. The judgment of conviction incorrectly states that Williams was convicted pursuant to a guilty plea. The judgment of conviction should have stated that Williams was convicted pursuant to a jury verdict. We therefore conclude that this matter should be remanded to the district court for the correction of the judgment of conviction. Accordingly, we

⁷Pertgen v. State, 105 Nev. 282, 286, 774 P.2d 429, 431 (1989).

⁸McNair v. State, 108 Nev. 53, 62, 825 P.2d 571, 577 (1992) (quoting United States v. Polizzi, 500 F.2d 856, 892 (9th Cir. 1974)).

ORDER the judgment of the district court AFFIRMED and
REMAND this matter to the district court for the limited purpose of
correcting the judgment of conviction.

Becker J.
Becker

Agosti J.
Agosti

Gibbons J.
Gibbons

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