

IN THE SUPREME COURT OF THE STATE OF NEVADA

DELWYN VENNARD WELLS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42067

FILED

AUG 26 2004

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. Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Judge.

Appellant Delwyn Vennard Wells was convicted of one count of first degree kidnapping with the use of a deadly weapon, one count of second degree kidnapping with the use of a deadly weapon, two counts of robbery with the use of a deadly weapon, one count of invasion of the home while in possession of a deadly weapon, one count of burglary while in possession of a deadly weapon, and one count of conspiracy to commit robbery and/or kidnapping. The district court sentenced Wells to serve two consecutive terms of life in the Nevada State Prison for first degree kidnapping with the use of a deadly weapon, two consecutive terms of 35 to 156 months for second degree kidnapping with the use of a deadly weapon, two consecutive terms of 72 to 180 months for each count of robbery with the use of a deadly weapon, one term of 35 to 156 months for invasion of the home while in possession of a deadly weapon, one term of 35 to 156 months for burglary while in possession of a deadly weapon, and one term of 13 to 60 months for conspiracy to commit robbery and/or kidnapping. The terms for each count were imposed to run concurrently.

Wells contends that reversal of his conviction is warranted because co-defendant Horace Houston's testimony on cross-examination included improper references to Wells' prior criminal history and the district court erred in denying Wells' motion for a mistrial based on those references. In particular, the following colloquy occurred:

Houston: . . . that was the third or fourth time I met Mr. Wells' son because he was incarcerated at that time, but he was still coming to the house.

Prosecutor: Just to be clear, you're referring to Mr. Wells' son, not to the people here, correct; not to these two defendants here?

You said somebody was incarcerated.

That was Mr. Wells' son?

Houston: Correct. And Mr. Wells was - -

The Court: Just a minute. You answered the question. Don't volunteer.

Ask another question.

Prosecutor: The type of incarceration that Delwyn Lewis was in was such that he was - -

Wells' Counsel: Objection, Your Honor. I don't understand where this is going. We are testifying now to my client.


The Court: No, it's Delwyn Lewis. That's not your client; it's his son.

"Reference to a defendant's prior criminal history may be reversible error. The test for determining if such a reference occurred is whether the jury could reasonably infer from the evidence presented that the defendant had engaged in prior criminal activity."¹ Applying this test


¹Collman v. State, 116 Nev. 687, 705, 7 P.3d 426, 437 (2000) (citations omitted).

to the instant case, we conclude that the jury could not have reasonably inferred that Houston's statements referred to Wells. Accordingly, the district court did not err in denying Wells' motion for a mistrial.

Having concluded that Wells' contention lacks merit, we
ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Douglas

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