

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICK ALLEN WHEAT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 34712

FILED

MAY 10 2000

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

ORDER DISMISSING APPEAL

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of burglary and possession of stolen property. The district court sentenced appellant to a prison term of twenty to seventy-two months for the burglary count, and twelve to seventy-two months for possession of stolen property. The district court also ordered appellant to pay \$5,194.33 in restitution, submit to a genetic marker determination test, and pay a \$25.00 administrative fee.

Appellant first contends that the State violated his right to a fair trial by failing to alert the court to alleged perjured testimony from a witness. However, as the State points out, appellant failed object to the witness' testimony or to any alleged prosecutorial misconduct. "As a general rule, the failure to object, assign misconduct, or request an instruction will preclude review by this court." *Sipsas v. State*, 102 Nev. 119, 125, 716 P.2d 231, 234-35 (1986). That rule does not apply where "the prosecutorial misconduct was so

prejudicial as to require court intervention sua sponte to protect the defendant's right to a fair trial." Id. at 125, 716 P.2d at 235. After reviewing the record, we conclude that appellant presents no credible evidence that the witness perjured herself or that the State committed any misconduct whatsoever. Therefore, we need not consider this issue on appeal.

Appellant next contends that the State violated his right to a fair trial by failing to disclose an offer of immunity to a witness for the prosecution. However, the record indicates that the witness was never offered immunity. Instead, the State was prepared to offer her immunity with regard to a prior, unrelated use of a controlled substance, but never actually made the offer. The witness was not informed of the State's potential offer. Thus, appellant's argument is without merit.

Finally, appellant contends that the district court erred in finding that Dawn Colleli was not an accomplice to the burglary as a matter of law. During closing argument, appellant's counsel characterized Colleli as a principal and accomplice to the offenses with which appellant was charged. The district court sustained the State's objection to this characterization and instructed the jury that, as a matter of law, Colleli was not a principal to the crimes. An accomplice is an individual who is liable for the identical offenses as the defendant. NRS 175.291(2). After reviewing the record,

we conclude there was no evidence that Colleli could be criminally liable for the crimes of burglary or possession of stolen property. Therefore, appellant's argument is without merit.

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

ORDER this appeal dismissed.

<u>Young</u>	J.
Young	
<u>Agosti</u>	J.
Agosti	
<u>Leavitt</u>	J.
Leavitt	

cc: Hon. Michael E. Fondi, District Judge
Attorney General
Carson City District Attorney
William G. Rogers
Carson City Clerk