

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

AGUSSY JAGGER SANTOYO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 68985

FILED

JUN 16 2016

FRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a jury verdict finding appellant guilty of battery with a deadly weapon. Eighth Judicial District Court, Clark County; Stefany Miley, Judge.

Appellant Agussy Santoyo stabbed Kevin Orozco during an altercation inside a Las Vegas pub, and thereafter fled the scene. Santoyo later claimed he acted in self-defense and in defense of his sister.¹ On appeal, Santoyo argues the prosecutor made several statements constituting misconduct during closing and rebuttal arguments, requiring the district court to grant either his motion for a mistrial or his motion for a new trial. We disagree and hold that even if prosecutorial misconduct occurred it does not warrant reversal under these facts, and, therefore, the district court did not err in denying Santoyo's motions for a mistrial and a new trial.

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

We review a district court's decision to deny a motion for a new trial or a motion for a mistrial for abuse of discretion. *Domingues v. State*, 112 Nev. 683, 695, 917 P.2d 1364, 1373 (1996) (citation omitted); *Smith v. State*, 110 Nev. 1094, 1102, 881 P.2d 649, 654 (1994). In deciding claims of prosecutorial misconduct, we employ a two-step analysis. *Valdez v. State*, 124 Nev. 1172, 1188, 196 P.3d 465, 476 (2008). First, we determine if the statement was improper, and second, if the statement was improper, whether it warrants reversal. *Id.* We will not lightly overturn a criminal conviction solely on the basis of a prosecutor's comments. *Runion v. State*, 116 Nev. 1041, 1053, 13 P.3d 52, 60 (2000). But, if "in light of the proceedings as a whole, the misconduct so infected the trial with unfairness as to make the resulting conviction a denial of due process" the misconduct is characterized as a constitutional error. *Valdez*, 124 Nev. at 1189, 196 P.3d 477 (internal quotations omitted). If the misconduct does not amount to constitutional error we apply a harmless-error standard of review. *Id.*

Our review of the record reveals the prosecutor's comments during closing and rebuttal argument did not constitute misconduct. But, assuming *arguendo* misconduct occurred, we note that during trial defense counsel objected to the prosecutor's statements and either the district court sustained those objections and admonished the jury not to consider them, or the prosecutor withdrew those statements. Where defense counsel immediately objects to a prosecutor's comment and the district court sustains the objection, the misconduct generally does not constitute reversible error. See *Hernandez v. State*, 118 Nev. 513, 525, 50 P.3d 1100, 1109 (2002). Further, the district court properly instructed the jury on defense of self and others, instructed the jury that the statements and

arguments of the attorneys are not evidence in the case, and also gave the jury a curative instruction regarding the prosecutor's speculative statement as to Santoyo's intent. We presume the jury followed the district court's instructions. *Summers v. State*, 122 Nev. 1326, 1333, 148 P.3d 778, 783 (2006). Consequently, any prejudice arising from the prosecutor's comments was rectified when the district court sustained the objections and instructed the jury.

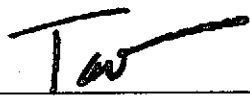
Even assuming, *arguendo*, prejudice arose from any of the prosecutor's statements—such as the prosecutor's speculation Santoyo intended to stab anyone unrelated to him—and that the prejudice was not cured by the district court's actions, any error is nevertheless harmless as the overwhelming evidence supports the jury's verdict. *See, e.g., Valdez*, 124 Nev. at 1196, 196 P.3d at 481 (noting overwhelming evidence of guilt can overcome prejudice to a defendant). Here, Santoyo argued he acted in self-defense and in the defense of his sister, but the State presented testimony of several witnesses who recounted that Santoyo unjustifiably stabbed the victim, belying Santoyo's self-defense claim. Importantly, this testimony was supported by the surveillance video capturing the incident. The State also presented testimony showing Santoyo fled the scene, hid the knife, and refused to surrender to police for nearly 40 minutes. As "it is the jury's function, not that of the court, to assess the weight of the evidence and determine the credibility of witnesses," *Rose v. State*, 123 Nev. 194, 202-03, 163 P.3d 408, 414 (2007) (internal quotations and citations omitted), we will not disturb the jury's verdict where it is supported by overwhelming evidence.

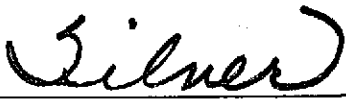
Santoyo further contends the district court should have ruled on his motion for a mistrial before the jury was allowed to deliberate, or,

alternatively, the court should have instructed the jury to restart deliberations after giving the curative instruction. He asserts the district court erred by instead instructing the jury to return to the deliberation room to consider whether the curative instruction would impact their verdict. But, Santoyo provides no authority to support his position, and we need not consider arguments that are unsupported by relevant authority. *Woods v. State*, 94 Nev. 435, 438, 581 P.2d 444, 446 (1978).² Accordingly we,

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

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

²We have carefully considered Santoyo's additional arguments and conclude they are without merit.