

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDWINA G. CAMACHO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44228

FILED

JUL 0 5 2005

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of unlawful sale of a controlled substance. Fifth Judicial District Court, Mineral County; John P. Davis, Judge. The district court sentenced appellant Edwina G. Camacho to serve a prison term of 12-30 months to run consecutively to the sentence imposed in district court case no. 1986.

Camacho contends that the prosecutor committed misconduct during rebuttal closing arguments by disparaging her and defense counsel, and by improperly vouching for his own credibility. Camacho challenges the following statement by the prosecutor:

Ladies and gentlemen, the defense would have you believe that the entirety of the State's case rests with just [the confidential informant (CI)]. Nothing is further from the truth.

You heard here of all the procedures used by law enforcement to make sure the integrity of the investigation was sound. The defense would have you believe that the only reason the State is prosecuting Ms. Camacho today is because we lost her brother to death. That, in fact, is not true.

The State brings this case today because Ms. Edwina Gail Camacho has been charged with the crime of selling methamphetamine, the

methamphetamine that's in evidence, to [the CI]. She sold that methamphetamine by being in her house, and taking part in the transaction, by accepting payment for that methamphetamine. Evidence of that is also contained in the tape that you will be listening to in your deliberations.

Camacho argues that the prosecutor's comments imply that "the defense is lying, pulling the wool over the eyes, or otherwise misleading the jury and that the prosecution is not." Camacho concedes that the defense never objected to any of the statements above made by the State, but argues that the alleged misconduct amounts to plain error.¹ We disagree.

This court has stated that "it is . . . inappropriate for a prosecutor to make disparaging remarks pertaining to defense counsel's ability to carry out the required functions of an attorney."² Additionally, it is improper for a prosecutor to vouch for the credibility of a government witness.³ Nevertheless, this court has stated that it is permissible for the prosecutor to argue evidence before the jurors and suggest reasonable inferences that might be drawn from it.⁴

In this case, we cannot conclude that the remarks above amounted to prosecutorial misconduct or prejudiced Camacho in any way amounting to reversible plain error. In fact, the prosecutor's statements

¹See NRS 178.602 ("Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court."); Parker v. State, 109 Nev. 383, 391, 849 P.2d 1062, 1067 (1993) (holding that the failure to object to prosecutorial misconduct generally precludes appellate consideration).

²Riley v. State, 107 Nev. 205, 213, 808 P.2d 551, 556 (1991).

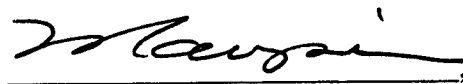
³See United States v. Roberts, 618 F.2d 530, 533 (9th Cir. 1980).


⁴See Klein v. State, 105 Nev. 880, 884, 784 P.2d 970, 973 (1989).

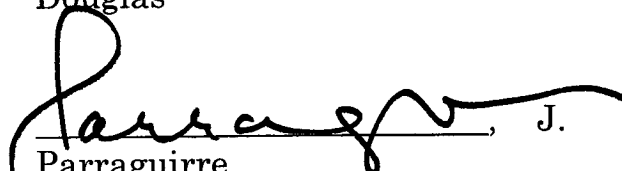
were made in direct rebuttal to specific assertions made by defense counsel during Camacho's own closing argument. We further note that the jury was properly instructed only to consider as evidence the testimony of witnesses, exhibits, and facts admitted or agreed to by counsel. The jury was also instructed that the statements, arguments, and opinions of counsel were not to be considered as evidence. Finally, even if the remarks were inappropriate, we conclude that the State presented substantial evidence of Camacho's guilt, and "where evidence of guilt is overwhelming, even aggravated prosecutorial misconduct may constitute harmless error."⁵

Therefore, having considered Camacho's contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Maupin


_____, J.
Douglas


_____, J.
Parraguirre

⁵King v. State, 116 Nev. 349, 356, 998 P.2d 1172, 1176 (2000).

cc: Hon. John P. Davis, District Judge
Law Offices of Robert Witek
Attorney General Brian Sandoval/Carson City
Mineral County District Attorney
Mineral County Clerk