

IN THE SUPREME COURT OF THE STATE OF NEVADA

NERRON D. WORMLEY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 42042

FILED

APR 25 2005

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, entered pursuant to a jury verdict, of second-degree murder with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Nancy M. Saitta, Judge. The district court sentenced appellant Nerron Wormley to serve two consecutive prison terms of life with the possibility of parole. Wormley asks this court to reverse his conviction.

On May 24, 2002, Wormley shot Joseph Delacruz twice while in the parking lot of a nightclub in Las Vegas. He fired his first shot while Delacruz was standing just a few feet away. The bullet struck Delacruz in the chest and mortally wounded him. Wormley then fired a second shot as Delacruz lay dying on the ground, inflicting another mortal wound. Wormley was subsequently charged with open murder with the use of a deadly weapon.

At trial, the State presented the testimony of fifteen witnesses, eight of whom testified that Wormley was present at the time of the shooting. Four witnesses identified Wormley as the person who shot Delacruz. Two others testified that they saw a black male shoot Delacruz, and the evidence established that Wormley was the only black individual present. Ronald Isbell testified that he tossed his handgun to

Wormley just prior to the shooting. The State's firearms expert testified that the bullets recovered from DelaCruz's body had been fired from Isbell's handgun. None of the State's witnesses saw a knife, and four witnesses specifically testified that DelaCruz did not have a knife. Wormley testified that he shot DelaCruz because DelaCruz tried to stab him and he was scared. The jury found Wormley guilty of second-degree murder with the use of a deadly weapon.

On appeal, Wormley claims that the district court committed a plain error by failing to declare a mistrial sua sponte based upon prosecutorial misconduct. District courts have a duty to ensure that criminal defendants receive a fair trial.<sup>1</sup> In fulfilling this duty, district courts must "exercise their discretionary power to control obvious prosecutorial misconduct sua sponte."<sup>2</sup>

In determining whether prosecutorial misconduct has deprived a defendant of a fair trial, we inquire as to whether the prosecutor's statements so infected the proceedings with unfairness as to make the results a denial of due process. Furthermore, a defendant is entitled to a fair trial, not a perfect one and, accordingly, a criminal conviction is not to be lightly overturned on the basis of a prosecutor's comments standing alone, for the statements or conduct must be viewed in context. Finally, we will determine whether any prosecutorial misconduct that did occur was harmless beyond a reasonable doubt.<sup>3</sup>

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<sup>1</sup>Collier v. State, 101 Nev. 473, 477, 705 P.2d 1126, 1128 (1985).

<sup>2</sup>Id.

<sup>3</sup>Rudin v. State, 120 Nev. 121, 136-37, 86 P.3d 572, 582 (2004) (internal footnotes and quotation marks omitted).

Wormley contends that the Deputy District Attorney Jerome Tao committed misconduct during his closing argument when he stated, "And I'll tell you one other person who seems to have been surprised by the knife, that would be Mr. Brooks, his attorney." Trial counsel timely objected to the comment, and the district court properly sustained the objection and instructed Tao to confine his comments to a summation of what the evidence had shown. Given the overwhelming evidence of Wormley's guilt, we conclude that no reversible error occurred.<sup>4</sup>

Wormley further contends that Deputy District Attorney Frank Coumou committed misconduct during his rebuttal closing argument when he stated:

One of the hard things about trials is that – especially murder trials, the whole focus is always on the defendant. And like in this case, he's trying to get himself out of the culpability of shooting Joseph DelaCruz. But we're here because this is a murder case. We are here because he died. He was murdered on May 24th, 2002. He was somebody's son on May 24th, he was somebody's brother, and he also had friends.

(Emphasis added.) Wormley argues that this comment was an improper and inflammatory appeal to sympathy. Contrary to the State's assertion, we conclude that Wormley's objection to this statement preserved it for appeal. However, Wormley has cited no authority to show that this statement exceeded the boundaries of proper prosecutorial conduct.<sup>5</sup>


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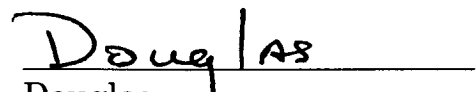
<sup>4</sup>See Hernandez v. State, 118 Nev. 513, 525, 50 P.3d 1100, 1109 (2002); Jones v. State, 113 Nev. 454, 467-68, 937 P.2d 55, 64 (1997).

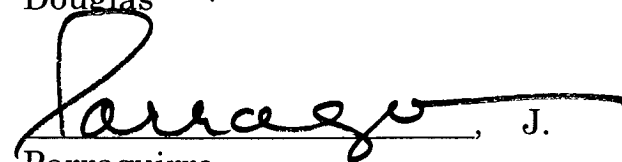
<sup>5</sup>See Floyd v. State, 118 Nev. 156, 173, 42 P.3d 249, 261 (2002).

Having considered Wormley's contentions and concluded that they are without merit, we

ORDER the judgment of the district court AFFIRMED.

 J.  
Maupin

 J.  
Douglas

 J.  
Parraguirre

cc: Hon. Nancy M. Saitta, District Judge  
Clark County Public Defender Philip J. Kohn  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk