

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT HENRY SPAHR,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 63341

FILED

JAN 21 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *A. Malone*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of battery by a prisoner in lawful custody. Sixth Judicial District Court, Pershing County; Richard Wagner, Judge.

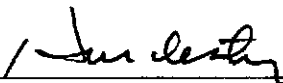
First, appellant Robert Spahr contends that the district court abused its discretion by failing to instruct the jury regarding self-defense. This court reviews a district court's refusal to give a jury instruction for an abuse of discretion, but whether the requested instruction was a correct statement of the law de novo. *Nay v. State*, 123 Nev. 326, 330, 167 P.3d 430, 433 (2007). The district court denied Spahr's requested instruction because it concluded that self-defense was not available to prisoners within a prison setting. The district court erred by denying the instruction on this basis. However, because the testimony at trial was unequivocal that Spahr, an inmate, punched a correctional officer in the face after refusing to remove coverings that he had placed over cameras in his cell, we conclude that the error was harmless beyond a reasonable doubt. *See Crawford v. State*, 121 Nev. 744, 756, 121 P.3d 582, 590 (2005).

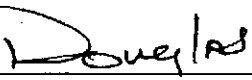
Second, Spahr contends that the district court erred by failing to instruct the jury regarding the offense of resisting an officer. We

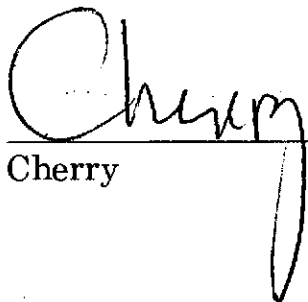
conclude that the district court did not err by denying this instruction because resisting an officer is not a lesser-included offense of battery by a prisoner in lawful custody. Compare NRS 199.280 (resisting a public officer), with NRS 200.481(2)(f) (battery by a prisoner in lawful custody); see *Rosas v. State*, 122 Nev. 1258, 1263, 147 P.3d 1101, 1105 (2006) (“A lesser offense is included in a greater offense when all of the elements of the lesser offense are included in the elements of the greater offense.” (internal quotation marks omitted)).

Having considered Spahr’s contentions and concluded that no relief is warranted, we¹

ORDER the judgment of conviction AFFIRMED.


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Cherry

¹Spahr’s fast track statement does not comply with NRAP 32(a)(5) because the typeface is smaller than permitted and the footnotes are not in the same size font as the body of the brief. The State’s fast track response does not comply with NRAP 32(a)(4) because it does not have 1-inch margins on all four sides and is not double-spaced. See NRAP 3C(h)(1). We caution counsel for both parties that future failure to comply with the Nevada Rules of Appellate Procedure when filing briefs with this court may result in the imposition of sanctions. See NRAP 3C(n); NRAP 28.2(b).

cc: Hon. Richard Wagner, District Judge
Pershing County Public Defender
Attorney General/Carson City
Attorney General/Ely
Pershing County Clerk