

IN THE SUPREME COURT OF THE STATE OF NEVADA

GREGORY STIEGLER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46245

FILED

JAN 10 2007

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of second-degree murder with the use of a deadly weapon. Eighth Judicial District Court, Clark County; John S. McGroarty, Judge. The district court sentenced appellant Gregory Stiegler to serve two consecutive prison terms of 10 years to life.

First, Stiegler contends that the evidence presented at trial was insufficient to support the jury's finding that he was guilty beyond a reasonable doubt. Specifically, Stiegler claims (1) the State failed to disprove, beyond a reasonable doubt, that he committed the murder in self-defense, and (2) the evidence adduced by the State was insufficient to support the charge as alleged in the second amended criminal information. We disagree.

Our review of the record on appeal reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational

trier of fact.¹ Stiegler was charged with killing his roommate, Robert Wilson, by "blunt force trauma and/or asphyxiation," with the use of a deadly weapon, "to wit: a metal pole and/or unknown blunt object." Stiegler admitted to killing Wilson, albeit in self-defense, during the course of a fight in which he used a metal rod to hit Wilson. Stiegler, however, did not report the incident to the police, but instead wrapped a plastic sheet around Wilson's head and body, tied the hands and feet together, and placed the body in a hollow space under the floorboards of his apartment beneath a stairwell. Within days, Stiegler proceeded to pour concrete and tar over the body, and when it dried, covered the area with carpet. Stiegler disposed of the metal rod and excised the portion of the carpet where Wilson bled. After Wilson disappeared, Stiegler lied to several people, including Wilson's family, about Wilson's whereabouts. Several months later, after losing a contested eviction, Stiegler fled to Arizona and worked under an assumed name.

Dr. Rexene Worrell performed the autopsy on Wilson and testified at trial that he suffered approximately fourteen blows to the head, most of which were to the back of his skull, resulting in lacerations. Dr. Worrell stated that if the blows to the head did not kill Wilson, he may have died from asphyxiation after the plastic bag was placed over his dead. Dr. Worrell also testified that the ligature marks around Wilson's

¹See Mason v. State, 118 Nev. 554, 559, 51 P.3d 521, 524 (2002) (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979)).

wrists and the swelling of his hands indicated that Wilson was alive when his wrists were bound.

Based on the above, we conclude that a jury could reasonably infer from the evidence presented that Stiegler's actions were not consistent with self-defense and that he committed the crime beyond a reasonable doubt.² 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, sufficient evidence supports the verdict.³ Moreover, we note that circumstantial evidence alone may sustain a conviction.⁴ Therefore, we conclude that the State presented sufficient evidence to support the jury's verdict.

Second, Stiegler contends that the prosecutor committed misconduct during rebuttal closing argument by disparaging defense counsel. We disagree.

²See NRS 200.010; NRS 200.030(2); NRS 193.165; see also Keys v. State, 104 Nev. 736, 738, 766 P.2d 270, 271 (1988) (the malice necessary to support a second-degree murder conviction is implied "when all the circumstances of the killing show an abandoned and malignant heart" (quoting NRS 200.020)).

³See Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981); McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992); see also Tabish v. State, 119 Nev. 293, 313, 72 P.3d 584, 597 (2003) ("[W]hen conflicting or alternative theories of criminal agency are offered through the medium of competent evidence, the jury need only achieve unanimity that a criminal agency in evidence was the cause of death; the jury need not achieve unanimity on a single theory of criminal agency.")

⁴See Buchanan v. State, 119 Nev. 201, 217, 69 P.3d 694, 705 (2003).

This court has stated that "[i]t is . . . inappropriate for a prosecutor to make disparaging remarks pertaining to defense counsel's ability to carry out the required functions of an attorney."⁵ "To determine if prejudicial prosecutorial misconduct occurred, the relevant inquiry is whether a prosecutor's statements so infected the proceedings with unfairness as to result in a denial of due process."⁶ Additionally, "[a] prosecutor's comments should be viewed in context, and 'a criminal conviction is not to be lightly overturned on the basis of a prosecutor's comments standing alone.'"⁷

Initially, we note that Stiegler did not object to the prosecutor's comments. The failure to raise an objection with the district court generally precludes appellate consideration of an issue.⁸ This court may nevertheless address an alleged error if it was plain and affected the appellant's substantial rights.⁹ We conclude that Stiegler cannot demonstrate that the prosecutor's comments affected his substantial

⁵Riley v. State, 107 Nev. 205, 213, 808 P.2d 551, 556 (1991).

⁶Anderson v. State, 121 Nev. 511, 516, 118 P.3d 184, 187 (2005).

⁷Knight v. State, 116 Nev. 140, 144-45, 993 P.2d 67, 71 (2000) (quoting United States v. Young, 470 U.S. 1, 11 (1985)).

⁸See Parker v. State, 109 Nev. 383, 391, 849 P.2d 1062, 1067 (1993) (holding that the failure to object to prosecutorial misconduct generally precludes appellate consideration).

⁹See NRS 178.602 ("Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court."); Pray v. State, 114 Nev. 455, 459, 959 P.2d 530, 532 (1998).

rights or prejudiced him in any way amounting to reversible plain error.¹⁰ In fact, the prosecutor's statements were made in direct response to assertions made by defense counsel during Stiegler's closing argument. We further note that the jury was properly instructed only to consider as evidence the testimony of witnesses, exhibits, and facts admitted or agreed to by counsel. The jury was also instructed that the statements, arguments, and opinions of counsel were not to be considered as evidence. Finally, even if the remarks were inappropriate, we conclude that the State presented substantial evidence of Stiegler's guilt, and "where evidence of guilt is overwhelming, even aggravated prosecutorial misconduct may constitute harmless error."¹¹

Finally, Stiegler contends that the district court committed reversible error by providing the jury with a flight instruction. Stiegler claims that the evidence was insufficient to support such an instruction. We disagree.

"[A] district court may properly give a flight instruction if the State presents evidence of flight and the record supports the conclusion that the defendant fled with consciousness of guilt and to evade arrest."¹²

¹⁰See Green v. State, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003) (stating that when conducting a review for plain error, "the burden is on the defendant to show actual prejudice or a miscarriage of justice").

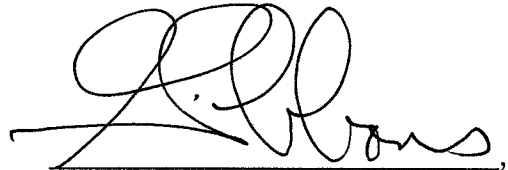
¹¹King v. State, 116 Nev. 349, 356, 998 P.2d 1172, 1176 (2000).

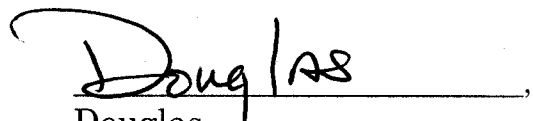
¹²Rosky v. State, 121 Nev. 184, 199, 111 P.3d 690, 699-700 (2005).

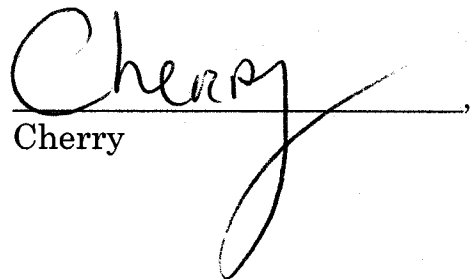
Initially, we note that Stiegler did not object to the flight instruction.¹³ Moreover, the State presented evidence indicating that as soon as Stiegler was evicted and forced to vacate the premises where the decomposing body of the victim was buried, he fled to Arizona and remained there under an assumed name. Therefore, we conclude that the district court did not commit reversible plain error by instructing the jury on flight.

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

ORDER the judgment of conviction AFFIRMED.


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Cherry

¹³See Green, 119 Nev. at 545, 80 P.3d at 95 ("Generally, the failure to clearly object on the record to a jury instruction precludes appellate review.").

cc: Eighth Judicial District Court Dept. 16, District Judge
Special Public Defender David M. Schieck
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk