

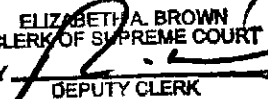
IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSE FERNANDO MONAY-PINA,
A/K/A JOSE FERNANDO MONAYPINA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 74199

FILED

MAR 28 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of two counts each of battery with the use of a deadly weapon resulting in substantial bodily harm, battery with the use of a deadly weapon, burglary while in possession of a firearm, and robbery with the use of a deadly weapon and one count each of conspiracy to commit robbery, attempted murder with the use of a deadly weapon, aiming a firearm at a human being, coercion with the use of a deadly weapon, and battery with the intent to commit a crime. Eighth Judicial District Court, Clark County; Linda Marie Bell, Judge.

Appellant Jose Monay-Pina's sole contention on appeal is that the district court should have sua sponte declared a mistrial after comments made by the State during rebuttal argument impermissibly shifted the burden of proof thereby denying him the right to a fair trial. Monay-Pina failed to object to the State's comments; and on appeal, he fails to demonstrate error that affects his "substantial rights, by causing actual prejudice or a miscarriage of justice." *Valdez v. State*, 124 Nev. 1172, 1190, 196 P.3d 465, 477 (2008) (internal quotation marks omitted) (outlining the plain-error standard of review for unobjected-to prosecutorial misconduct). Given the state of the evidence against Monay-Pina, any perceived error in



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the prosecutor's statements about the defense not going through the pictures or evidence during closing argument did not affect the verdict. Further, counsel for Monay-Pina's codefendant objected to the prosecutor's statement on burden-shifting grounds. Any harm resulting from the prosecutor's argument was cured when the district court sustained the objection and admonished the jury that the burden was on the State and that the defense was not required to present any evidence. Based on the above, we conclude that the prosecutor's statements did not deprive Monay-Pina of a fair trial. And because Monay-Pina fails to demonstrate the prosecutor's statements were "so inherently prejudicial that the trial judge was compelled to preclude the statement[s] *sua sponte*, [or] to grant a mistrial *sua sponte*," *Baker v. State*, 89 Nev. 87, 88, 506 P.2d 1261, 1261 (1973), he has not demonstrated that he is entitled to relief.

Accordingly, we

ORDER the judgment of conviction AFFIRMED.

Hardesty J.
Hardesty

Stiglich J.
Stiglich

Silver J.
Silver

cc: Hon. Linda Marie Bell, Chief Judge
Nguyen & Lay
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk