

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DEMARIO ANTAWAN WASHINGTON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 71160

FILED

OCT 31 2017

ORDER OF AFFIRMANCE

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

Demario Washington appeals from a judgment of conviction entered pursuant to a jury verdict. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

Washington was involved in an attempted robbery and shooting. A jury thereafter convicted Washington of conspiracy to commit robbery, attempt robbery with a deadly weapon, attempt murder with use of a deadly weapon, and battery with use of a deadly weapon resulting in substantial bodily harm.¹ On appeal, Washington argues the district court abused its discretion by denying his motion for a mistrial after the State impermissibly shifted the burden of proof in questioning a witness. Specifically, Washington argues the prosecutor engaged in misconduct by asking an FBI agent whether defense counsel had ever tried to obtain certain information.

We review a district court's decision to deny a motion for a mistrial for a clear abuse of discretion. *Ledbetter v. State*, 122 Nev. 252, 264, 129 P.3d 671, 680 (2006). We review claims of prosecutorial misconduct for improper conduct and then determine whether the improper

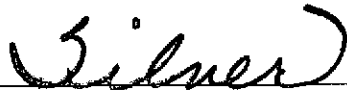
¹We do not recount the facts except as necessary to our disposition.

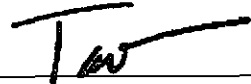
17-902284

conduct warrants reversal. *Valdez v. State*, 124 Nev. 1172, 1188, 196 P.3d 465, 476 (2008). Washington preserved this claim for appellate review, and we therefore review improper conduct for harmless error. *See id.* at 1188-90, 196 P.3d at 476-77 (holding that if error is of constitutional dimension, the State must show, “beyond a reasonable doubt, that the error did not contribute to the verdict”).

We conclude the district court correctly sustained Washington’s objection finding that the prosecutor’s rebuttal question to the witness was improper. *See Barron v. State*, 105 Nev. 767, 778, 783 P.2d 444, 451 (1989) (“The tactic of stating that the defendant can produce certain evidence or testify on his or her own behalf is an attempt to shift the burden of proof and is improper.”). However, in light of the district court’s curative instruction and the overwhelming evidence of Washington’s guilt produced at trial, we conclude the prosecutor’s question was harmless beyond a reasonable doubt. *See Valdez*, 124 Nev. at 1188-90, 196 P.3d at 476-77; *see also Summers v. State*, 122 Nev. 1326, 1333, 148 P.3d 778, 783 (2006) (we presume jurors follow the district court’s instructions). Therefore, we conclude no relief is warranted. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Douglas W. Herndon, District Judge
Roy L. Nelson, III
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk