

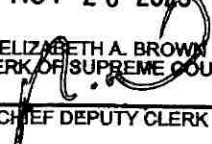
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

PENNIE ROSE BALLANDBY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 88868-COA

FILED

NOV 26 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

Pennie Rose Ballandby appeals a judgment of conviction, entered pursuant to a jury verdict, of battery resulting in substantial bodily harm. Seventh Judicial District Court, White Pine County; Steve L. Dobrescu, Chief Judge.

Ballandby argues that the State did not produce sufficient evidence at trial to sustain the conviction. Specifically, she contends that the State did not prove beyond a reasonable doubt that Ballandby did not act in self-defense.

When analyzing the sufficiency of the evidence, this court examines “whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *McNair v. State*, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). A person may act in self-defense where there is “a reasonably perceived apparent danger” or actual danger of an impending battery. *Pineda v. State*, 120 Nev. 204, 212, 88 P.3d 827, 833 (2004).

Here, the State presented testimony from the victim and her niece describing Ballandby engaging in a heated argument, trying to strike the victim, and twice returning after being asked to leave. On her second return, Ballandby pushed the victim as she was climbing stairs and then struck the victim with her cell phone, knocking out several of the victim's teeth. Based on the evidence presented, a rational juror could find that Ballandby used willful and unlawful force on the victim resulting in substantial bodily harm. *See* NRS 0.060 (defining substantial bodily harm); NRS 200.481(1)(a) (describing the elements of battery). While Ballandby introduced evidence of her own purported injuries and testified that she did not strike the victim, but instead explained that the victim was injured when the victim attempted to batter Ballandby, it was for the jury to assess the weight and credibility of conflicting evidence and the jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict. *See Bolden v. State*, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981).

Next, Ballandby argues that the district court plainly erred in instructing the jury. She contends that the district court should have instructed the jury that Ballandby's lawful retreat from her earlier altercation restored her right to act in self-defense during the later encounter.

Ballandby concedes that she did not object to the self-defense instruction below. Therefore, this court reviews for plain error. *See Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48-49 (2018). To demonstrate plain error, an appellant must show that there was an error; the error was plain, meaning that it is an error that is clear under current

law from a casual inspection of the record; and the error affected appellant's substantial rights. *Id.* at 50, 412 P.3d at 48. The appellant holds the burden of showing that her substantial rights were affected and that she was actually prejudiced. *Phenix v. State*, 114 Nev. 116, 119, 954 P.2d 739, 740 (1998); *see also Miller v. State*, 121 Nev. 92, 99, 110 P.3d 53, 58 (2005) (stating it is the appellant's burden to demonstrate plain error).

The district court instructed the jury that “[t]he right to self-defense is not available to an original aggressor . . . unless the original aggressor makes a good faith effort to decline any further struggle before using force upon another.” This instruction conformed with the language in the relevant statutes. *See* 200.200(2); *see also* 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.”). In addition, the instruction accurately described Nevada law. *See Guidry v. State*, 138 Nev. 390, 397-98, 510 P.3d 782, 791 (2022) (providing that an original assailant may assert self-defense if he or she “endeavored to decline any further struggle”); *see also Davis v. State*, 130 Nev. 136, 145, 321 P.3d 867, 873-74 (2014) (describing when battery is justifiable). Moreover, showing that Ballandby retreated would necessarily show that she declined further struggle. Because the jury necessarily concluded that Ballandby did not decline further struggle, she did not demonstrate that it would have concluded she retreated had it been so instructed. Thus, Ballandby did not demonstrate that the district court

plainly erred by omitting mention of retreat in the given instruction, as this omission did not affect Ballandby's substantial rights.

Having considered Ballandby's contentions and concluding that they lack merit, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. Steve L. Dobrescu, Chief Judge
Justice Law Center
Attorney General/Carson City
White Pine County District Attorney
White Pine County Clerk