

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LEE ARTHUR WHITE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 70879

**FILED**

AUG 21 2017

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Lee Arthur White appeals from a judgment of conviction, pursuant to a jury verdict, for battery with use of a deadly weapon resulting in substantial bodily harm. Eighth Judicial District Court, Clark County; William D. Kephart, Judge.

White contends that the district court abused its discretion by declining to instruct the jury that there is no general duty on the public to report a crime in Nevada. This court reviews the district court's decision whether to issue a jury instruction for an abuse of discretion or judicial error. *See Crawford v. State*, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005). "An abuse of discretion occurs if the district court's decision is arbitrary or capricious or if it exceeds the bounds of law or reason." *Id.* (quoting *Jackson v. State*, 117 Nev. 116, 120, 17 P.3d 998, 1000 (2001)).

First, we cannot say the district court's denial of the instruction was arbitrary, capricious, or exceeded the bounds of law or reason when White provided no authority to support the instruction, the instruction was irrelevant to the issues raised by the evidence, and when it could have confused the jury. *See Gonzalez v. State*, 131 Nev. \_\_\_, \_\_\_, 366 P.3d 680, 684 (2015), *reh'g denied* (Mar. 25, 2016) ("The trial court has the duty to instruct on general principles of law relevant to the issues raised by the evidence and has the correlative duty to refrain from instructing on

principles of law which not only are irrelevant to the issues raised by the evidence but also have the effect of confusing the jury or relieving it from making findings on relevant issues.”).

Below, White provided no authority to support his proffered jury instruction; even on appeal, he provides us with only one civil case stating that there is no general duty on members of the public in Nevada to report a crime. *See Mangeris v. Gordon*, 94 Nev. 400, 403, 580 P.2d 481, 483-84 (1978). However, White has directed us to no authority deeming it an abuse of discretion or judicial error for a district court to decline to instruct the jury on this statement of law. Nor has White persuaded us to adopt such a rule because, although a flight instruction allows the jury to make an *inference* of guilt, the jury could have easily declined to do so had they believed White’s theory of self-defense. Thus, we reject White’s argument that a self-defense instruction conflicts with a flight instruction, thereby requiring a duty to report instruction to counteract the flight instruction, and conclude that his proffered instruction was irrelevant—both to whether he committed the crime and also his theory of self-defense. *See Gonzalez*, 131 Nev. at \_\_\_, 366 P.3d at 684 (explaining that a court “has the correlative duty to refrain from instructing on principles of law which not only are irrelevant to the issues raised by the evidence but also have the effect of confusing the jury or relieving it from making findings on relevant issues.”); NRS 200.200 (defining self-defense); NRS 200.481(2)(e)(2) (defining battery with a deadly weapon).

White also 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. *See Origel-*

*Candido v. State*, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998); *see also Jackson v. Virginia*, 443 U.S. 307, 319 (1979).


It is undisputed that White was in a physical confrontation with the victim. Neither eyewitness to the confrontation identified the victim as the aggressor. The victim testified that he did not have a knife. An eyewitness testified that the victim fell to the ground and White stood over the victim, straddling and striking the victim while the victim was trying to keep White off of him by “[k]icking and holding his hands up trying to keep from getting hit,” with his hands open and palms up. The record shows that the victim sustained 12 stab wounds during the confrontation, at least some of which appeared to be defensive wounds. Law enforcement found a broken knife near the scene with the victim’s DNA on it. Finally, there was a surveillance video of the incident shown to the jury.


The jury could reasonably infer from the evidence presented that White committed battery with the use of a deadly weapon causing substantial bodily harm. *See* NRS 200.481(1), (2)(e)(2). Although there was a conflict in testimony on some points, 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. *See McNair v. State*, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992); *Bolden v. State*, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981). Moreover, the surveillance video and the victim’s medical records—each provided to the jury but not to this court—would provide adequate support for the verdict. *See* NRAP 10(b)(2); *Zahavi v. State*, 131 Nev. \_\_\_, \_\_\_, 343 P.3d 595, 603 n.7 (2015) (stating that this court need not consider claims that are not cogently argued or supported by relevant authority (citing *Edwards v. Emperor’s Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280,


1288 n.38 (2006)); *Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (same); see also *Johnson v. State*, 113 Nev. 772, 776, 942 P.2d 167, 170 (1997) (holding that it is the appellant's burden to make an adequate appellate record and this court "cannot properly consider matters not appearing in that record").

Accordingly, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, C.J.  
Silver

  
\_\_\_\_\_, J.  
Tao

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

cc: Hon. William D. Kephart, District Judge  
Sanft Law, P.C.  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk