

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM JACOB MARTIN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 48955

**FILED**

JUL 17 2007

WANNETTE M. BLOOM  
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 one count of voluntary manslaughter with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge. The district court sentenced appellant William Jacob Martin to serve two consecutive prison terms of 48-120 months and ordered him to pay \$1,402.01 in extradition costs and \$3,500.00 in restitution.

First, Martin contends that the prosecutor committed misconduct during her rebuttal closing argument by impeaching him with his post-Miranda silence.<sup>1</sup> Specifically, Martin challenges the following statement by the prosecutor:

The defendant comes in, and the first time he tells his story about self-defense, he knows exactly what the evidence is going to show. He's heard [his ex-girlfriend] testify at the prior hearing and here today. He's heard all the witnesses and evidence. In fact, you even heard testimony that there was a complete copy of the detective's file that the defense had. He knew every single piece

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<sup>1</sup>Miranda v. Arizona, 384 U.S. 436 (1966).

of evidence that was going to come out in this trial before he testified.

Additionally, Martin contends that the district court abused its discretion by denying his motion for a new trial based on the prosecutor's misconduct. We disagree.

In Doyle v. Ohio, the United States Supreme Court held that the Due Process Clause of the United States Constitution forbids the prosecution from commenting on a defendant's invocation of the right to remain silent following an arrest.<sup>2</sup> In this case, however, prior to invoking his right to remain silent, Martin waived his Miranda rights, spoke to the arresting officers, and stated that he did not know what happened to the victim. At trial, Martin claimed for the first time that he stabbed the victim in self-defense. Therefore, we conclude that the prosecutor's rebuttal closing argument was a permissible comment regarding the inconsistencies between Martin's trial testimony and his statements to the arresting officers.<sup>3</sup> Additionally, even if we were to find that the prosecutor's comment was improper, in light of the overwhelming evidence of Martin's guilt, we conclude that it was harmless beyond a reasonable doubt.<sup>4</sup> And finally, because Martin's contention lacks merit, we also

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<sup>2</sup>426 U.S. 610 (1976); see also Washington v. State, 112 Nev. 1054, 1059, 921 P.2d 1253, 1257 (1996).

<sup>3</sup>See Anderson v. Charles, 447 U.S. 404, 408 (1980); see also Sims v. State, 107 Nev. 438, 441, 814 P.2d 63, 64-65 (1991) (prosecutor allowed to question defendant about inconsistencies between trial testimony and statements to arresting officers without violating post-arrest right to remain silent).

<sup>4</sup>See Sampson v. State, 121 Nev. 820, 830, 122 P.3d 1255, 1261 (2005) ("references to a defendant's exercise of her Fifth Amendment  
*continued on next page . . .*

conclude that the district court did not abuse its discretion in denying his motion for a new trial based on the alleged prosecutorial misconduct.

Second, Martin contends that the district court erred by refusing to instruct the jury on justifiable homicide committed in defense of a felony, pursuant to NRS 200.160(2), along with self-defense, pursuant to NRS 200.200. Martin points out that “justifiable homicide” was the alternative theory of defense. We disagree with Martin’s contention.

“The district court has broad discretion to settle jury instructions, and this court reviews the district court’s decision for an abuse of that discretion or judicial error.”<sup>5</sup> The district court may refuse to give a proposed jury instruction if the content is substantially covered by other jury instructions.<sup>6</sup> In this case, the district court found that the instruction proposed by Martin was substantially covered by the several jury instructions pertaining to self-defense. We agree and conclude that

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... *continued*

rights are harmless beyond a reasonable doubt and do not require reversal of a conviction if, ‘(1) at trial there was only a mere passing reference, without more, to an accused’s post-arrest silence, or (2) there is overwhelming evidence of guilt’”) (quoting Morris v. State, 112 Nev. 260, 264, 913 P.2d 1264, 1267-68 (1996)); see also King v. State, 116 Nev. 349, 356, 998 P.2d 1172, 1176 (2000) (“[W]here evidence of guilt is overwhelming, even aggravated prosecutorial misconduct may constitute harmless error.”).


<sup>5</sup>Crawford v. State, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005); see also Jackson v. State, 117 Nev. 116, 120, 17 P.3d 998, 1000 (2001) (holding that “[a]n abuse of discretion occurs if the district court’s decision is arbitrary or capricious or if it exceeds the bounds of law or reason”).

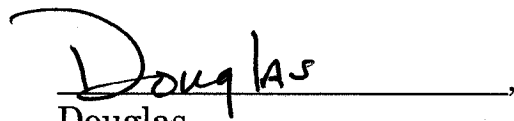
<sup>6</sup>See Vallery v. State, 118 Nev. 357, 372, 46 P.3d 66, 77 (2002).

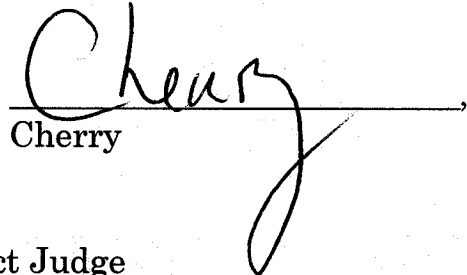
the district court did not abuse its discretion in rejecting Martin's proposed instruction. Nonetheless, even assuming the district court erred by not giving Martin's proffered instruction, we further conclude that, under the facts of this case, the error was harmless beyond a reasonable doubt.<sup>7</sup>

Having considered Martin's contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.

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

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Cherry

cc: Hon. Stewart L. Bell, District Judge  
Clark County Public Defender Philip J. Kohn  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk

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<sup>7</sup>Crawford, 121 Nev. at 756, 121 P.3d at 590.