

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MEELAD MOFAWAK ABDALMASEEH,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 80564-COA

FILED

MAY 25 2021

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY *Edgema*  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Meelad Mofawak Abdalmaseeh appeals from a judgment of conviction, pursuant to a jury verdict, of battery with use of a deadly weapon resulting in substantial bodily harm. Eighth Judicial District Court, Clark County; Kathleen E. Delaney, Judge.

In August 2017, Nicholas Hukill and two of his friends walked to a convenience store so Hukill could purchase a beer.<sup>1</sup> Abdalmaseeh was working as a cashier. Following his purchase, Hukill began drinking the beer in front of the store.<sup>2</sup> Abdalmaseeh went outside and told Hukill he could not drink alcohol there. Hukill and his friends walked towards Abdalmaseeh. Abdalmaseeh picked up two bricks from a nearby pile and brandished them at Hukill, who then “brandished” his beer can at Abdalmaseeh. They swung at each other and Hukill struck Abdalmaseeh on the head with the beer can. The two started grappling and Abdalmaseeh, still holding bricks, hit Hukill with them as they struggled.

Abdalmaseeh’s brother, Fadi Abdalmaseeh (Fadi), broke up the brawl and pushed Hukill to the ground. Fadi pointed a handgun at Hukill

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<sup>1</sup>We only recount the facts as necessary for our disposition.

<sup>2</sup>The State submitted high-quality video surveillance footage that depicted the events from this point on. The jury viewed the footage multiple times at trial and we reviewed it on appeal.

and held him at gunpoint on the ground. Seeing the gun, Hukill's friends backed away. Abdalmaseeh then threw a brick at Hukill, picked up the same brick, and threw it at Hukill again. This time, it hit Hukill's head, fracturing his skull and causing severe bleeding. Abdalmaseeh picked up more bricks and threw them at Hukill's friends. The altercation ended after Abdalmaseeh threw a brick at the windshield of a nearby car, smashing it, and kicked Hukill to the ground as Hukill tried to stand. The State charged Abdalmaseeh with one count of battery with use of a deadly weapon resulting in substantial bodily harm and one count of breaking, injuring, or tampering with a motor vehicle.<sup>3</sup>

At trial, the State described Abdalmaseeh as being "out for blood" and "looking to hurt people" in its opening statement. In closing, the State declared "you can't just go outside and bash someone's skull in because they're drinking in public." Abdalmaseeh's case rested entirely on his claim of self-defense; he did not dispute that he threw bricks at Hukill, thereby striking and injuring him. The district court provided six instructions to the jury explaining self-defense but rejected Abdalmaseeh's proposed jury instruction on self-defense. The jury convicted him of battery with use of a deadly weapon resulting in substantial bodily harm.

On appeal, Abdalmaseeh argues that (1) insufficient evidence supports the jury's findings that he did not act in self-defense; (2) the State's comments in opening and closing constituted prosecutorial misconduct resulting in plain error; and (3) the district court erred by refusing to instruct the jury as he requested. We disagree.

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<sup>3</sup>The State dropped the breaking, injuring, or tampering with a motor vehicle charge.

Abdalmaseeh argues there was insufficient evidence to overcome his claim of self-defense because Hukill acted rude in the store, broke the law by drinking in public, approached Abdalmaseeh in a menacing manner, and initiated the conflict by striking him with a beer can. The State answers that all the evidence, including the surveillance footage of the confrontation, could have convinced a rational trier of fact to find the elements of the crime beyond a reasonable doubt. *McNair v. State*, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

Evidence is sufficient if, “after viewing the evidence in a light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Id.* (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). The jury weighs evidence and determines witnesses’ credibility; this court will not do so on appeal. *McNair*, 108 Nev. at 56, 825 P.2d at 573. A jury may rely on circumstantial evidence in reaching its verdict. *Wilkins v. State*, 96 Nev. 367, 374, 609 P.2d 309, 313 (1980). “Battery means any willful and unlawful use of force or violence upon the person of another.” NRS 200.481(1)(a). Substantial bodily harm means (1) “[b]odily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment” or (2) “prolonged physical pain.” NRS 0.060.

Sufficient evidence supports the jury’s finding that the State proved all of the elements of the offense and Abdalmaseeh did not act in self-defense. The surveillance footage shows, in high resolution, Fadi holding Hukill at gunpoint on the ground before Abdalmaseeh started throwing bricks. The footage also shows Hukill’s friends backing away at the sight of Fadi’s gun. Based on the footage and other evidence presented at trial, a rational trier of fact could conclude that Abdalmaseeh was not under threat of serious bodily harm or death when he threw the brick at Hukill, or when

he picked up the same brick and threw it again, striking Hukill on the head and seriously injuring him. Thus, there was sufficient evidence to support the jury's finding that Abdalmaseeh did not act in self-defense.

Abdalmaseeh next argues that the State's comments that he was "out for blood," "looking to hurt people," and that "you can't just go outside and bash someone's skull because they're drinking in public" were prosecutorial misconduct. Abdalmaseeh concedes that he did not object below and therefore plain error analysis applies. The State argues, among other things, that Abdalmaseeh does not cogently argue how the comments were plain error.

There are two steps in a prosecutorial misconduct analysis: (1) determine if the conduct was improper, and (2) if so, determine whether the misconduct warrants reversal. *Valdez v. State*, 124 Nev. 1172, 1188, 196 P.3d 465, 476 (2008). "[U]nflattering characterizations of a defendant will not provoke reversal when such descriptions are supported by the evidence." *Miller v. State*, 121 Nev. 92, 100, 110 P.3d 53, 59 (2005) (quoting *United States v. Tisdale*, 817 F.2d 1552, 1555 (11th Cir.1987)). "The statements should be considered in context, and a criminal conviction is not to be lightly overturned on the basis of a prosecutor's comments standing alone." *Byars v. State*, 130 Nev. 848, 865, 336 P.3d 939, 950-51 (2014) (quoting *Thomas v. State*, 120 Nev. 37, 47, 83 P.3d 818, 825 (2004)). Moreover, if a defendant fails to preserve a claim of prosecutorial misconduct for review, "this court employs plain-error review." *Valdez*, 124 Nev. at 1190, 196 P.3d at 477. "Before this court will correct a forfeited error, an appellant must demonstrate that: (1) there was an error; (2) the error is plain, meaning that it is clear under current law from a casual inspection of the record; and (3) the error affected the defendant's substantial rights." *Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48 (2018) (internal quotation marks omitted).

The State is correct that Abdalmaseeh neglected to address the plain error standard on appeal, nor did he explain how the State's comments specifically rise to the level of plain error. As a result, we conclude that Abdalmaseeh failed to present cogent argument regarding his claim of prosecutorial misconduct. *See Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (explaining that this court need not consider an appellant's argument that is not cogently argued or lacks the support of relevant authority).

Last, Abdalmaseeh argues that the district court abused its discretion by rejecting his proposed self-defense jury instruction and misstating the law on self-defense.<sup>4</sup> He elaborates that Nevada law allowed him to use force to resist an offense against his person, but the district court rejected his proposed instruction to this effect and instead instructed the jury that he was only permitted to use force to resist a threat of serious bodily injury or death. *See* NRS 193.240(1). The only authority Abdalmaseeh cites to support his argument is *Whisman v. State*, Docket No. 57246 (Order of Affirmance, October 1, 2012). *Whisman* is an unpublished case from 2012. NRAP 36(c)(3) prohibits Abdalmaseeh from relying upon unpublished dispositions issued before January 1, 2016. Because Abdalmaseeh cites no other authority to support his argument, his

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<sup>4</sup>The district court's instruction provided "[u]se of force against another person in self-defense is justified and not unlawful when the person who uses or attempts to use force actually and reasonable believes: (1) that there is imminent danger that the assailant will either kill him or cause him serious bodily injury; and (2) that it is absolutely necessary under the circumstances for him to use in self-defense force or means that might cause substantial bodily harm or death of the other person, for the purpose of avoiding death or serious bodily injury to himself or others."

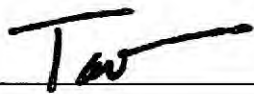
argument fails for lack of cogency. *See Maresca*, 103 Nev. at 673, 748 P.2d at 6.

Regardless, even if the district court abused its discretion by refusing Abdalmaseeh's jury instruction on self-defense, which provided Abdalmaseeh could resist an offense against his person, the error was harmless. "Erroneous jury instructions are reviewable according to a harmless-error analysis." *Wegner v. State*, 116 Nev. 1149, 1155, 14 P.3d 25, 30 (2000), *overruled on other grounds by Rosas v. State*, 122 Nev. 1258, 147 P.3d 1101 (2006). "An error is harmless when it is 'clear beyond a reasonable doubt that a rational jury would have found the defendant guilty absent any error.'" *Id.* (quoting *Neder v. United States*, 527 U.S. 1, 18 (1999)).

The video surveillance footage shows Fadi holding Hukill at gunpoint on the ground. While Hukill laid helpless, Abdalmaseeh threw a brick at Hukill, picked up the same brick, and threw it at Hukill again, striking him on the head. Had the jury been instructed that Abdalmaseeh could employ "resistance sufficient . . . to prevent [an] offense against his . . . person," there is no doubt it would still have found Abdalmaseeh guilty because Abdalmaseeh was under no apparent threat and the resistance he used was deadly. *See* NRS 193.240(1); *see also* NRS 200.275. Accordingly, we

ORDER the judgment of conviction AFFIRMED.

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

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

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

cc: Hon. Kathleen E. Delaney, District Judge  
Justice Law Center  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk