

IN THE SUPREME COURT OF THE STATE OF NEVADA

DOUGLAS EDWARD JENSEN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39415

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DEC 19 2002

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF CLERK

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of first-degree arson. The district court sentenced appellant to a prison term of 40 to 180 months.

Appellant contends that prosecutorial misconduct warrants reversal. Specifically, appellant first argues that the prosecutor improperly elicited testimony that the State had not offered appellant a plea bargain. Appellant argues that the evidence was offered only to insinuate guilt from the State's decision to prosecute.

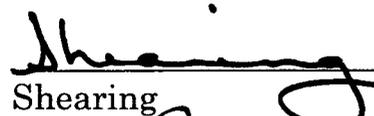
The question by the prosecutor came after appellant testified that he had previously been convicted of a felony, and in that previous case, he "was guilty of the crime and I made my plea accordingly." We conclude that appellant opened the door as to why he had previously entered a guilty plea but had not in this case.¹ Accordingly, appellant's argument lacks merit.

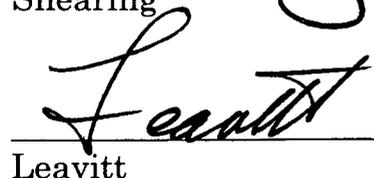
¹See, e.g., Colton v. State, 113 Nev. 484, 493, 938 P.2d 714, 720 (1997) (admission of evidence that is not normally admissible is not reversible error where defendant opened the door by raising the issue), clarified on other grounds by Salgado v. State, 114 Nev. 1039, 968 P.2d 324 (1998).

Appellant next argues that the prosecutor impermissibly shifted the burden of proof during closing argument by pointing out that appellant had not called certain witnesses to support his alibi. "However, this court [has] held that a prosecutor was justified in commenting on a defendant's failure to call a person to testify where the defendant had 'injected [the person] into the testimony as an alibi witness.'"² Based on that reasoning, we conclude that the prosecutor's comments do not constitute prosecutorial misconduct.

Having considered appellant's arguments and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.

 _____, J.
Shearing

 _____, J.
Leavitt

 _____, J.
Becker

cc: Hon. Janet J. Berry, District Judge
Robert Bruce Lindsay
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

²See Evans v. State, 117 Nev. 609, 631, 28 P.3d 498, 513 (2001) (quoting Colley v. State, 98 Nev. 14, 16, 639 P.2d 530, 532 (1982)).