

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RAUL TORRES,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 71697

**FILED**

OCT 11 2017

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

*ORDER OF AFFIRMANCE*

Raul Torres appeals from a judgment of conviction, pursuant to a jury verdict, of conspiracy to commit robbery, robbery with the use of a deadly weapon, and grand larceny auto. Eighth Judicial District Court, Clark County; Jennifer P. Togliatti, Judge.

First, Torres argues there was insufficient evidence to support the jury's finding of guilt. Our review of the record on appeal, however, reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact. *See Origel-Candido v. State*, 114 Nev. 378, 381; 956 P.2d 1378, 1380 (1998); *see also Jackson v. Virginia*, 443 U.S. 307, 319 (1979).

The victim testified that she was robbed by two men, identified Torres as one of the perpetrators, and stated Torres threatened her with a firearm during the robbery. The victim testified the men took her car keys and her purse, then drove away in her car. The authorities later discovered the abandoned car, and subsequent tests revealed the car contained Torres' fingerprints and DNA.

Based on this evidence and testimony, the jury could reasonably find Torres committed conspiracy to commit robbery, robbery with the use of a deadly weapon, and grand larceny auto. See NRS 193.165(1); NRS 199.480(1); NRS 200.380(1); NRS 205.228(1). It is for the jury to determine the weight and credibility to give conflicting testimony, and the jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict. See *Bolden v. State*, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981).

Second, Torres argues the State committed prosecutorial misconduct during rebuttal argument for disparaging the defense theory of the case. Torres asserts the State committed misconduct by arguing the defense had to acknowledge Torres had been in the victim's vehicle because his fingerprints and DNA were discovered in the car. We review claims of prosecutorial misconduct for improper conduct and then determine whether reversal is warranted. *Valdez v. State*, 124 Nev. 1172, 1188, 196 P.3d 465, 476 (2008). Torres preserved this claim for appellate review, therefore, we review improper conduct for harmless error. See *id.* at 1188-90, 196 P.3d at 476-77.

The district court sustained Torres' objection regarding the State's argument. The district court then directed the State to rephrase its rebuttal argument and the State followed the district court's order. To the extent the State's rebuttal argument constituted misconduct, we conclude the misconduct was rendered harmless by the district court's order directing the State to rephrase its argument and the overwhelming evidence of Torres' guilt produced at trial. Therefore, we conclude no relief is warranted

on this claim. *See id.* at 1188, 196 P.3d at 476 (“[T]his court will not reverse a conviction based on prosecutorial misconduct if it was harmless error.”).


Third, Torres argues the State committed prosecutorial misconduct for attempting to shift the burden of proof to the defense. Torres asserts the State committed misconduct during its closing argument when it began to state the defense had failed to prove its theory of the case. As stated previously, we review claims of prosecutorial misconduct for improper conduct and then determine whether reversal is warranted. *Id.* at 1188, 196 P.3d at 476. Torres preserved this claim for appellate review, therefore, we review improper conduct for harmless error. *See id.* at 1188-90, 196 P.3d at 476-77.

During closing argument, the State argued “[t]hat’s what the defense told you the evidence was going to show but yet, you have” and the defense objected before the State finished the sentence. The district court sustained the objection, instructed the jury to disregard the State’s comment, and later explained it concluded the comment amounted to burden shifting. We conclude the district court correctly concluded the State’s argument 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 Torres’ guilt produced at trial, we conclude the State’s comment was harmless beyond a reasonable doubt. *See Valdez* at 1188-90, 196 P.3d at 476-77; *see also Lisle v. State*, 113 Nev. 540, 558, 937 P.2d 473, 484 (1997) (stating jurors are

presumed to follow the district court's instructions). Therefore, we conclude no relief is warranted on this claim.

Having concluded Torres is not entitled to relief, we  
ORDER the judgment of conviction AFFIRMED.

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

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

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

cc: Hon. Jennifer P. Togliatti, District Judge  
Clark County Public Defender  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk