

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT STEVEN EDLER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 47026

**FILED**

NOV 28 2006

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, entered pursuant to a jury verdict, of one count of battery with the use of a deadly weapon resulting in substantial bodily harm. Eighth Judicial District Court, Clark County; Sally L. Loehrer, Judge. The district court sentenced appellant Robert Steven Edler to serve a prison term of 72 to 180 months.

First, Edler contends that the State improperly commented on his prearrest silence when it suggested that he deliberately avoided contact with the police. The Supreme Court has held "that the use of prearrest silence to impeach a defendant's credibility does not violate the Constitution."<sup>1</sup> We conclude that Edler placed his prearrest silence at issue when he claimed that he stabbed the victim in self-defense, and therefore it was admissible to impeach his credibility.<sup>2</sup>

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<sup>1</sup>Jenkins v. Anderson, 447 U.S. 231, 240-41 (1980).

<sup>2</sup>See Dettloff v. State, 120 Nev. 588, 597-99, 97 P.3d 586, 591-93 (2004); Pineda v. State, 120 Nev. 204, 210, 88 P.3d 827, 832 (2004) (a  
*continued on next page . . .*

Second, Edler contends that the State's continuous objections, and the district court's decision to sustain the objections, violated his right to present his theory of the case during closing argument. Edler's theory of the case was that he acted in self-defense. In support of this theory, Edler attempted to discredit the victim's preliminary hearing testimony and statements to the police by highlighting the victim's absence from the trial. The record reveals that the district court sustained the State's objections to speculation and mischaracterization of evidence, and that Edler was nonetheless able to present his theory of the case and argument as to the victim's unavailability for trial. Accordingly, we conclude that this claim lacks merit.

Third, Edler contends that he was denied a fair trial due to prosecutorial misconduct. He claims that the prosecutor improperly denigrated his testimony and the defense case, misstated the law, shifted the burden of proof, trivialized reasonable doubt, and mischaracterized evidence. However, Edler failed to object to the prosecutor's alleged misconduct at trial, and we conclude that he has not demonstrated that the prosecutor's remarks were patently prejudicial.<sup>3</sup>

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*... continued*

defendant who testified that he took a life in self-defense placed his credibility squarely at issue).

<sup>3</sup>Riker v. State, 111 Nev. 1316, 1328, 905 P.2d 706, 713 (1995) (holding that when an appellant fails to object below, this court reviews alleged prosecutorial misconduct only if it constitutes plain error, i.e., if it is shown to be patently prejudicial).

Fourth, Edler contends that there was insufficient evidence to support his conviction because the victim presented two inconsistent versions of events and was unavailable for trial. However, the record on appeal reveals sufficient evidence to establish Edler's guilt beyond a reasonable doubt as determined by a rational trier of fact.<sup>4</sup> In particular, we note that Edler testified that he cut the victim's chest with a utility knife, and Dr. Nathan Ozobia testified that the victim received three deep stab wounds which had to be sutured shut in layers. We conclude that a rational juror could reasonably infer from the evidence adduced at trial that Edler battered the victim with the use of a deadly weapon, caused substantial bodily harm, and was not acting in self-defense. It is for the jury to determine the weight and credibility to give conflicting testimony, and the jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict.<sup>5</sup>

Fifth, Edler contends that the district court failed to adequately instruct the jury on his theory of the case. Generally, a defendant is entitled to have the jury instructed on his or her theory of the case if it is supported by some evidence and the proposed instruction correctly states the law.<sup>6</sup> However, the district court has broad discretion in settling jury instructions and its decisions will not be disturbed absent

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<sup>4</sup>See McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992) (citing Jackson v. Virginia, 443 U.S. 307, 319 (1979)).

<sup>5</sup>See Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981); see also McNair, 108 Nev. at 56, 825 P.2d at 573.

<sup>6</sup>Brooks v. State, 103 Nev. 611, 613, 747 P.2d 893, 895 (1987).

an abuse of discretion or judicial error.<sup>7</sup> Here, the district court concluded that the instructions that Edler objected to were correct statements of the law, and it declined to give Edler's proposed self-defense instruction after determining that the State's proposed instruction was sufficient and based on a more recent pronouncement of Nevada law. Accordingly, we conclude that Edler has failed to demonstrate that the district court abused its discretion.

Having considered Edler's contentions and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.

Becker, J.  
Becker

Hardesty, J.  
Hardesty

Parraguirre, J.  
Parraguirre

cc: Hon. Sally L. Loehrer, District Judge  
Clark County Public Defender Philip J. Kohn  
Attorney General George Chanos/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk

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<sup>7</sup>Jackson v. State, 117 Nev. 116, 120, 17 P.3d 998, 1000 (2001).