

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JESSIE ZOLU WRIGHT,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 72419

**FILED**

DEC 26 2017

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Jessie Zolu Wright appeals from a judgment of conviction, pursuant to a jury verdict, of battery with substantial bodily harm. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Wright formerly worked at a Target store.<sup>1</sup> Julio Castellanos worked at the same store. Wright and Castellanos had a number of disagreements during the time they worked together.

One day, while working inside the store, Wright punched Castellanos numerous times, breaking bones in Castellanos' face and bruising his brain. The store's video surveillance system captured and recorded the attack from two different angles. Castellanos spent a month in the hospital and additional time thereafter recovering from his injuries.

Wright was charged with battery with substantial bodily harm. Wright pleaded not guilty and the case proceeded to a jury trial.

At trial, Wright admitted during his testimony that he threw all the punches, including the first punch, and that Castellanos suffered severe injuries because of those punches. However, he argued that he only punched Castellanos because Castellanos had cornered him and he feared that Castellanos was going to attack him with a box cutter.

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<sup>1</sup>We do not recount the facts except as necessary to our disposition.

The jury found Wright guilty of battery with substantial bodily harm. Wright appeals from this judgment on five grounds: (1) the district court violated his constitutional right to a jury venire composed of a fair cross-section of the community; (2)-(4) the district court abused its discretion by denying each of his three motions for a mistrial; and (5) cumulative errors deprived him of a fair trial.

*Wright fails to make a prima facie showing of underrepresentation caused by systematic exclusion*

Wright claims that the district court erred by denying his motion to strike the jury venire due to a violation of his constitutional right to a fair-cross-section of the community. However, he admits that he has not shown that any underrepresentation of certain distinct groups in his venire was due to systematic exclusion. See *Williams v. State*, 121 Nev. 934, 940, 125 P.3d 627, 631 (2005) (holding that, “[t]o demonstrate a prima facie violation of the fair-cross-section requirements, a defendant must show,” *inter alia*, that underrepresentation of a distinct group “is due to systematic exclusion of the group in the jury-selection process”) (quoting *Evans v. State*, 112 Nev. 1172, 1186, 926 P.2d 265, 275 (1996)). Accordingly, we reject Wright’s contention that the district court erred in denying his motion to strike the jury venire in his case.<sup>2</sup>

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<sup>2</sup>Wright argues that the Clark County jury commissioner and the district court prevented him from fully litigating his fair cross-section claim by not providing him with certain demographic information about the juror-selection process. However, Wright did not raise this challenge in the district court proceedings below and so we will not consider it in his direct appeal. See *Gibbons v. State*, 97 Nev. 520, 522-23, 634 P.2d 1214, 1216 (1981) (noting this court’s policy of “declining to review factual issues that have neither been raised nor determined before a district judge”).

*The district court did not abuse its discretion in denying Wright's first and second motions for a mistrial*

Wright argues that the district court abused its discretion by denying his first two motions for a mistrial, which concerned trial testimony given by witnesses for the prosecution. We disagree.

"A defendant's request for a mistrial may be granted for any number of reasons where some prejudice occurs that prevents the defendant from receiving a fair trial." *Rudin v. State*, 120 Nev. 121, 144, 86 P.3d 572, 587 (2004). However, "[t]he decision to deny a motion for a mistrial rests within the district court's discretion and will not be reversed on appeal 'absent a clear showing of abuse.'" *Ledbetter v. State*, 122 Nev. 252, 264, 129 P.3d 671, 680 (2006) (quoting *Randolph v. State*, 117 Nev. 970, 981, 36 P.3d 424, 431 (2001)). Where the district court has denied a defendant's motion for a mistrial based upon prejudicial testimony solicited by the prosecutor, this court reviews the district court's denial for harmless error. *Parker v. State*, 109 Nev. 383, 389, 849 P.2d 1062, 1066 (1993). "[W]here a prosecutor solicits the prejudicial testimony, denial of defendant's motion for a mistrial will be deemed harmless error where the prejudicial effect of the statement is not strong and where there is otherwise strong evidence of defendant's guilt." *Id.*

First, Wright argues that the district court abused its discretion by denying his motion for a mistrial based upon Castellanos' testimony that he intended to become a police officer or join the Marines, but his injuries, caused by Wright's attack, prevented him from pursuing these goals. Wright contends that this testimony was more prejudicial than probative because he stipulated to causing substantial bodily harm.

Wright did not attempt to stipulate to causing substantial bodily harm until after Castellanos testified. Moreover, the prosecution

never agreed to such a “stipulation.” Therefore, Castellanos’ testimony about the effects of his injuries was relevant and not unduly prejudicial in light of the substantial bodily harm element of the charged offense. Further, the evidence of Wright’s guilt is overwhelming given that he admitted to throwing all the punches and two video recordings of the battery were introduced as evidence indisputably showing him repeatedly punching a helpless Castellanos who suffered major injuries. Accordingly, we conclude that any error in the district court’s decision to deny Wright’s motion for a mistrial based on Castellanos’ testimony was harmless. See *Parker*, 109 Nev. at 389, 849 P.2d at 1066.

Second, Wright argues that the district court abused its discretion by denying his motion for a mistrial based upon the testimony of Castellanos’ sister, Nellie Garcia. In particular, Wright contends the prosecution inflamed the passions of the jury by showing Garcia certain photographs—previously admitted at trial as exhibits—that depicted Castellanos’ injuries, which caused Garcia to become emotional. Wright also argues that the prosecution sought to elicit prejudicial testimony about the effects Castellanos’ injuries had on Garcia’s employment.

Again, the prejudicial effect of this testimony is minimal. Though Wright reasserts that he stipulated to substantial bodily harm, the prosecution did not agree to any such stipulation. Garcia was Castellanos’ primary caretaker after he was released from the hospital. Thus, the prosecution properly sought her testimony to describe the severity of Castellanos’ injuries. Moreover, Wright’s objections to these inquiries in conjunction with the district court’s sustaining each of these objections blunted the prejudicial impact of the prosecution’s attempts to solicit this testimony from Garcia about the effects of Castellanos’ injuries on her

employment. And, once more, the evidence of Wright's guilt was overwhelming. Accordingly, we conclude that any error in the district court's decision to deny Wright's motion for a mistrial concerning Garcia's testimony was harmless. *See id.*

*The district court did not abuse its discretion in denying Wright's third motion for a mistrial*

Wright argues that the district court abused its discretion by denying his third motion for a mistrial based upon nine instances of alleged prosecutorial misconduct during closing statements, even though the district court sustained each of his objections to these nine instances.<sup>3</sup>

"When considering claims of prosecutorial misconduct," we use a two-step analysis. *Valdez v. State*, 124 Nev. 1172, 1188, 196 P.3d 465, 476 (2008). "First, we must determine whether the prosecutor's conduct was improper." *Id.* "Second, if the conduct was improper, we must determine whether the improper conduct warrants reversal." *Id.*

We have reviewed the nine instances Wright asserts constitute reversible prosecutorial misconduct. We conclude that these alleged instances of misconduct involved either proper conduct, *see Jeffries v. State*, 133 Nev. \_\_\_, \_\_\_, 397 P.3d 21, 26 (2017) (holding that a district court does not abuse its discretion by denying a motion for mistrial predicated upon proper prosecutorial conduct), or improper conduct that does not merit reversal as the misconduct did not substantially affect the jury's verdict. *See Valdez*, 124 Nev. at 1188-89, 196 P.3d at 476. Moreover, the district court later instructed the jury that the State bore the burden of proof, that

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<sup>3</sup>In one instance the district court did not expressly sustain Wright's objection, but agreed that the objection had merit, instructed the prosecutor to move on without further comment, and the prosecutor complied.

the jury must disregard any evidence to which an objection was sustained, and that statements, arguments, and opinions of counsel are not evidence, and we presume the jury followed those instructions. *See Summers v. State*, 122 Nev. 1326, 1333, 148 P.3d 778, 783 (2006). Accordingly, we affirm the district court's denial of Wright's third motion for a mistrial.

*Cumulative error does not mandate reversal*

Wright argues that even if none of his motions for mistrial merit reversal individually, the errors in each of them together require reversal as cumulative error. "A criminal defendant is not entitled to a perfect trial, only a fair trial." *Pascua v. State*, 122 Nev. 1001, 1008 n.16, 145 P.3d 1031, 1035 n.16 (2006). Accordingly, because the errors that Wright argues transpired in the proceedings below are either "insignificant or nonexistent, the cumulative effect of those errors cannot be found to have deprived [him] of a fair trial, especially in consideration of the evidence presented against [him]." *Id.* Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Gibbons

SILVER, C.J., concurring:

I concur with the majority's result and reasoning. However, I write separately on the issue of prosecutorial misconduct. In closing argument, Wright's counsel objected 12 times to the prosecutors' arguments, and the district court sustained all 12 objections.

Notwithstanding the improper comments made by the prosecutor, including statements disparaging defense counsel, I agree that in light of the videotape and overwhelming evidence of Wright's guilt the prosecutor's misconduct in this case was harmless error. However, I would caution the prosecution that in a weaker case such misconduct could constitute reversible error. *See Jones v. State*, 113 Nev. 454, 469-70, 937 P.2d 55, 65 (1997) (holding that although the prosecutor's improper comments were harmless in light of the overwhelming evidence, "with a weaker case [ ] such misconduct might very well constitute reversible error").

  
\_\_\_\_\_, C.J.  
Silver

cc: Hon. Michelle Leavitt, District Judge  
Clark County Public Defender  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk