

IN THE SUPREME COURT OF THE STATE OF NEVADA

ABRAHAM BUZ MORALES,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 63412

FILED

DEC 16 2013

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY: *[Signature]*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of battery resulting in substantial bodily harm. Fourth Judicial District Court, Elko County; Nancy L. Porter, Judge.

First, appellant Abraham Buz Morales contends that insufficient evidence was adduced to support the jury's verdict. Morales specifically claims that the State "may very well have proven the lesser offense of simple battery, but not battery with substantial bodily harm." We disagree because the evidence, when viewed in the light most favorable to the State, is sufficient to establish guilt beyond a reasonable doubt as determined by a rational trier of fact. *See Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *Mitchell v. State*, 124 Nev. 807, 816, 192 P.3d 721, 727 (2008).

Trial testimony indicated that Morales kicked the victim in the face, both perpetrators beat the victim with baseball bats, and the victim was struck in the head with a solid object after hearing Morales' codefendant say, "hit him with the rock." As a result of the beating inflicted by Morales and his codefendant, the victim suffered a fractured

skull and an acute subdural hematoma. At the trial more than six months after the incident, the victim testified that he was still suffering from migraine headaches and double vision. Due to the injury to his rib cage, the victim experienced pain and difficulty breathing for several weeks. Medical records and photographs detailing the victim's injuries were admitted as exhibits at trial.

It is for the jury to determine the weight and credibility to give conflicting testimony, *McNair v. State*, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992), and a jury's verdict will not be disturbed on appeal when sufficient evidence supports the verdict, *Bolden v. State*, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981). Based on the above, we conclude that the State presented sufficient evidence to establish beyond a reasonable doubt that the victim suffered substantial bodily harm. See NRS 0.060 (defining "substantial bodily harm"); *Collins v. State*, 125 Nev. 60, 64, 203 P.3d 90, 92-93 (2009); see also NRS 200.481(1)(a). Therefore, Morales' contention is without merit.

Second, Morales contends that the district court erred by admitting gang-affiliation evidence at trial. "The decision to admit gang-affiliation evidence rests within the discretion of the trial court." *Butler v. State*, 120 Nev. 879, 889, 102 P.3d 71, 78 (2004). The district court conducted a hearing on both Morales' motion in limine seeking to preclude the State from introducing the evidence and the State's motion seeking admission of the evidence. The district court determined that the evidence was relevant to establish motive and proven by clear and convincing

evidence, and that its probative value was not substantially outweighed by the risk of unfair prejudice. *See id.*; *see also* NRS 48.045(2); *Lara v. State*, 120 Nev. 177, 181, 87 P.3d 528, 531 (2004); *Qualls v. State*, 114 Nev. 900, 904, 961 P.2d 765, 767 (1998). We conclude that the district court did not abuse its discretion by admitting the gang-affiliation evidence.

Third, Morales contends that the prosecutor committed misconduct during the State's rebuttal closing argument by suggesting that "the witnesses lack of recall or inconsistent statements" regarding which codefendant struck the victim in the head with a rock may have been "the result of fear of retaliation" by a local gang. The prosecutor specifically queried, "Are they [the witnesses] influenced in any way out of a fear for the Rebels for retribution?" After brief arguments from counsel, the district court overruled Morales' objection to the prosecutor's comment. We agree that the prosecutor's comment was improper and the district court erred by overruling Morales' objection. Nevertheless, considering the prosecutor's comment in context, and in light of the overwhelming evidence of guilt, we conclude that Morales was not prejudiced and the error was harmless. *See Valdez v. State*, 124 Nev. 1172, 1188-89, 196 P.3d 465, 476 (2008) ("[T]his court will not reverse a conviction based on prosecutorial misconduct if it was harmless error."); *Baltazar-Monterrosa v. State*, 122 Nev. 606, 618, 137 P.3d 1137, 1145 (2006) ("[G]iven the physical evidence in this case," even if the witness intimidation testimony was improper, "any error would be harmless."); *see also Browning v. State*, 124 Nev. 517, 533, 188 P.3d 60, 72 (2008) ("[P]rejudice from prosecutorial

misconduct results when a prosecutor's statements so infect the proceedings with unfairness as to make the results a denial of due process." (alteration omitted) (internal quotation marks omitted)).

Accordingly, we

ORDER the judgment of conviction AFFIRMED.<sup>1</sup>

Pickering, C.J.  
Pickering

Hardesty, J.  
Hardesty

Cherry, J.  
Cherry

cc: Hon. Nancy L. Porter, District Judge  
Lockie & Macfarlan, Ltd.  
Attorney General/Carson City  
Elko County District Attorney  
Elko County Clerk

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<sup>1</sup>The fast track statement, response, and reply do not comply with NRAP 3C(h)(1) and NRAP 32(a)(4) because the text in the body of the briefs is not double-spaced. Counsel for the parties are cautioned that the failure to comply with the briefing requirements in the future may result in the imposition of sanctions. See NRAP 3C(n).