


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ZETH BERNARD DONAHUE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 71210

FILED

SEP 13 2017

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

ORDER OF AFFIRMANCE

Zeth Bernard Donahue appeals from a judgment of conviction, pursuant to a jury verdict, of one count each of battery by strangulation constituting domestic violence, assault with use of a deadly weapon, preventing or dissuading a person from testifying, and principal to attempted destroying evidence. Second Judicial District Court, Washoe County; Lidia Stiglich, Judge.

Donahue contends the district court erred in rejecting his proposed jury instruction defining "willfully," which in turn relieved the State of its burden of proving beyond a reasonable doubt each element of the crime of battery by strangulation which constitutes domestic violence. We review the district court's decision for abuse of discretion. *Crawford v. State*, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005).

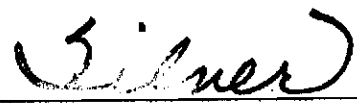
The district court instructed the jury,


The word "willfully," when applied to the intent with which an act is done or omitted and as used in my instructions, implies simply a purpose or willingness to commit the act or to make the omission in question. The word does not require in its meaning any intent to violate law, or to injure another, or to acquire any advantage.


This instruction is nearly verbatim that approved in *Childers v. State*, 100 Nev. 280, 282-83, 680 P.2d 598, 599 (1984). Further, the additional language Donahue sought—the act must be intentional and not accidental—was adequately covered in the instruction containing the definition of the strangulation element: “By intentionally impeding the normal breathing or circulation of the blood by applying pressure on the throat or neck.” We therefore conclude the district court did not err by rejecting Donahue’s proposed instruction.

Moreover, even were the instruction erroneous, we conclude it was harmless beyond a reasonable doubt such that reversal would not be warranted. See *Crawford*, 121 Nev. at 756, 121 P.3d at 590. Donahue has never claimed his grasping of the victim’s throat was accidental. Rather, his theory at trial was his actions were insufficient to create a risk of death or substantial bodily harm. See NRS 200.481(1)(h) (defining “strangulation” as “intentionally impeding the normal breathing or circulation of the blood by applying pressure on the throat or neck . . . in a manner that creates a risk of death or substantial bodily harm”). Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Chief Judge, Second Judicial District
Second Judicial District, Dept. Eight
Law Office of Thomas L. Qualls, Ltd.
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk