

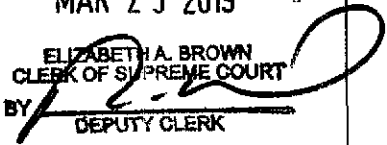
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ERIC ANTHONY BUHL,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 74704-COA

FILED

MAR 25 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFRIMANCE

Eric Anthony Buhl appeals from a judgment of conviction, pursuant to a bench trial, of battery by a prisoner in custody. First Judicial District Court, Carson City; James E. Wilson, Judge.

Buhl was in custody and awaiting trial on a murder charge for the death of a child.¹ Buhl and another inmate, Brian Ball, were being held in the jail's special needs pod when the two exchanged words and then began fighting. Part of the fight was caught on jail surveillance video, but a pillar obscured some of the action including the beginning of the fight, so it is not clear who threw the first punch. Following an investigation by jail officials, the State charged Buhl with battery by a prisoner in custody. Buhl waived his right to a jury trial. After reviewing the surveillance video and considering all of the competing testimony, the district court found Buhl guilty and sentenced him to serve a prison term of 12-30 months but suspended the sentence and placed him on probation for six months.

On appeal, Buhl argues that (1) the district court erred when it rejected his self-defense argument and (2) the evidence presented was insufficient to support his conviction.

First, we consider whether the district court correctly applied the law when it found that Buhl did not act in self-defense. Buhl argues that the

¹We do not recount the facts except as necessary to our disposition.

district court incorrectly concluded that he had a duty to retreat, and that the evidence demonstrated that Buhl acted in self-defense.

“This court reviews findings of fact for clear error, but the legal consequences of those facts involve questions of law that we review de novo.” *State v. Beckman*, 129 Nev. 481, 486, 305 P.3d 912, 916 (2013). Therefore, whether the district court correctly applied the law of justifiable battery is a question that we review de novo. *Paige v. State*, 116 Nev. 206, 208, 995 P.2d 1020, 1021 (2000) (“Questions of law are subject to de novo review.”).

Under NRS 200.481(1)(a), “battery” refers to “any willful and unlawful use of force or violence upon the person of another.” If the battery is committed by a prisoner who is in lawful custody at the time of the crime, such a battery constitutes a category B felony. NRS 200.481(2)(f). However, a party who is about to be injured may resist “[t]o prevent an offense against his or her person, family or some member of his or her family.” NRS 193.240(1); *see also* NRS 200.275 (stating that “[i]n 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”). “Because self-defense is justifiable, it negates the unlawfulness element.” *Barone v. State*, 109 Nev. 778, 780, 858 P.2d 27, 28 (1993). Self-defense “is justifiable if the circumstances were sufficient to excite the fears of a reasonable person.” *Davis v. State*, 130 Nev. 136, 143, 321 P.3d 867, 872 (2014) (internal quotation marks omitted). “[M]ere words or gestures by the victim, however abusive or insulting, are no defense to a battery prosecution.” 2 Charles E. Torcia, *Wharton’s Criminal Law* § 190 (15th ed. 1994). Nevertheless, the State has the burden to prove beyond a reasonable doubt that the defendant was not acting in self-defense. *Barone*, 109 Nev. at 780-81, 858 P.2d at 28-29.

Here, the district court found credible Buhl's statement that he did not believe Ball would hit him first, and also noted that Ball had directed only words and gestures at Buhl before Buhl approached Ball. These findings involve questions of credibility that we do not second-guess on appeal. Moreover, Buhl never testified that he struck Ball out of fear of serious bodily injury. Thus, the district court did not err when it concluded that Buhl did not reasonably believe that he was in danger and therefore did not act in self-defense. Also, Buhl contends that the district court erroneously applied the law to impose an independent duty to retreat that does not exist in Nevada. The district court did not impose a separate legal burden but rather weighed all of the nonviolent options available to Buhl in order to determine whether the circumstances were such as to arouse sufficient fear in a reasonable person such that self-defense was legally invoked, which was not improper. *See* NRS 200.275 and 200.200(1).

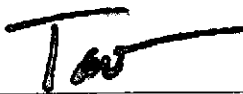
Second, we consider whether the evidence was sufficient to support Buhl's conviction. Buhl argues that there is not sufficient evidence in the record to support Buhl's battery by a prisoner in custody conviction.


"Whether the trier of fact in a criminal case is a jury—or a judge, . . . the sufficiency of the evidence test is the same." *Hunt v. State*, 92 Nev. 536, 537, 554 P.2d 255, 255 (1976). When reviewing a challenge to the sufficiency of the evidence, this court reviews "the evidence in the light most favorable to the prosecution" and determines whether "*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Higgs v. State*, 126 Nev. 1, 11, 222 P.3d 648, 654 (2010) (internal quotation marks omitted). "[I]t is the function of the [factfinder], not the appellate court, to weigh the evidence and pass upon the credibility of the witness." *Walker v. State*, 91 Nev. 724, 726, 542 P.2d 438, 439 (1975). Here, the State needed to prove a "willful and unlawful use of force or violence upon the person of another." NRS 200.481(1)(a). The district court considered


testimony from various individuals, including Buhl and Ball, who discussed the fight between the two. Ultimately, the district court determined that some of the testimony was not credible while other competing testimony was credible, which it had the authority to do as the factfinder. Further, the district court reviewed the surveillance video that showed Buhl approaching Ball, and Buhl and Ball striking each other several times. Accordingly, there was sufficient evidence to show that Buhl committed a willful and unlawful use of force or violence against Ball. Therefore, there was sufficient evidence to support Buhl's conviction.²

Based on the foregoing, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Tao


_____, J.
Gibbons


_____, J.
Bulla

²We also conclude that Buhl's "first punch" argument is unpersuasive. Buhl argues that, regardless of the district court's ruling on self-defense, the State failed to prove beyond a reasonable doubt that he started the fight because it could not prove who threw the first punch. But the State need not prove that Buhl threw the first punch to establish all of the elements of the battery charge. *See Byars v. State*, 130 Nev. 848, 863, 336 P.3d 939, 949 (2014) (stating that "[b]attery is any willful and unlawful use of force or violence upon the person of another" (internal quotation marks omitted)). Battery is a general intent crime under which it does not matter who struck first. *See id.* ("[T]he [State] need only prove that the defendant actually intend[ed] to commit a willful and unlawful use of force or violence upon the person of another." (third alteration in original) (internal quotations omitted)).

cc: Hon. James E. Wilson, District Judge
John E. Malone
Attorney General/Carson City
Carson City District Attorney
Carson City Clerk