IN THE COURT OF APPEALS OF THE STATE OF NEVADA

IDA SISSAY MEKONNEN, A/K/A HAYMANOT MEKONNEN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 68498

FILED

APR 20 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction entered pursuant to a jury verdict of battery with the use of a deadly weapon causing substantial bodily harm. Eighth Judicial District Court, Clark County; Carolyn Ellsworth, Judge.

Appellant Ida Mekonnen claims the district court erred by failing to remove juror number 203 because she did not understand English. Mekonnen failed to object or otherwise challenge the seating of this juror below; therefore, no relief would be warranted absent a demonstration of plain error.[1] *See Leonard v. State*, 117 Nev. 53, 67, 17 P.3d 397, 406 (2001) (reviewing for plain error where defendant failed to object when the district court removed a juror for cause).

At the beginning of voir dire, the juror informed the district court she was having a little trouble understanding what was going on and what the case was about. The district court spoke to her and

[1]Mekonnen claims this court should apply structural error analysis but she fails to support this claim with relevant authority and cogent argument. Therefore, we decline to address this issue. *See Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987).

explained it was too early in the process to know what the case was about but if she continued to have difficulty, she should inform the district court. The juror never again spoke up claiming she did not understand the proceedings. Further, the juror was able to answer each of the questions she was asked during voir dire without any difficulty. Our review of the record does not indicate the decision to keep the juror on the jury was plainly erroneous. Therefore, the district court did not err in this regard.

Second, Mekonnen claims the district court abused its discretion by allowing the entirety of the victim's medical records from the incident to be admitted because only certain portions of the records were relevant. The burden is on Mekonnen to provide an adequate record enabling this court to review assignments of error. *Thomas v. State*, 120 Nev. 37, 43 n.4, 83 P.3d 818, 822 n.4 (2004); *see also Greene v. State*, 96 Nev. 555, 558, 612 P.2d 686, 688 (1980). The medical records are necessary for this court's review of this claim. However, Mekonnen failed to provide this court with a copy of the medical records that were admitted. Therefore, we decline to consider this claim.

Third, Mekonnen claims the district court abused its discretion by allowing hearsay from the victim's mother. The district court allowed the testimony, over objection, as a prior consistent statement of the victim pursuant to NRS 51.035(2)(b) to rebut a claim of recent fabrication. We conclude the district court did not err in allowing this testimony.

The victim testified on direct examination the victim stole money from him, and when he confronted her outside of his home, she hit him with her car. During cross-examination of the victim, Mekonnen questioned the victim regarding an insurance settlement document he signed where he agreed his claim against Mekonnen for hitting him with her car was doubtful. This implied the victim fabricated his testimony at

trial. The State introduced the victim's mother's testimony to rebut Mekonnen's claim the victim fabricated his testimony regarding what happened. The victim told his mother about the incident shortly after it happened and her testimony was substantially similar to the testimony given by the victim. Therefore, the testimony was properly admitted to rebut Mekonnen's claim the victim fabricated his testimony at trial.

Fourth, Mekonnen claims the district court abused its discretion by refusing to give Mekonnen's proposed self-defense instructions. "The district court has broad discretion to settle jury instructions, and this court reviews the district court's decision for an abuse of that discretion or judicial error." *Crawford v. State*, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005). "[A] defendant is entitled to a jury instruction on his theory of the case, so long as there is evidence to support it, regardless of whether the evidence is weak, inconsistent, believable, or incredible." *Hoagland v. State*, 126 Nev. 381, 386, 240 P.3d 1043, 1047 (2010).

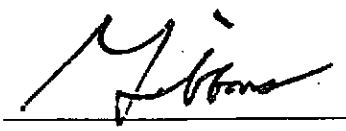
We conclude the district court abused its discretion by failing to give jury instructions on self-defense. Mekonnen presented evidence she believed she was in danger because the victim came out of his home and was banging on her car door, broke the side window, and tried to rip her windshield wipers off. She then drove off. Therefore, there was some evidence to support her defense that she acted in self-defense when she hit the victim.

However, we conclude this error was harmless beyond a reasonable doubt given the facts of this case. *See Gonzalez v. State*, 131 Nev. ___, ___, ___ P.3d ___, ___ (2015) (a jury instruction that concerns a defendant's right to self-defense is an issue of constitutional magnitude); *Nay v. State*, 123 Nev. 326, 333-34, 167 P.3d 430, 435 (2007) ("[A]n error is harmless when it is clear beyond a reasonable doubt that a rational jury

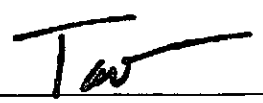
would have found the defendant guilty absent the error."); *see also Davis v. State*, 130 Nev. ___, ___, 321 P.3d 867, 874 (2014). The victim testified Mekonnen drove her car at him and purposely hit him. He also testified he was on the hood of the car for a period of time before falling off and hitting his head. The severity of the injuries suffered by the victim demonstrate Mekonnen hit him and Mekonnen specifically claimed she did not hit him. Because it is clear beyond a reasonable doubt a rational jury would have found Mekonnen guilty even if the jury had been instructed on self-defense, we conclude the error was harmless.

Finally, Mekonnen claims the cumulative errors at trial warrant reversal of her conviction. We conclude Mekonnen is not entitled to relief on this claim. *See United States v. Sager*, 227 F.3d 1138, 1149 (9th Cir. 2000) ("One error is not cumulative error."). Having reviewed the claims on appeal and concluded Mekonnen is not entitled to relief, we

ORDER the judgment of conviction AFFIRMED.



_____, C.J.
Gibbons



_____, J.
Tao

_____, J.
Silver

cc: Hon. Carolyn Ellsworth, District Judge
Law Office of Lisa Rasmussen
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk