IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GENARO RICHARD PERRY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 69139



*ORDER OF AFFIRMANCE*

Appellant Genaro Richard Perry appeals from a judgment of conviction entered pursuant to a bench trial of robbery with the use of a deadly weapon, false imprisonment with the use of a deadly weapon, grand larceny of an automobile, assault with a deadly weapon, coercion, battery resulting in substantial harm and constituting domestic violence, and preventing or dissuading a witness or victim from reporting a crime or commencing prosecution. Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge.

*Evidentiary ruling*

Perry claims the district court erred by excluding testimony necessary to support his self-defense claim. "We review a district court's decision to admit or exclude evidence for an abuse of discretion." *Mclellan v. State*, 124 Nev. 263, 267, 182 P.3d 106, 109 (2008). Prior to trial, the district court conducted a hearing on Perry's motion to admit evidence pursuant to NRS 48.045(2). Perry sought to elicit testimony from the victim to show the victim previously chased a woman through TJ Maxx with a knife and crowbar, the victim told Perry about this prior incident, and Perry's knowledge of this prior incident affected how he responded to



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the victim in the instant case. The district court found the evidence was relevant to Perry's claim of self-defense, it was clear and convincing evidence, and it was not more prejudicial than probative. However, the district court limited the admission of this evidence to "evidence about this incident of which [Perry] was aware to show . . . that it affected his state of mind" on the day of the charged offenses.

During the trial, Perry sought to present the testimony of a security guard who witnessed the TJ Maxx incident in order to bolster his self-defense claim. The district court reiterated it was only allowing evidence about the TJ Maxx incident to the extent that it affected Perry's state of mind. And the district court ruled, unless Perry had talked to the security guard, the security guard's testimony was not pertinent to the issue of self-defense. We conclude the district court did not abuse its discretion by excluding the security guard's testimony. *See Daniel v. State*, 119 Nev. 498, 515-17, 78 P.3d 890, 902-03 (2003) (discussing the admission of evidence when a defendant claims self-defense and knew of the victim's prior violent conduct).

*Self-defense instructions*

Perry claims the district court erred by rejecting the parties' proposed instructions on self-defense. We review a district court's exercise of discretion when settling jury instructions for abuse of discretion or judicial error. *Crawford v. State*, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005). "[A] defendant is entitled to a jury instruction on his theory of the case so long as there is some evidence to support it, regardless of whether the evidence is weak, inconsistent, believable, or incredible." *Hoagland v. State*, 126 Nev. 381, 386, 240 P.3d 1043, 1047 (2010).

We conclude the district court abused its discretion by rejecting the instructions on self-defense because Perry presented some evidence in support of his self-defense claim through the victim's testimony. However, we further conclude the error was harmless because it is clear beyond a reasonable doubt that a rational trier of fact would have found Perry guilty absent the error. *See Gonzalez v. State*, 131 Nev. ___, ___, 366 P.3d 680, 684 (2015) (instructional errors involving a defendant's right to self-defense have constitutional dimension); *Nay v. State*, 123 Nev. 326, 333-34, 167 P.3d 430, 435 (2007) (stating the test for harmless-error analysis of an instructional error with constitutional dimension).

*Sufficiency of the evidence*

Perry claims insufficient evidence supports his convictions because the trier of fact did not take into consideration the evidence supporting his claim of self-defense. We review the evidence in the light most favorable to the prosecution and determine whether "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979).

The trier of fact heard testimony that the victim allowed Perry to spend the night at her residence. Perry became agitated and aggressive when the victim asked him to leave the following morning. Perry grabbed the victim's cell phone, threw it against the wall, and told her she "was not going to call the police on him." Perry punched the victim in the face, and he continued to punch her after she fell backwards into the bathroom.

The victim bit Perry's hand, stood up, and ran for the staircase. Perry kicked the victim in the back as she started down the stairs, causing her to tumble down the stairs and into the kitchen. Perry

continued to kick and punch the victim while she lay in a fetal position on the kitchen floor. He grabbed a steak knife from the stove and swung the knife at the victim, striking her hands.

Perry dragged the victim into the living room and told her to sit on the love seat. He paced back and forth in front of the victim for about 50 minutes, all the while holding the knife and threatening to kill her. At some point, Perry spotted the keys to the victim's Mercedes on a coffee table and grabbed them. He then marched the victim back upstairs at knifepoint, placed her in a bathroom, told her not to leave or he would kill her, and threw her cell phone in the toilet.

After Perry drove off in the victim's Mercedes, the victim called the police and eventually went to the hospital. She suffered an orbital fracture, a broken nose, the loss of two teeth, a cut hand, and damage to the area of her right hip. She testified that she purchased her Mercedes for $4,200 and it was valued at $5,100.

We conclude a rational trier of fact could reasonably infer from this evidence that Perry assaulted, battered, robbed, imprisoned, and coerced his former girlfriend; he prevented her from reporting a crime and stole her car; he used a deadly weapon and caused her to suffer substantial bodily harm; and he was not acting in self-defense when he committed these criminal acts. *See* NRS 33.018(1); NRS 193.165(1); NRS 199.305(1); NRS 200.380(1); NRS 200.460(1); NRS 200.471(1); NRS 200.481(1); NRS 205.228(1); NRS 207.190(1); *Pineda v. State*, 120 Nev. 204, 212, 88 P.3d 827, 833 (2004) (the right to self-defense exists when there is a reasonably perceived apparent danger or actual danger); *People v. Hardin*, 102 Cal. Rptr. 2d 262, 268 n.7 (Ct. App. 2000) (the right to use force in self-defense ends when the danger ceases). It is for the trier of

fact to determine the weight and credibility to give conflicting testimony, and the trier of fact's verdict will not be disturbed on appeal where, as here, sufficient evidence supports its verdict. *See Bolden v. State*, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981).

*Cumulative error*

Perry claims cumulative error deprived him of a fair trial. However, we reject this claim because there was one error and the error was harmless. *See United States v. Sager*, 227 F.3d 1138, 1149 (9th Cir. 2000) ("One error is not cumulative error."); *Pascua v. State*, 122 Nev. 1001, 1008 n.16, 145 P.3d 1031, 1035 n.16 (2006).

Having concluded Perry is not entitled to relief, we ORDER the judgment of conviction AFFIRMED.

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Silver

cc: Hon. Elissa F. Cadish, District Judge
Travis E. Shetler
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk