



First, Ruiz claims the State impermissibly appealed to the jury's sympathies during closing argument. The State utilized a PowerPoint presentation during its closing argument. The final slide of that presentation included a bullet point stating "[f]or the safety of the community, find Mr. Ruiz guilty." Ruiz timely objected to this bullet point. The district court overruled the objection. At the close of arguments, however, the district court instructed the jury:

Ladies and Gentlemen, during the State's first argument it broadcast [four] words in its PowerPoint referring to safety of the community. I remind you that you are not empowered to generally monitor the safety of the community. You are directly instructed to follow the principles of law that I have given to you, to analyze this case based upon the facts that have been presented, whether that leads to one verdict or another. That particular language is stricken.

Comments by a prosecutor that "divert the jury's attention from its proper purpose," such as the determination of guilt, may be improper. *Collier v. State*, 101 Nev. 473, 478, 705 P.2d 1126, 1129 (1985), *modified on other grounds by Howard v. State*, 106 Nev. 713, 719, 800 P.2d 175, 178 (1990); *see also Patano v. State*, 122 Nev. 782, 793, 138 P.3d 477, 484 (2006) (holding it is improper for the State to "appeal[ ] to juror sympathies by diverting their attention from evidence relevant to the elements necessary to sustain a conviction"). The "safety of the community" is not one of the elements of the crime here. Thus, the State's exhortation to the jury to find Ruiz guilty for "the safety of the community" was improper. However, while improper, the State's remarks constitute harmless error because the district court ultimately struck the objectionable PowerPoint language and issued a curative instruction to the jury to follow the provided jury instructions.

*See Haberstroh v. State*, 105 Nev. 739, 742, 782 P.2d 1343, 1345 (1989) (finding the district court's admonition to the jury that it disregard the State's reference to "the conscience of the community" cured any possible prejudice); *see also Summers v. State*, 122 Nev. 1326, 1333, 148 P.3d 778, 783 (2006) ("[T]his court generally presumes that juries follow district court orders and instructions."). Thus, Ruiz has not demonstrated that reversal of his conviction is warranted.

Second, Ruiz claims the State improperly shifted the burden of proof during closing arguments. It is "generally improper for a prosecutor to comment on the defense's failure to produce evidence or call witnesses as such comment impermissibly shifts the burden of proof to the defense." *Whitney v. State*, 112 Nev. 499, 502, 915 P.2d 881, 883 (1996). However, "[d]uring closing argument, the prosecution can argue inferences from the evidence and offer conclusions on contested issues." *Jones v. State*, 113 Nev. 454, 467, 937 P.2d 55, 63 (1997).

In advance of trial, the parties stipulated that the weapon found on Ruiz's person was a firearm. Thus, the only element for the jury to determine was whether Ruiz had concealed the firearm. *See* NRS 202.350(1)(d). The State presented testimony from two officers. Ruiz did not testify or present any evidence. During closing argument, the State argued the jury should "notice that you have not received any contrary evidence [that the firearm was concealed]. All of the evidence is in favor of the conviction in this case. It's all direct evidence from two veteran officers." Ruiz timely objected to this statement, but the record does not reveal the court's ruling.

The district court, however, addressed Ruiz's objection to these arguments at the close of arguments by admonishing the jury that Ruiz had no burden of proof:

[T]he State did comment during closing arguments that the only direct evidence came from two law enforcement witnesses. That was a fair comment upon the evidence, but I just want to remind you that under no circumstances can the presumption of innocence be diluted, that Mr. Ruiz has no burden of proof at trial, and is not required to call any witnesses and cannot be compelled to testify in this case.

Assuming without deciding that the State's comments shifted the burden of proof to Ruiz, the comments were ultimately harmless because the district court's admonition to the jury cured any potential prejudice. Moreover, the jury instructions properly informed the jury regarding the State's burden of proof, and the jury is presumed to follow the instructions. *See Summers*, 122 Nev. at 1333, 148 P.3d at 783. Thus, Ruiz has not demonstrated he is entitled to relief on this claim.

Third, Ruiz claims the State engaged in misconduct by misstating the reasonable doubt standard. The Nevada Supreme Court "has repeatedly cautioned the district courts and attorneys not to attempt to quantify, supplement, or clarify the statutorily prescribed standard for reasonable doubt." *Evans v. State*, 117 Nev. 609, 631, 28 P.3d 498, 514 (2001); *overruled on other grounds by Lisle v. State*, 131 Nev. 356, 366 n.5, 351 P.3d 725, 732 n.5 (2015). Nor may they "explain, elaborate on, or offer analogies or examples based on the statutory definition of reasonable doubt." *Id.* at 632, 28 P.3d at 514. Attorneys can argue, however, that the evidence, or lack thereof, meets or does not meet the reasonable doubt standard. *Id.* Prosecutors may comment on the adequacy of evidence as it

pertains to a specific defense claim or theory. *See Leonard v. State*, 117 Nev. 53, 81, 17 P.3d 397, 415 (2001) (“Although a prosecutor may not normally comment on a defendant’s failure to present witnesses or produce evidence, in some instances the prosecutor may comment on a defendant’s failure to substantiate a claim.”). Prosecutors may also respond to issues and arguments defense counsel raises in their closing argument. *Greene v. State*, 113 Nev. 157, 178, 931 P.2d 54, 67 (1997), *receded from on other grounds by Byford v. State*, 116 Nev. 215, 235, 994 P.2d 700, 713 (2000).

During its closing argument, the State referred the jury to the instruction on reasonable doubt to argue that “reasonable doubt is not based on speculation” and commented that a finding the State had not met that burden would “require [the jury] to speculate.” Ruiz timely objected to this statement; the record does not indicate the district court’s ruling on this objection. During his closing argument, Ruiz argued that his sweatshirt was tucked behind the gun in his waistband at the time of his encounter with law enforcement and that his sweatshirt had fallen over the gun when the officer positioned him against a patrol vehicle to conduct the pat down search. In its rebuttal closing, the State characterized Ruiz’s argument as “pure speculation” and “the definition of pure speculation.”

The State’s comments in its closing and rebuttal arguments did not constitute an attempt to explain or elaborate on the reasonable doubt standard. Rather, the State’s comments responded to Ruiz’s theory of defense. Indeed, the context of the State’s comments are more properly understood as arguing that the trial evidence did not create any reasonable doubt as to Ruiz’s guilt.

Furthermore, even if the prosecutor’s comments were improper, they would not merit reversal. Properly given jury instructions or

references to them render errors such as this harmless. *Randolph v. State*, 117 Nev. 970, 981, 36 P.3d 424, 431 (2001) (“We have nevertheless consistently deemed incorrect explanations of reasonable doubt to be harmless error as long as the jury instruction correctly defined reasonable doubt.”). Here, the district court properly instructed the jury on the reasonable doubt standard, instructed the jury that the parties’ arguments and statements were not evidence, and admonished the jury to follow the jury instructions in deliberating. And the jury is presumed to follow the instructions. *See Summers*, 122 Nev. at 1333, 148 P.3d at 783. The State therefore did not commit misconduct, and even if it did, the error would have been harmless because Ruiz has not shown the error substantially affected the jury’s verdict. Thus, Ruiz has not demonstrated he is entitled to relief on this claim.

Finally, Ruiz claims that the instances of alleged prosecutorial misconduct cumulated and deprived him of his right to due process, warranting reversal of his conviction. Reversal is warranted where individually harmless errors, viewed collectively, nevertheless violate the defendant’s right to a fair trial. *See Valdez*, 124 Nev. at 1195, 196 P.3d at 481. In reviewing claims of cumulative error, we consider “(1) whether the issue of guilt is close, (2) the quantity and character of the error, and (3) the gravity of the crime charged.” *Id.* (internal quotations omitted). We conclude cumulative error does not warrant reversal. Although the charged crime is serious, the issue of guilt was not close on the charge for which Ruiz was convicted, and to the extent there were errors, they were neither pervasive nor consequential as related to that charge considering the evidence against him. *Cf. id.* at 1197, 196 P.3d at 482 (concluding there was cumulative error where “[t]he prosecutorial misconduct occurred

throughout the trial” and another error “resulted in serious jury misconduct”). Accordingly, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, C.J.  
Bulla

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

  
\_\_\_\_\_, J.  
Westbrook

cc: Hon. David A. Hardy, District Judge  
Washoe County Public Defender  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk