

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JEFFREY COOPER, A/K/A JEFFERY
COOPER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 73558

FILED

JUL 20 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

Jeffrey Cooper appeals from a judgment of conviction entered pursuant to a jury verdict of attempt murder with the use of a deadly weapon and battery with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

Cooper was arrested for his involvement in a shooting on the Las Vegas Strip. He was charged with attempt murder with the use of a deadly weapon and battery with the use of a deadly weapon. At trial, the State presented eyewitness testimony, surveillance videos, and additional evidence showing that officers were able to trace and apprehend Cooper shortly after the shooting and recover the weapon and other items implicating Cooper. The jury convicted Cooper on both counts.¹ Cooper appeals, arguing the prosecutor engaged in misconduct by vouching for a witness and making inflammatory and prejudicial statements during closing and rebuttal arguments. He further argues that cumulative error warrants reversal. We disagree.

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

In reviewing claims of prosecutorial misconduct, we must first determine whether the prosecutor's conduct was improper and, if so, whether the conduct warrants reversal. *Valdez v. State*, 124 Nev. 1172, 1188, 196 P.3d 465, 476 (2008). Cooper did not object to the prosecutor's statements below, and we therefore review for plain error. *Id.* at 1190, 196 P.3d at 477. To obtain a reversal, Cooper must show the error affected his substantial rights. *Id.* Whether prosecutorial misconduct warrants reversal will depend in part on the strength of the evidence against the defendant. *Rowland v. State*, 118 Nev. 31, 38, 39 P.3d 114, 118 (2002).

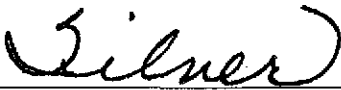
We have carefully considered Cooper's arguments and conclude that he is not entitled to relief. We note that the prosecutor's statement regarding Cooper "looking to kill with the gun in his backpack" may have been speculative and inflammatory.² Assuming, however, this statement was misconduct, Cooper fails to demonstrate reversible error under a plain error standard,³ as the evidence of guilt in this case was overwhelming. *See id.* at 40, 39 P.3d at 120. We likewise reject Cooper's argument of cumulative error, as Cooper has demonstrated at most only one error in


²Cooper did not include the video in the appellate record, and we are therefore unable to determine whether the prosecutor was making a reasonable inference from the evidence or impermissibly speculating on the evidence. *See Johnson v. State*, 113 Nev. 772, 776, 942 P.2d 167, 170 (1997) (noting that it is appellant's responsibility to present an adequate appellate record, as we cannot consider matters that are not in that record).

³Although the court held a bench conference regarding this statement at defense counsel's request, counsel never formally objected to that language. On appeal, Cooper does not contest the State's assertion that Cooper failed to object below.

this case. *See United States v. Sager*, 227 F.3d 1138, 1149 (9th Cir. 2000) (“One error is not cumulative error.”). Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Michael Villani, District Judge
Aisen Gill & Associates LLP
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk