

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD MARK BOOTH,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 45741

**FILED**

FEB 17 2006

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY   
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of assault with a deadly weapon. Second Judicial District Court, Washoe County; Brent T. Adams, Judge. Appellant Richard Booth was sentenced to prison for 12-72 months.

Booth contends that the evidence presented at trial was insufficient to support the jury's finding of guilt. Our review of the record on appeal, however, reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact.<sup>1</sup> In particular, we note Booth contends the state failed to prove beyond a reasonable doubt that he did not act in self-defense.

The jury could reasonably infer from the evidence presented that Booth did not act in self-defense. Booth conceded he grabbed the knife when the victim was not armed and that Booth himself made the first move toward the victim once he had the knife. It is for the jury to determine the weight and credibility to give conflicting testimony, and the

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<sup>1</sup>See Wilkins v. State, 96 Nev. 367, 609 P.2d 309 (1980); see also Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998).

jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict.<sup>2</sup>

Booth further contends that the prosecutorial misconduct which occurred on multiple occasions during closing requires reversal of his conviction. Booth contends the prosecutor belaboring the point of Booth's use of the "N word" amounted to misconduct. Booth failed to object at trial to this allegation of misconduct. "Failure to object during trial generally precludes appellate consideration of an issue."<sup>3</sup> Consequently, this court will not review this issue on appeal unless this error was plain and it affected the defendant's substantial rights.<sup>4</sup> To show that an error affected a defendant's substantial rights, the defendant must establish the error was prejudicial.<sup>5</sup> Booth has failed to show any error or prejudice.

Booth further asserts prosecutorial misconduct occurred when the prosecution made a remark following an overruled objection by defense counsel, to the effect that defense counsel was objecting to hide important or damaging information. Improper comments may constitute harmless error when there is overwhelming evidence of guilt and the remarks did not contribute to the verdict.<sup>6</sup> Here, the improper remark of "see how

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<sup>2</sup>See Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981); see also McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

<sup>3</sup>Cordova v. State, 116 Nev. 664, 666, 6 P.3d 481, 482 (2000).

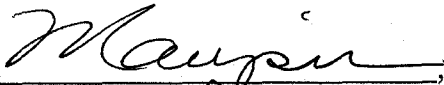
<sup>4</sup>Gallego v. State, 117 Nev. 348, 365, 23 P.3d 227, 239 (2001).


<sup>5</sup>Id.

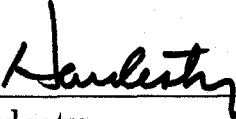
<sup>6</sup>See Pellegrini v. State, 104 Nev. 625, 628-29, 764 P.2d 484, 486-87 (1988).

important that is," following an overruled objection, did not contribute to the verdict in light of the overwhelming evidence against Booth. Therefore, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Maupin

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

  
\_\_\_\_\_, J.  
Hardesty

cc: Hon. Brent T. Adams, District Judge  
Washoe County Public Defender  
Attorney General George Chanos/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk