

IN THE SUPREME COURT OF THE STATE OF NEVADA

RANDALL MESCALL,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 56784

**FILED**

**JUN 08 2011**

ORDER OF AFFIRMANCE

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

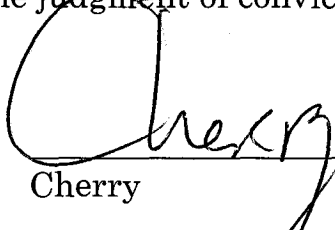
This is an appeal from a judgment of conviction entered pursuant to a jury verdict of battery constituting domestic violence with the use of a deadly weapon resulting in substantial bodily harm. Eighth Judicial District Court, Clark County; David Wall, Judge.


Appellant Randall Mescall contends that the district court erred by rejecting his proposed theory of defense instruction. His instruction provided, "If the evidence is susceptible of two reasonable interpretations, one of which points to the defendant's guilt and the other to his innocence, it is your duty to adopt that interpretation which points to the defendant's innocence, and reject the other which points to his guilt." We have previously held that it is not error to reject this kind of instruction where, as here, the jury was properly instructed on the standard of reasonable doubt. Bails v. State, 92 Nev. 95, 96-98, 545 P.2d 1155, 1155-56 (1976) (citing Holland v. United States, 348 U.S. 121, 139-40 (1954)). Accordingly, the district court did not abuse its discretion or commit judicial error by rejecting this instruction. See Nelson v. State, 123 Nev. 534, 548, 170 P.3d 517, 527 (2007) (reviewing a district court's decision concerning jury instructions for abuse of discretion and judicial error).

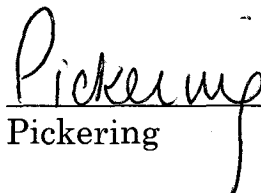
Mescall also contends that the district court erred by limiting his closing argument and preventing him from arguing that Shelley Hutchinson, one of the State's primary witnesses, was not credible because she had been convicted of three felonies. Our review of the record reveals that the State objected to Mescall's attempt to argue facts that were not in evidence and the district court sustained the objection and ordered the last sentence of Mescall's argument stricken. We conclude that the district court did not abuse its discretion by sustaining the State's objection and its ruling did not improperly limit Mescall's closing argument. See Glover v. Dist. Ct., 125 Nev. \_\_\_, \_\_\_, \_\_\_, 220 P.3d 684, 693, 695-96 (2009) (reviewing a district court's ruling regarding the scope of counsel's closing argument for abuse of discretion and reiterating the rule that counsel may not address facts that were not introduced into evidence).

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

ORDER the judgment of conviction AFFIRMED.

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

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

  
\_\_\_\_\_, J.  
Pickering

cc: Chief Judge, Eighth Judicial District Court  
Law Office of Patricia M. Erickson  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk