

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDWARD GARZA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 64640

FILED

JUN 12 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of attempted murder with the use of a deadly weapon, aiming a firearm at a human being, and discharging a firearm where a person might be endangered. Fifth Judicial District Court, Nye County; Robert W. Lane, Judge.

Appellant Edward Garza's sole contention on appeal is that the district court erred in denying his motion for a mistrial based on the State's comment suggesting that a verdict in his favor would expose the county to a large tort settlement deprived him of a fair trial. We discern no abuse of discretion. *See Rose v. State*, 123 Nev. 194, 206-07, 163 P.3d 408, 417 (2007) (reviewing decision to deny motion for mistrial for abuse of discretion). In response to the brief comment by the State and the defense's objection, the district court instructed the jury to disregard the State's comment. The jurors were later instructed that the statements of counsel that were not supported by the evidence must not be considered. Considering these instructions and the evidence at trial, we cannot conclude that the prosecutor's statements "so infect[ed] the proceedings with unfairness as to make the results [of the trial] a denial of due

process.” *Browning v. State*, 124 Nev. 517, 533, 188 P.3d 60, 72 (2008) (internal quotation marks omitted); cf. *Witherow v. State*, 104 Nev. 721, 724-25, 765 P.2d 1153, 1155-56 (1988) (recognizing that an improper statement may be harmless if the verdict would have been the same absent the statement). Accordingly, we

ORDER the judgment of conviction AFFIRMED.

Pickering, J.
Pickering

Parraguirre, J.
Parraguirre

Saitta, J.
Saitta

cc: Hon. Robert W. Lane, District Judge
Mountain West Lawyers
Nye County District Attorney
Attorney General/Carson City
Nye County Clerk