

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JAMES J. PULLEN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 78174-COA

**FILED**

APR 10 2020

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER OF AFFIRMANCE*

James J. Pullen appeals from a judgment of conviction, pursuant to a jury verdict, of battery with the use of a deadly weapon resulting in substantial bodily harm. Second Judicial District Court, Washoe County; Elliott A. Sattler, Judge.

Pullen contends the district court erred by giving an instruction that relieved the State of its burden of proof and essentially told the jury Pullen was guilty. "The district court has broad discretion to settle jury instructions, and this court reviews the district court's decision for an abuse of discretion or judicial error." *Crawford v. State*, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005). Because Pullen did not object to this instruction, he is not entitled to relief absent a demonstration of plain error. *Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48-49 (2018), *cert. denied*, 139 S. Ct. 415 (Oct. 29, 2018). To demonstrate plain error, an appellant must show there was an error, the error was plain or clear, and the error affected appellant's substantial rights. *Id.* at 50, 412 P.3d at 48.

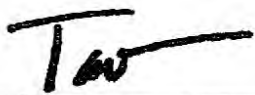
Jury instruction no. 6 stated, "On arriving at a verdict in this case, you shall not discuss or consider the subject of penalty or punishment as that is a matter which will be decided later and must not in any way

affect your decision as to the innocence or guilt of the defendant.” Pullen claims that, because the subject of ‘penalty or punishment’ would only come up if the jury convicted Pullen, this was a “subtle” way of directing the jury to find him guilty and it stripped him of the presumption of innocence. Pullen failed to demonstrate clear error that is apparent from a casual inspection of the record.

Moreover, Pullen did not demonstrate the instruction affected his substantial rights. We presume jurors follow the instructions of the district courts. *Summers v. State*, 122 Nev. 1326, 1333, 148 P.3d 778, 783 (2006). The jury was plainly instructed to consider the instructions as a whole and that Pullen was presumed innocent unless the State proved him guilty beyond a reasonable doubt. Accordingly, Pullen failed to demonstrate the giving of jury instruction no. 6 amounted to plain error, and we

ORDER the judgment of conviction AFFIRMED.

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

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Elliott A. Sattler, District Judge  
Scott W. Edwards  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk