IN THE SUPREME COURT OF THE STATE OF NEVADA

ELIAS MALDONADO,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 37129

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of battery causing substantial bodily harm. The district court sentenced appellant Elias Maldonado to imprisonment for 48 months with a minimum parole eligibility of 16 months. The court further ordered appellant to submit to genetic marker and/or secretor status testing and pay a $25 assessment fee, a $250 DNA analysis fee and $18,000 in restitution.

Appellant first contends that insufficient evidence was adduced to support the jury's finding of guilt. He specifically argues that the evidence presented at trial shows that he acted in self-defense during the altercation which led to the charge against him. Appellant further argues that no evidence shows when the alleged victim, James Bradley, was injured or that appellant had lost the right to use self-defense at the time the injuries were suffered. Our review of the record on appeal, however, reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact.[1]

In particular, we note the following evidence adduced at trial. Bradley testified that during a period when he and his wife, LeAna Yost, were in the process of divorcing, Bradley saw Yost riding with appellant in his Bronco. Bradley, driving his own truck, followed appellant's Bronco until it was parked. Bradley stopped his truck and began yelling at Yost through his open driver's side window. Appellant exited the Bronco,

[1]See Wilkins v. State, 96 Nev. 367, 374, 609 P.2d 309, 313 (1980) (stating standard of review for claims of insufficient evidence).

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approached Bradley's truck, yelled at Bradley, and then punched him in the head. Bradley exited his truck, swung at appellant, possibly hitting him, then ripped appellant's shirt off and hit him again, causing appellant to "fold." Bradley's next memory was waking up injured in the hospital.

Ronald and Mary Beth Rudden witnessed part of the incident from their home. Mary Beth testified that she looked out to the street from a window and saw appellant punching and kicking a man, who was on the ground. The man on the ground "wasn't moving much." He was "just laying there and kind of waving his arm, barely." Mary Beth observed appellant repeatedly punch and kick the man over a period of a couple of minutes and she told Ronald to call 9-1-1. Ronald testified that he looked outside and observed appellant repeatedly kick the face and chest of the man lying on the ground. Ronald approached appellant and said that the fight was over and that the police had been called. Appellant backed off. The man on the ground appeared to be unconscious and his face was "smashed in." An EMT who responded to the scene testified that appellant did not appear to need any medical treatment, but Bradley had a bloody and very swollen face. Bradley was conscious but not coherent. The EMT also noted that appellant was wearing rounded-toe cowboy boots. Testimony from responding police showed that appellant admitted to being involved in the altercation but claimed that Bradley was the aggressor. The doctor who treated Bradley at the hospital testified that when Bradley arrived at the emergency room, he had bruising all over his face, lacerations about his face, marked swelling of his nose and right eye area, a fractured nose and a blowout fracture of the right eye orbit. The doctor opined that for Bradley to have such extensive injuries, he must have suffered a severe blow or multiple blows to his face. Bradley underwent reconstructive surgery to restore the placement of his right eye, and testified that he continued to suffer from various physical problems associated with his injuries.

The jury could reasonably infer from the evidence presented that appellant was not acting in self-defense but instead had caused substantial bodily harm during an unlawful battery of Bradley. Although Yost testified, consistent with appellant's statement to police, that Bradley was the aggressor, the jury was free to reject this evidence and believe

Bradley's contrary testimony.[2] Moreover, regardless of who initiated the physical confrontation, the jury could reasonably infer that at some point during the attack on Bradley, appellant could no longer have reasonably believed Bradley posed any threat, and, therefore, any right appellant had to use self-defense had ended, yet appellant continued to use force upon Bradley to the extent of causing severe injuries.[3] 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, substantial evidence supports the verdict.[4]

Appellant next challenges several of the jury instructions on various grounds and argues that together the instructions improperly shifted the burden of proof. We decline to address appellant's argument that the instructions considered cumulatively shifted the burden of proof, as appellant has failed to present any cogent argument or authority in support of this contention.[5] Further, appellant only objected below to Instruction 14. Therefore, we review his challenges to the remaining instructions only for plain error.[6]

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[2]See Giordano v. Spencer, 111 Nev. 39, 42-43, 888 P.2d 915, 917 (1995) (recognizing that where evidence conflicts regarding which party was the initial aggressor and regarding whether the force used exceeds that privileged in self-defense, these issues are questions for the trier of fact); Commonwealth v. Kendrick, 218 N.E.2d 408, 414 (Mass. 1966) (acknowledging that how far a person may properly go in self-defense is ordinarily a question for the jury).

[3]Cf. Hill v. State, 497 N.E.2d 1061, 1064-65 (Ind. 1986) (recognizing that even if appellant reasonably feared her ex-husband would injure her, evidence showing that she continued firing shots at him after he fell to the ground and was no longer a threat supported jury's conclusion that degree of force used by appellant exceeded that which was justifiable in self-defense); Williams v. State, 91 Nev. 533, 539 P.2d 461 (1975) (holding that where appellant was struck on the head by an attacker who fled, and appellant retrieved a gun, then pursued and fatally shot his attacker, appellant was the aggressor in the fatal attack and was not entitled to claim self-defense in his trial for murder).

[4]See Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981).

[5]See Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (stating that this court need not address arguments not supported by relevant authority and cogent argument).

[6]See Cordova v. State, 116 Nev. 664, 666, 6 P.3d 481, 482-83 (2000) (recognizing that failure to object to instructions at trial will preclude appellate review except in instances of plain error).

Appellant contends that the district court erred in giving Instructions 14[7] and 15[8] because these instructions conflict with others and because the evidence showed he was not the initial aggressor and that he was privileged to defend himself at least until he was advised that the victim was no longer fighting. Appellant notes that under Nevada law, he had no duty to retreat and therefore argues that his actions in response to an attack by Bradley are justifiable. He also objects to Instruction 14 on the grounds that it improperly shifted to him the burden of proof on self-defense and is not supported by Nevada law. These contentions lack merit.

First, appellant presents no relevant authority or coherent argument in support of his contention that the instructions conflict with other instructions. Therefore, we do not consider this issue. Additionally, as we have noted, although conflicting evidence was adduced on the issue of who acted as the initial aggressor, the issue was a factual one for the jury.[9] Similarly, the issue of whether appellant's actions were within the

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[7]Instruction 14 stated:

> The right of self-defense is only available to a person who initiated an assault if he has done all the following:
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> 1. He has actually tried, in good faith, to refuse to continue fighting;
> 2. He has clearly informed his opponent that he wants to stop fighting; and
> 3. He has clearly informed his opponent that he has stopped fighting.
>
> After he has done all these three things, he has the right to self-defense if his opponent continues to fight.

[8]Instruction 15 stated:

> The right of self-defense ends when there is no longer any apparent danger of further violence on the part of an assailant. Thus where a person is attacked under circumstances which justify the exercise of the right of self-defense, and thereafter the person uses enough force upon his attacker as to render the attacker apparently incapable of inflicting further injuries, the right to use force in self-defense ends.

[9]See Giordano, 111 Nev. at 42-43, 888 P.2d at 917; Kendrick, 218 N.E.2d at 414.

privilege of self-defense was also a matter to be determined by the jury.[10] Nevada law recognizes that a person who is not the original aggressor has no duty to retreat before responding with force to a reasonably perceived threat to his person.[11] However, this rule does not authorize a person privileged to defend himself to continue to use force when he could not reasonably have believed that his attacker presented any continuing threat.[12] Appellant has not demonstrated that Instruction 14 is inconsistent with Nevada law.[13] Moreover, the instruction merely stated the legal principles applicable to determining the issue of self-defense. The jury was properly instructed that the State carried the burden of proving beyond a reasonable doubt that a willful and unlawful use of force and violence upon the victim caused substantial bodily harm and that appellant did not act in self-defense. Thus, we conclude that the instruction did not impermissibly shift the burden of proof to appellant on the issue of self-defense.[14]

Appellant also argues that the district court erred in giving Instruction 11, which defined the limits of the use of force justifiable in

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[10]See Kendrick, 218 N.E.2d at 414.

[11]See Culverson v. State, 106 Nev. 484, 797 P.2d 238 (1990). We note that the jury was properly instructed on Nevada's no-duty-to-retreat rule.

[12]See State v. Comisford, 41 Nev. 175, 178, 168 P. 287, 287 (1917) (recognizing that amount of force justifiable in self-defense is that which a reasonable man would have believed necessary to protect himself).

[13]See NRS 200.200 ("If a person kills another in self-defense, it must appear that: 1. The danger was so urgent and pressing that, in order to save his own life, or to prevent his receiving great bodily harm, the killing of the other was absolutely necessary; and 2. The person killed was the assailant, or that the slayer had really, and in good faith, endeavored to decline any further struggle before the mortal blow was given.") (emphasis added); NRS 200.275 ("In addition to any other circumstances recognized as justification at common law, the infliction or threat of bodily injury is justifiable, and does not constitute mayhem, battery or assault, if done under circumstances which would justify homicide."); State v. Robinson, 54 Nev. 56, 76, 6 P.2d 433, 439 (1931).

[14]Cf. Carl v. State, 100 Nev. 164, 678 P.2d 669 (1984) (concluding no improper burden shifting occurred where jury was merely informed that certain facts or circumstances must exist in order for the legal principles of self-defense to be applicable and the jury was properly instructed on the state's burden of proof).

self-defense. However, not only is no plain error apparent, but appellant has again failed to present any cogent argument or authority in support of his contentions, and, therefore, we do not consider them further. Appellant also claims that the court erred in giving Instruction 17, which explained that the use of mere words unaccompanied by the threat or apparent threat of great bodily injury or an assault upon the person does not justify the use of force likely to produce great bodily injury. Appellant argues that Instruction 17 is inconsistent with Nevada law permitting self-defense in cases of apparent danger.[15] However, appellant has failed to demonstrate that the instruction is erroneous. Moreover, the jury was properly instructed regarding when apparent danger will justify actions in self-defense. Accordingly, no error, plain or otherwise, resulted from the giving of this instruction.

Appellant next argues that the trial court improperly limited his direct examination of Bradley. Bradley testified first as a State's witness, was cross-examined by the defense, and then was called as a defense witness. During defense direct, Bradley testified that he had never before followed Yost in his truck. Defense counsel inquired into Bradley's lack of memory on the subject during his preliminary hearing testimony, and the following occurred.

> [DEFENSE COUNSEL]: So would you please enlighten the jury? Were you being untruthful at Preliminary Hearing or –
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> [THE COURT]: Don't answer that question. Don't answer the question.
>
> [PROSECUTOR]: I object. It's argumentative.
>
> [THE COURT]: Don't answer the question. [Defense counsel], this is Cross-Examination. If you have some Direct testimony to get from this witness, do it. Otherwise, excuse the witness.
>
> . . .
>
> [DEFENSE COUNSEL]: So you testified on Direct for the State that the reason you followed LeAna is you needed to tell her something?

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[15]See Runion v. State, 116 Nev. 1041, 13 P.3d 52 (2000) (recognizing that actual danger is not necessary to justify self-defense).

> [The State objected on the ground that the question had been asked and answered; the court sustained the objection.]
>
> [DEFENSE COUNSEL]: Let me ask you this, Mr. Bradley. What, if any, different reason did you give at Preliminary Hearing for following LeAna?
>
> [PROSECUTOR]: Objection, Your Honor. Once again, this is Cross Examination in the form of Direct Examination, and it's improper.
>
> [THE COURT]: Do you have any Direct Examination of this witness, [defense counsel]?
>
> [DEFENSE COUNSEL]: That was my Direct Examination.
>
> [THE COURT]: I'm not going to allow it.
>
> . . .
>
> These are questions you could have asked before and you should have asked before. You're not bringing out anything new from the witness. I'm not going to let you proceed in that manner.
>
> [Whereupon defense counsel indicated he had no further questions, and the court excused Bradley.]

Appellant argues that Bradley was a hostile witness and, therefore, appellant had the right to pose leading questions and impeach Bradley during defense direct examination of him.[16] Appellant notes that when Bradley testified as a witness for the State, defense witnesses Yost and Heather Hamilton had not yet testified. During the defense case, Yost testified that Bradley had followed her in his truck on previous occasions and that he started the physical altercation with appellant by approaching appellant and shoving him. Hamilton testified that at the time of the incident, she looked outside her residence for a few seconds and observed appellant and Bradley holding onto each other and fighting. Appellant argues that the discrepancies between the testimony of these witnesses and Bradley's testimony during the State's case was crucial to the issue of credibility. He further argues that it was necessary to his claim of self-defense to show that Bradley had previously stalked appellant and Yost. Therefore, he contends that the trial court's limitations on his examination of Bradley impermissibly violated his confrontation rights. We disagree.

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[16]See NRS 50.075 ("The credibility of a witness may be attacked by any party, including the party calling him."); NRS 50.115(4) ("[A] party is entitled to call: (a) An adverse party; or (b) A witness identified with an adverse party, and interrogate by leading questions.").

Our review of the record shows that appellant had a full and fair opportunity to cross-examine Bradley in order to impeach his testimony when he testified as a State's witness. During that cross-examination, defense counsel inquired into Bradley's reason for following Yost on the date in question, whether he had previously followed her, the circumstances surrounding the physical altercation, and perceived inconsistencies between his preliminary hearing and trial testimony. We conclude that the trial court was within its discretion in restricting defense questioning of Bradley on matters already inquired into during its earlier cross-examination of him and that appellant has failed to demonstrate any violation of his confrontation rights.[17]

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

ORDER the judgment of the district court AFFIRMED.

_____, J.
Young

_____, J.
Agosti

_____, J.
Leavitt

cc: Hon. David A. Huff, District Judge
Attorney General/Carson City
Churchill County District Attorney
Karla K. Butko
Churchill County Clerk

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[17]See NRS 50.115(1) ("The judge shall exercise reasonable control over the mode and order of interrogating witnesses . . . ."); Leonard v. State, 117 Nev. ___, ___, 17 P.3d 397, 409 (2001) (acknowledging trial court's broad discretion to restrict cross-examination which is repetitive without violating defendant's confrontation rights).