

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SABRINA DAWN YEAGER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 89696-COA

**FILED**

MAR 18 2026

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER AFFIRMING IN PART, REVERSING IN PART AND  
REMANDING*

Sabrina Dawn Yeager appeals from a judgment of conviction, entered pursuant to a jury verdict, of assault with a deadly weapon, battery with a deadly weapon resulting in substantial bodily harm, and concealing or destroying the evidence of the commission of a felony. Fourth Judicial District Court, Elko County; Mason E. Simons, Judge.

Yeager asserts that the district court erred in denying her motion for judgment of acquittal, or in the alternative, motion for a new trial. She also contends that various trial errors, including a coercive *Allen* charge,<sup>1</sup> warrant reversal of her convictions. Because we conclude the district court gave an improper *Allen* charge that was coercive under the totality of the circumstances, we reverse Yeager's convictions for assault with a deadly weapon and battery with a deadly weapon resulting in substantial bodily harm. However, because the jury had already determined Yeager was guilty of concealing or destroying the evidence of the commission of a felony when it received that improper *Allen* charge, and

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<sup>1</sup>*Allen v. United States*, 164 U.S. 492 (1896).

26-12541

because Yeager's remaining arguments do not merit reversal, we affirm her conviction on that charge. We address Yeager's arguments chronologically in the order they were presented.

*Motion for judgment of acquittal*

Yeager first argues the district court erred in denying her motion for judgment of acquittal asserting that the verdict was against the weight of the evidence. She asserts that the State's case was full of conflicting evidence and based on an inadequate investigation. She insists that no one other than the victim saw the stabbing and his credibility was suspect, and that the evidence not only failed to prove guilt beyond a reasonable doubt but also failed to prove she did not act in self-defense.

Our review of a motion for a judgment of acquittal is essentially the same as review of the sufficiency of the evidence. *See Kassa v. State*, 137 Nev. 150, 152, 485 P.3d 750, 755 (2021). 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 evidence that the victim, Craig T., was involved in two altercations in and near the home he shared with his girlfriend Janae S. The trial evidence showed that as Craig was walking away from his home, Yeager approached and stabbed him. After which, Yeager entered the home, admitted she stabbed Craig, and threw the knife

in the fireplace. Neither Yeager nor Craig were at the scene when police arrived. Officers and paramedics later located Craig on the street after he had sought first aid at a friend's home. In Yeager's statements to the police, she acknowledged that she stabbed Craig, threw her knife in the fire, left before speaking with the police, and spent the night where she could not be located by law enforcement.

Based on the evidence presented, a rational juror could find that Yeager intentionally placed Craig in reasonable apprehension of immediate bodily harm with the use of a deadly weapon, used willful and unlawful force on Craig resulting in substantial bodily harm with the use of a deadly weapon, and then attempted to destroy evidence of those acts. *See* NRS 0.060 (defining substantial bodily harm); NRS 193.165(1), (6) (use of a deadly weapon); NRS 199.220 (describing elements of concealing or destroying evidence); NRS 200.471(1), (2)(b) (describing elements of assault); NRS 200.481(1)(a) (describing elements of battery). While some of Yeager's interviews and out of court statements indicated she acted in self-defense and some of Craig's accounts were inconsistent, it was for the jury to assess the weight and credibility of conflicting evidence and the jury's verdict will not be disturbed where it is supported by substantial evidence. *See Bolden v. State*, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981). Accordingly, Yeager did not demonstrate that the district court abused its discretion in denying the motion for a judgment of acquittal.

*Motion for new trial*

Yeager raises several arguments related to the denial of her motion for a new trial.<sup>2</sup> We review the district court's decision granting or denying a motion for new trial for an abuse of discretion. *State v. Carroll*, 109 Nev. 975, 977, 860 P.2d 179, 180 (1993). “[W]e understand that district courts hesitate to grant new trials in criminal matters and do so cautiously, only when it is absolutely necessary.” *Id.* When analyzing these issues, “a defendant is entitled to a fair trial, not a perfect one” and “[a] criminal conviction is not to be lightly overturned.” *Rudin v. State*, 120 Nev. 121, 136-37, 86 P.3d 572, 582 (2004) (quoting *United States v. Young*, 470 U.S. 1, 11 (1985)).

First, Yeager contends that a new trial is warranted because Craig violated the rule of exclusion and intimidated witnesses. On the second day of trial, defense counsel informed the district court that Craig visited the home of a witness, Mandy M., who had been noticed by the State. Mandy later testified that Craig behaved in a threatening manner, indicated he wanted to harm Cameron G.,<sup>3</sup> a witness who testified the day before, and suggested Mandy not testify. Yeager asserts that the district court took no corrective action, and she was not required to show prejudice.

The witness-exclusionary rule prevents a witness from listening to the testimony of another witness. NRS 50.155(1); see *Dickey v.*

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<sup>2</sup>The district court did not address the specific merits of Yeager's trial error claims in the motion, instead denying the motion by concluding that these issues were better addressed through the appellate process.

<sup>3</sup>Cameron testified on the third day of trial that he provided Craig with first aid for an apparent stab wound. Cameron called for medical assistance, but Craig left his home before paramedics arrived. Craig was also living with Cameron at the time of trial.

*State*, 140 Nev. 8, 16, 540 P.3d 442, 451 (2024) (providing that violations of the witness-exclusionary rule can warrant a mistrial where they affect the witness's testimony). However, the record does not indicate that the interaction between Craig and Mandy involved a discussion of either of their respective testimony. Neither Craig nor Mandy had testified at trial at the time of their interaction, and both witnesses were examined about the interaction during their respective testimony. *See Romo v. Keplinger*, 115 Nev. 94, 96, 978 P.2d 964, 966 (1999) (recognizing a court may "hold the witness in contempt, allow cross-examination concerning the violation, prevent the witness from testifying, give a curative jury instruction and, finally, declare a mistrial" to remedy a violation of the witness-exclusionary rule). Cameron had already testified by the time Mandy testified about Craig discussing his desire to hurt Cameron, therefore, it is unclear how Craig's conversation with Mandy affected Cameron's testimony. Nevertheless, there was sufficient evidence of guilt based on Craig's testimony and injuries and Yeager's admissions and behavior regardless of the effect Craig's conversation with Mandy may have had on the testimony of Mandy or Cameron. Accordingly, the district court did not abuse its discretion in denying relief on this claim.<sup>4</sup>

Second, Yeager contends the State failed to investigate, collect, and preserve evidence. Specifically, she asserts that the police delayed talking to both Craig and Cameron. She contends the police failed to search Janae S.'s residence, Cameron's residence, or test vomit found near the

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<sup>4</sup>Yeager also contends that the State committed misconduct by failing to investigate Craig for witness intimidation. As noted above, Yeager was able to examine both Craig and Mandy about their conversation and Yeager fails to allege what additional investigation should have been conducted regarding the conversation.

scene. She also suggests that the police returned two knives recovered during the investigation without testing them and permitted Janae to retrieve the purported weapon used in the crime from the fireplace. Further, she contends the police failed to preserve Craig's shirt or recover and test any other clothing and failed to follow-up on alternate suspects or accounts. She contends that the police acted in bad faith or gross negligence at a minimum.

Nevada law distinguishes the failure to collect evidence from the failure to preserve evidence. *See Daniels v. State*, 114 Nev. 261, 266-67, 956 P.2d 111, 115 (1998) (noting police have failed to preserve evidence if evidence under police control is lost). Generally, "police officers . . . have no duty to collect all potential evidence from a crime scene." *Id.* at 268, 956 P.2d at 115 (quotation marks omitted). However, if the police fail to collect material evidence as a result of gross negligence, "the defense is entitled to a presumption that the evidence would have been unfavorable to the State." *Id.* at 267-68, 956 P.2d at 115. "The State's failure to preserve material evidence can lead to dismissal of the charges 'if the defendant can show bad faith or connivance on the part of the government or that he was prejudiced by the loss of the evidence.'" *Higgs v. State*, 126 Nev. 1, 21, 222 P.3d 648, 660-61 (2010) (quoting *Daniels*, 114 Nev. at 267, 956 P.2d at 115). To establish prejudice, the defendant "must show that it could be reasonably anticipated that the evidence would have been exculpatory and material to the defense." *Cook v. State*, 114 Nev. 120, 125, 953 P.2d 712, 715 (1998).

In light of the aforementioned caselaw, in order to prevail on the motion for a new trial based on the investigating officers' alleged failure to collect or preserve evidence, Yeager was required to show that the purported evidence was material to her case. The evidence supporting

Yeager's convictions included Craig's testimony that Yeager stabbed him; a paramedic's description of the stab wound; and Yeager's admissions to police that she stabbed Craig, threw the knife she used in the fireplace at Janae S.'s residence, and avoided law enforcement after leaving the scene. Yeager's allegations below and arguments on appeal do not address how additional investigation and testing would undermine this evidence. She does not describe what Craig and Cameron may have disclosed if questioned earlier nor does she indicate what evidence would have been recovered from Janae or Cameron's residences. Yeager does not allege what forensic testing of clothing or the pocketknife recovered from Craig's clothing or the pocketknife recovered from the search of another witness would have shown. Presumably, testing the vomit would reveal that it was indeed Yeager's as she described in her statement to police, but it is unclear how verifying her account in this respect would have affected the outcome of trial. Accordingly, Yeager failed to demonstrate the district court abused its discretion in denying the motion for a new trial on this basis.

Third, Yeager contends that the State frustrated her counsel's attempts to inspect and test the knife found in the fireplace. NRS 174.235(1) requires the State to permit inspection of tangible objects it intends to introduce in its case-in-chief. According to Yeager, the State permitted counsel to inspect the knife in its evidence bag. The record does not indicate that she moved the district court to compel a closer inspection before trial or sought any independent forensic testing of the knife. She does not indicate what information could have been obtained from a closer inspection. Absent a showing of prejudice, Yeager did not demonstrate that the district court abused its discretion in denying the motion for a new trial on this basis. *See, e.g., Meyer v. State*, 119 Nev. 554, 563-64, 80 P.3d 447,

455 (2003) (requiring a showing of prejudice from juror misconduct to warrant a new trial); *Lioce v. Cohen*, 124 Nev. 1, 18, 174 P.3d 970 (2008) (requiring a showing that a party's substantial rights were affected by misconduct to warrant a new trial).

Fourth, Yeager contends that the State withheld a March 2024 supplemental police report, which she asserts contained evidence impeaching Craig. Under *Brady*,<sup>5</sup> the State is required to disclose evidence favorable to the defense when that evidence is material to guilt or punishment. *Mazzan v. Warden*, 116 Nev. 48, 66, 993 P.2d 25, 36 (2000). "Evidence also must be disclosed if it provides grounds for the defense to . . . impeach the credibility of the state's witnesses . . ." *Id.* at 67, 993 P.2d at 37. "[T]here are three components to a *Brady* violation: the evidence at issue is favorable to the accused; the evidence was withheld by the state, either intentionally or inadvertently; and prejudice ensued, i.e., the evidence was material." *Id.*

Yeager failed to demonstrate that the State withheld exculpatory evidence. According to the March 2024 report, police responded to a verbal domestic dispute at Janae's residence involving Janae and Craig. Craig claimed to have been assaulted. He also mentioned that he had been pistol-whipped and stabbed, but when officers asked who had pistol-whipped him, he started talking about an incident in Oklahoma. These statements did not clearly contradict his statements or testimony as to this case. Police were responding and asking about a separate incident of domestic violence. To the extent Craig's statements implied he was pistol-whipped while in Oklahoma, these assertions did not clearly contradict his

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<sup>5</sup>*Brady v. Maryland*, 373 U.S. 83 (1963).

report that he had been similarly battered in Elko County. Moreover, considering the aforementioned evidence of guilt, Yeager did not demonstrate that she was prejudiced by the failure to disclose this report. Accordingly, the district court did not abuse its discretion in denying the motion for a new trial on this ground.

Fifth, Yeager contends the State falsely represented testimony during closing arguments. Yeager insists that the State incorrectly stated that Jim S., Janae's father, saw her throw the knife in the fire.

Yeager failed to demonstrate that the prosecutor's statement amounted to misconduct. Jim testified that he saw Yeager sit by the fire and throw something in it. At the time, he assumed it was a cigarette but later found out it was a knife when the knife was recovered from the fireplace. Thus, the prosecutor's aforementioned argument constituted a reasonable interpretation of the evidence and the inferences that could be drawn from it and did not amount to prosecutorial misconduct. *See Klein v. State*, 105 Nev. 880, 884, 784 P.2d 970, 973 (1989) (stating a prosecutor may argue the evidence and "suggest reasonable inferences that might be drawn from that evidence"). Accordingly, the district court did not abuse its discretion in denying the motion for a new trial on this ground.

#### *Trial errors*

Yeager raises several contentions of trial error as well. First, she argues the State committed prosecutorial misconduct when it commented on Yeager's failure to testify. She contends the district court plainly erred in not addressing the prosecutor's comments asking "[w]here is the explanation" for Yeager's conduct. Yeager also contends that the State's repeated comments saying there is "no explanation" for certain

conduct also misled the jury into thinking Yeager had to disprove the State's theory.

Because Yeager did not object to the alleged instances of prosecutorial misconduct, we review for plain error. *Valdez v. State*, 124 Nev. 1172, 1190, 196 P.3d 465, 477 (2008). To demonstrate plain error, an appellant must show 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). Although Yeager acknowledges the error was not preserved and that plain error is the appropriate standard of review, she does not attempt to demonstrate prejudice as required. We thus conclude that she has forfeited these claims and we decline to review them on appeal. *See id.* at 52, 412 P.3d at 49 ("[T]he decision whether to correct a forfeited error is discretionary."); *see also Miller v. State*, 121 Nev. 92, 99, 110 P.3d 53, 58 (2005) (stating that it is appellant's burden to demonstrate plain error); *State v. Eighth Jud. Dist. Ct. (Doane)*, 138 Nev. 896, 900, 521 P.3d 1215, 1221 (2022) (recognizing the Nevada appellate courts "follow the principle of party presentation" and thus "rely on the parties to frame the issues for decisions and assign to courts the role of neutral arbiter of matters the parties present" (quoting *Greenlaw v. United States*, 554 U.S. 237, 243 (2008))); *Senjab v. Alhulaibi*, 137 Nev. 632, 633-34, 497 P.3d 618, 619 (2021) ("We will not supply an argument on a party's behalf but review only the issues the parties present.").

Second, Yeager contends the State committed misconduct when the prosecutor stated it would be happy to ask Yeager about Craig's reputation for violence when she was on the stand. Yeager asserts this

amounted to an improper comment on whether she would testify and shifted the burden of proof. “When considering claims of prosecutorial misconduct, this court engages in a two-step analysis. First, we must determine whether the prosecutor’s conduct was improper. Second, if the conduct was improper, we must determine whether the improper conduct warrants reversal.” *Valdez*, 124 Nev. at 1188, 196 P.3d at 476.

After the testimony of another witness, counsel discussed the court’s ruling on the admissibility of Craig’s uncharged conduct. During the discussion, the prosecutor stated he would be “happy to ask [Yeager]” about Craig’s reputation for violence “when she’s on the stand.” The prosecutor immediately apologized and indicated he would ask her “when and if Ms. Yeager comes to the stand.” Yeager objected to the prosecutor’s comments. However, the district court did not find the comments improper. We agree. The prosecutor corrected his remark immediately and thus, the comments, when taken as a whole, did not amount to an impermissible comment on Yeager’s Sixth Amendment rights warranting reversal. *See, e.g., Valdez*, 124 Nev. at 1193-94, 196 P.3d at 478 (considering the fact that “the district court sustained the defense’s objection and instructed the prosecutor to move on” in determining whether alleged prosecutorial misconduct was prejudicial); *Cunningham v. State*, 113 Nev. 897, 908, 944 P.2d 261, 268 (1997) (concluding that prosecutor’s slip-of-the-tongue comment, which was immediately corrected, did not amount to prosecutorial misconduct). Accordingly, the district court did not err in overruling Yeager’s objection.

Third, Yeager contends the district court abused its discretion in admitting Yeager’s unredacted interview transcript. She asserts that some statements and questions by investigators suggested she had a duty to retreat or improperly shifted the burden of proof; that investigators used

prejudicial language characterizing Yeager's actions as bad decisions and poor choices, inquiring as to the accountability expected from her, and accusing her of lying; and that the transcript included several references to hearsay.

Because Yeager objected to the introduction of her interview asserting that the interview contained inadmissible hearsay, we review the admission on this basis for an abuse of discretion. *Collins v. State*, 133 Nev. 717, 724, 405 P.3d 657, 664 (2017). During the interview with Yeager, the detective acknowledged he heard Craig's wound was significant, asked Yeager what she had heard about Craig's condition that led her to believe she'd be going to jail, and acknowledged that his review of the photos of Craig's injuries appear to have a stab wound where Yeager indicated she stabbed him.<sup>6</sup> Questions to Yeager about what she heard were not offered for the truth of the matter asserted, *see* NRS 51.035(1), but to assess the effect of the statements on Yeager when she heard it, *see Wallach v. State*, 106 Nev. 470, 473, 796 P.2d 224, 227 (1990) (explaining that the hearsay rule does not apply when a statement is not offered to show the truth of the matter asserted but rather to show the statement's effect on the listener). The detective's questions were thus admissible to provide context to Yeager's answers. *Carroll v. State*, 132 Nev. 269, 276, 371 P.3d 1023, 1028 (2016); *Wade v. State*, 114 Nev. 914, 917-18, 966 P.2d 160, 162-63 (1998), *opinion modified on denial of reh'g*, 115 Nev. 290, 986 P.2d 438 (1999).

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<sup>6</sup>Yeager generally cites to additional pages of the interview transcript as purported hearsay. However, she does not identify specific comments nor does she provide cogent argument about those comments. *See Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (stating that an appellant has a duty to present legal authority in support of their arguments).

Accordingly, the district court did not abuse its discretion in admitting the interview over the hearsay objection.

Because Yeager did not object to the introduction of the interview as misstatements of the law, inflammatory, or otherwise prejudicial, those contentions are reviewed for plain error. *See Jeremias*, 134 Nev. at 50, 412 P.3d at 48-49. Yeager does not acknowledge that plain error is the appropriate standard of review, nor does she attempt to demonstrate prejudice as required. We thus conclude that she has forfeited this argument and we decline to review it on appeal.<sup>7</sup> *See id.* at 52, 412 P.3d at 49; *see also Miller*, 121 Nev. at 99, 110 P.3d at 58; *Doane*, 138 Nev. at 900, 521 P.3d at 1221; *Senjab*, 137 Nev. at 633-34, 497 P.3d at 619.

Fourth, Yeager asserts the district court erred in admitting bodycam footage recorded during the investigation. She asserts that one video, although silent, contains nonverbal assertions that constitute hearsay. She also asserts the district court erred in admitting the bodycam video of a deputy's call with Isaya D., who described fighting with Craig after he left Janae's home; video of Isaya, Josh H., and Janae initially reporting the altercations to officers; and video of an interview with Janae and Jim.

Nevada appellate courts "follow the principle of party presentation" and thus "rely on the parties to frame the issues for decisions and assign to courts the role of neutral arbiter of matters the parties present." *Doane*, 138 Nev. at 900, 521 P.3d at 1221 (quoting *Greenlaw*, 554 U.S. at 243. Accordingly, "[w]e will not supply an argument on a party's

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<sup>7</sup>Because Yeager did not object on these bases below, and we decline to reach this forfeited issue on appeal, nothing in this order prevents Yeager from objecting on these grounds on retrial.

behalf but review only the issues the parties present.” *Senjab*, 137 Nev. at 633-34, 497 P.3d at 619. With regard to the silent bodycam footage, Yeager insists that there were too many gestures constituting nonverbal hearsay to count, but only specifically identifies a few apparent references to a firearm and a cut on the face. Because Yeager does not indicate what facts these gestures are communicating so that they might be evaluated for whether they constitute inadmissible hearsay or were otherwise prejudicial, we decline to consider her argument.

As to the remaining bodycam footage, Yeager’s brief argument asserts that the videos contain hearsay and should not have been admitted in their entirety. However, her argument does not identify or describe any statements from the recordings that she contends are hearsay and not subject to any hearsay exception. *See Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (stating that an appellant has a duty to present legal authority in support of their arguments). Accordingly, her argument is insufficient to demonstrate the district court abused its discretion in admitting these exhibits. *See Collins*, 133 Nev. at 724, 405 P.3d at 664.

Fifth, Yeager asserts the district court erred in admitting testimony about DNA on the knife found in the fireplace. She contends that a detective’s testimony about whether the conditions in the fireplace would affect the ability to recover DNA on the knife were speculative and admitted without expert qualification.

We discern no abuse of discretion. The testimony about whether the detective expected forensic analysis of the knife from the fireplace, and thus why she did not order forensic analysis of the knife, was not offered as an expert opinion but rather was based on the detective’s experience as an investigator. *See Abbott v. State*, 122 Nev. 715, 730, 138

P.3d 462, 472 (2006) (approving a district court's decision to permit a detective to testify as an expert witness in light of the detective's training and experience). The detective even acknowledged that she was not an expert in DNA evidence. To the extent the jury may have been improperly swayed by the detective's opinion, any error was harmless given the aforementioned evidence of guilt.

Sixth, Yeager contends the district court abused its discretion in allowing the jury to have access to Yeager's video interview, transcript, phone interview, and written statement during deliberation. She contends that this access invited the jury to overanalyze this evidence. She further contends these materials constituted cumulative evidence.

NRS 175.441 permits the jury to take all materials received as evidence into deliberations. Here, the district court permitted the jury to consider the evidence admitted at trial during deliberations. Yeager's argument relies on *Collins v. State*, No. 85842, 2024 WL 38783279 (Nev. Aug. 19, 2024) (Order of Affirmance), wherein the district court properly restricted a jury from taking video evidence, which had not been properly admitted at trial, into the jury room. She cites no authority suggesting that the district court erred in permitting the jury to consider properly admitted evidence during deliberations. Accordingly, Yeager failed to demonstrate that the district court abused its discretion. *See Miles v. State*, 97 Nev. 82, 84, 624 P.2d 494, 495 (1981) (recognizing the district court's wide discretion in the conduct of deliberations).

Seventh, Yeager contends the jury was coerced into rendering a verdict. After deliberating for over six hours, the jury informed the court that it was deadlocked on the assault and battery counts. Following some discussion with the State and defense counsel, the district court gave a

modified *Allen* charge. An *Allen* charge is an instruction admonishing a deadlocked jury “that the case must at some time be decided or that minority jurors should consider their positions in light of the majority view.” *Farmer v. State*, 95 Nev. 849, 853, 603 P.2d 700, 703 (1979). The Nevada Supreme Court has “approved the *Allen* charge if it clearly informs the jury that each member has a duty to adhere conscientiously to his or her own honest opinion, and if it avoids creating the impression that there is anything improper, questionable or contrary to good conscience for a juror to create a mistrial.” *Wilkins v. State*, 96 Nev. 367, 373, 609 P.2d 309, 312 (1980). The court expressly directed courts to use the version of the *Allen* charge found in *Wilkins*. See *Staupe v. State*, 112 Nev. 1, 6, 908 P.2d 1373, 1377 (1996), holding modified by *Richmond v. State*, 118 Nev. 924, 59 P.3d 1249 (2002).<sup>8</sup> We review the district court’s decision regarding jury instructions for an abuse of discretion. *Crawford v. State*, 121 Nev. 744,

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<sup>8</sup>The approved *Allen* instruction states:

The verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree thereto. Your verdict must be unanimous. It is your duty, as jurors, to consult with one another and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with your fellow jurors. In the course of your deliberations, do not hesitate to reexamine your own views and change your opinion if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

You are not partisans. You are judges [ ] of the facts. Your sole interest is to ascertain the truth from the evidence in the case.

*Wilkins*, 96 Nev. at 373 n.2, 609 P.2d at 313 n.2.

748, 121 P.3d 582, 585 (2005). We consider the full context and circumstances surrounding an *Allen* charge when reviewing a claim that it improperly coerced a jury's verdict. *Lowenfield v. Phelps*, 484 U.S. 231, 237 (1988).

Here, the district court chose not to give the instruction approved of by the supreme court in *Wilkins*. Although the instruction given by the court informed each juror that they should not surrender their conscientious opinion as to the weight and effect of the evidence, the instruction was considerably longer than that approved of in *Wilkins*. Because the supreme court has directed district courts to use only the *Wilkins* instruction, the district court erred in giving a different *Allen* instruction.

Moreover, we determine that the instruction given was unduly coercive under the circumstances in this matter. For instance, the instruction informed the jurors that this was an "important case" and if they failed to reach a verdict, the case may be tried again. The instruction directed jurors to reconsider their positions:

Those of you who believe that the Government has proved the defendant guilty beyond a reasonable doubt should stop and ask yourselves if the evidence is really convincing enough, given that other members of the jury are not convinced.

And those of you who believe that the Government has not proved the defendant guilty beyond a reasonable doubt should stop and ask yourselves if the doubt you have is a reasonable one, given that other members of the jury do not share your doubt.

And the instruction further suggested that the jurors had a duty to agree upon a verdict if they could do so. Overall, we find this instruction did not

clearly avoid creating the impression in the jurors' minds that there is something questionable or improper in failing to arrive at a verdict and causing a mistrial. *See Wilkins*, 96 Nev. at 373, 609 P.2d at 312.

Additionally, the record indicates that the district court understood that the given instruction would have a coercive effect. The court presented the instruction at the end of the day after the jurors had been deliberating for hours and told the parties it would keep the jurors working because it believed they were more likely to make a decision under those conditions than if they were permitted to retire for the evening. Under these circumstances, we conclude that the district court abused its discretion. *See Crawford*, 121 Nev. at 748, 121 P.3d at 585; *see also Jackson v. State*, 117 Nev. 116, 120, 17 P.3d 998, 1000 (2001) ("An abuse of discretion occurs if the district court's decision is arbitrary or capricious or if it exceeds the bounds of law or reason.").

As we determine the instruction was improper, we must next analyze whether it was harmless. As to Yeager's convictions for assault with a deadly weapon and battery with a deadly weapon resulting in substantial bodily harm, we cannot conclude that the error was harmless. *See Wegner v. State*, 116 Nev. 1149, 1155, 14 P.3d 25, 30 (2000) (reviewing erroneous jury instructions for harmless error and affirming when it is clear beyond a reasonable doubt that the jury would have convicted absent the error), *overruled on other grounds by Rosas v. State*, 122 Nev. 1258, 147 P.3d 1101 (2006); *see* NRS 178.598 ("Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded."). Looking to the context and circumstances surrounding the instruction, *see Lowenfield*, 484 U.S. at 237, the jury had deliberated for six hours before indicating it was deadlocked on these charges. The district court gave the improper

instruction at 5:40 p.m. and, instead of retiring for the evening, directed the jury to continue deliberating. Thereafter, the jury returned with a verdict on all the charges about an hour later. *See id.* at 240 (acknowledging that returning a verdict soon after receiving an *Allen* charge may suggest it had coercive effect); *Redeford v. State*, 93 Nev. 649, 653, 572 P.2d 219, 221 (1977) (concluding that coercive instruction not harmless where verdict rendered shortly after it was given).<sup>9</sup>

Regarding Yeager's conviction for concealing or destroying the evidence of the commission of a felony, we conclude the error was harmless. Concealing or destroying the evidence of the commission of a felony was the third charge Yeager faced. The jury's note indicated that it was deadlocked on only the first two charges. Because the jury had reached a verdict on this charge before the district court issued the instruction, we conclude that it is clear the jury would have convicted Yeager of this charge absent the error. Accordingly, we affirm the judgment of conviction as to the conviction for concealing or destroying evidence of the commission of a felony.

Eighth, Yeager contends that the cumulative effect of trial errors warrants reversal. Yeager has only demonstrated one error for which we have granted appropriate relief. *Belcher v. State*, 136 Nev. 261, 279, 464 P.3d 1013, 1031 (2020); *see United States v. Sager*, 227 F.3d 1138, 1149 (9th Cir. 2000) ("One error is not cumulative error."). Therefore, she is not entitled to relief on this claim.

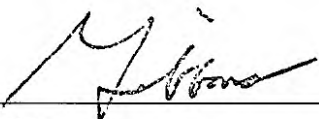
Having considered Yeager's contentions, we

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<sup>9</sup>To the extent Yeager's argument relies on an affidavit from a juror describing the deliberations, we decline to consider the affidavit. *See Meyer v. State*, 119 Nev. 554, 565, 510 P.3d 447, 456 (2003) (recognizing that juror affidavits describing the deliberative process are rarely admissible).

ORDER the judgment of conviction AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.

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

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

  
\_\_\_\_\_, J.  
Westbrook

cc: Hon. Mason E. Simons, District Judge  
Hillewaert Law Firm  
Attorney General/Carson City  
Elko County District Attorney  
Elko County Clerk