IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DANIEL MARK WILSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 70457

ORDER OF AFFIRMANCE

Daniel Mark Wilson appeals from a judgment of conviction, pursuant to a jury verdict, of causing substantial bodily harm to another by driving a vehicle while under the influence of alcohol and/or controlled substance, and leaving the scene of an accident involving personal injury.[1] Second Judicial District Court, Washoe County; Lynne K. Simons, Judge.

Wilson first challenges the sufficiency of the evidence for his conviction of leaving the scene of an accident involving personal injury. We view "the evidence in the light most favorable to the prosecution" and determine whether "*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Mitchell v. State*, 124 Nev. 807, 816, 192 P.3d 721, 727 (2008) (quoting *Koza v. State*, 100 Nev. 245, 250, 681 P.2d 44, 47 (1984); *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). Undisputed trial testimony demonstrated that, after the accident, Wilson did not remain at the scene of the accident to await the arrival of police, render medical assistance, or provide information to law enforcement. In fact, witnesses testified that they saw him leave the scene within minutes of the accident and he later admitted to leaving in order to drop his dog off at his neighbor's house. When viewing this

[1]We do not recount the facts except as necessary to our disposition.

17-900813

evidence in the light most favorable to the prosecution, a rational trier of fact could have found the essential elements of the crime. *See* NRS 484E.010; NRS 484E.030; NRS 484E.050.

Wilson next contends that his conviction should be reversed due to prosecutorial misconduct. During closing argument, the prosecutor told the jury that the presumption of innocence no longer applied because the attorney averred that the State had "presented proof beyond a reasonable doubt that [Wilson] committed each and ever[y] element of the crime." The State concedes this was error. "A prosecutor may suggest that the presumption of innocence has been overcome; however, a prosecutor may never properly suggest that the presumption no longer applies to the defendant." *Morales v. State*, 122 Nev. 966, 972, 143 P.3d 463, 467 (2006) (footnote omitted) ("[W]e wish to caution Nevada prosecutors that this sort of argument is always improper."). Wilson, however, did not preserve this error for review because he failed to object to the comment below. Our review of the record shows that he has not demonstrated that the prosecutor's improper comment resulted in actual prejudice or a miscarriage of justice as there was overwhelming evidence of guilt and the jury was properly instructed on the presumption of innocence. *See Valdez v. State*, 124 Nev. 1172, 1188–90, 196 P.3d 465, 476–77 (2008). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Silver, C.J.

Tao, J.

Gibbons, J.

cc: Hon. Lynne K. Simons, District Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk