

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES MANLEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 59031

FILED

APR 12 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Angers*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of battery by a prisoner and possession of a controlled substance by a prisoner. Seventh Judicial District Court, White Pine County; Dan L. Papez, Judge.

Appellant Charles Manley contends that there was insufficient evidence to support his battery conviction because the State failed to prove that he was not acting in self-defense. We review the evidence in the light most favorable to the prosecution and determine whether any rational juror could have found the essential elements of the crime beyond a reasonable doubt. McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992); see also St. Pierre v. State, 96 Nev. 887, 891, 620 P.2d 1240, 1242 (1980) (“[B]ecause self-defense is justifiable, it negates the unlawfulness element.”).

The State argues that it presented sufficient evidence for the jury to determine that Manley’s right to use self-defense ended when he continued to batter the victim after the apparent danger ceased to exist. We agree. Although Manley and the victim exercised their right to remain silent, correctional officers testified that they were called to Manley’s cell and observed him repeatedly striking his cellmate in the face and head

and then jumping on his back to apply a choke hold. One officer observed Manley with his arm around his cellmate's throat choking him out and telling him to "die." Even after gas was administered to their cell, the prisoners did not listen to the officers' commands. Two officers testified that, after the prisoners refused to respond to their repeated commands, they decided to enter the cell without all of their safety equipment because they were afraid that Manley's cellmate's life was in danger because of the choke hold.

We conclude that a rational juror could infer from these circumstances that Manley committed battery by continuing to choke his cellmate after officers arrived to intervene. See NRS 200.481(1)(a), (2)(f); NRS 193.240(1); Pineda v. State, 120 Nev. 204, 212, 88 P.3d 827, 833 (2004) (right to self-defense exists when there is a reasonably perceived apparent danger or actual danger); State v. Comisford, 41 Nev. 175, 178, 168 P. 287, 287 (1917) (amount of force justifiable is that a reasonable man would believe is necessary for protection) People v. Hardin, 102 Cal. Rptr. 2d 262, 268 n.7 (Ct. App. 2000) (right to use force in self-defense ends when danger ceases); see also McNair, 108 Nev. at 56, 825 P.2d at 573 ("[I]t is the jury's function, not that of the court, to assess the weight of the evidence and determine the credibility of witnesses.").

Manley also contends that the district court abused its discretion by sustaining the State's objection to the hearsay testimony of an investigator for the Department of Corrections who testified at trial. The investigator had previously testified at the preliminary hearing that Manley told him that he had asked to be removed from his cell the night before because his cellmate was agitated and he thought he might become combative. Manley argues that the investigator's trial testimony was admissible under the former testimony exception to the hearsay rule. See

NRS 51.325. We disagree. Manley's statement to the investigator was not admissible because NRS 51.325 only makes the "former" testimony of the witness admissible not his or her testimony at trial. See NRS 51.325 ("Testimony given as a witness at another hearing. . . is not inadmissible under the hearsay rule." (emphasis added)). Therefore, we conclude that the district court did not abuse its discretion by sustaining the State's hearsay objection.

Finally, Manley contends that the district court abused its discretion and violated his due process rights by prohibiting him from possessing certain pages of discovery in his prison cell which identified a prison "snitch." Because Manley "makes no argument as to how or why access, instead of possession, in any way prejudiced his ability to mount an adequate defense," we conclude that the district court did not abuse its discretion or violate Manley's due process rights. Wilson v. State, 121 Nev. 345, 360, 114 P.3d 285, 296 (2005).

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

ORDER the judgment of conviction AFFIRMED.

Cherry, J.
Cherry

Pickering, J.
Pickering

Hardesty, J.
Hardesty

cc: Hon. Dan L. Papez, District Judge
State Public Defender/Ely
Attorney General/Carson City
Attorney General/Ely
White Pine County Clerk