

IN THE SUPREME COURT OF THE STATE OF NEVADA

No. 82639

Electronically Filed
May 31 2022 11:33 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

TOYER EDWARDS

Appellant,

v.

THE STATE OF NEVADA

Respondent.

Appeal from a Judgment of Conviction
Eighth Judicial District Court, Clark County
The Honorable Carli Kierny, District Court Judge
District Court Case No. C-17-324805-1

APPELLANT'S REPLY BRIEF

Christopher R. Oram, Esq.
Nevada Bar No. 4349
Rachael E. Stewart, Esq.
Nevada Bar No. 14122
520 S. Fourth Street, Second Floor
Las Vegas, Nevada 89101
Telephone: (702) 598-1471
Facsimile: (702) 974-0623
contact@christopheroramlaw.com
Attorneys for Appellant

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

I. NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this Court may evaluate possible disqualifications or recusal.

NONE

Attorney of Record for Toyer Edwards:

/s/ Christopher R. Oram

II. TABLE OF CONTENTS

I. NRAP 26.1 DISCLOSURE.....	ii
II. TABLE OF CONTENTS.....	iii
III. TABLE OF AUTHORITIES	iv
IV. ARGUMENT	1
V. CONCLUSION	6
VI. CERTIFICATE OF COMPLIANCE	7
VII. CERTIFICATE OF SERVICE	9

III. TABLE OF AUTHORITIES

Page(s)

<i>Byars v. State</i> , 130 Nev. 848, 336 P.3d 939 (2014)	2
<i>Collins v. State</i> , 125 Nev. 60, 203 P.3d 90 (2009)	4, 5
<i>LaChance v. State</i> , 130 Nev. 263, 321 P.3d 919 (2014)	5
<i>McNair v. State</i> , 108 Nev. 53, 825 P.2d 571 (1992)	3
<i>McNamara v. State</i> , 132, Nev. 606, 377 P.3d 106 (2016)	4
<i>United State v. Fitzgerald</i> , 935 F.3d 814 (9th Cir. 2019).....	5

Statutes

NRS 0.060	5
-----------------	---

Rules

NRAP 26.1(a)	ii
NRAP 28(e)(1)	7
NRAP 32(a)(4)-(6)	7
NRAP 32(a)(6)	7
NRAP 32(a)(7)	8
NRAP 36(c)(3)	2

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

IV. ARGUMENT

A. This Court should reverse Mr. Edwards' convictions on Counts 1 and 2 of the Information because the State presented insufficient evidence at trial to convict Mr. Edwards.

1. The State failed to present sufficient evidence to convict Mr. Edwards on Counts 1 and 2 because he acted in self-defense.

In the Respondent's Answering Brief ("RAB"), at 8 the State claims that Mr. Edwards was the initial aggressor and therefore, unable to claim self-defense.

However, the State freely admits that Mr. Chase Lovato deployed his pepper spray prior to Mr. Edwards brandishing a knife. RAB, at 11 and 12. Additionally, the State explains that Mr. Chase Lovato used mace against Mr. Toyer Edwards because he was threatening Mr. William Allison's life with a knife. RAB, at 13.

The evidence and the video recording presented at trial depicted security officers, Mr. Lavato and Mr. Allison, waking Mr. Edwards and thereafter, brandishing handcuffs. The video recording illustrated Mr. Lovato preparing and deliberately using mace against Mr. Edwards, while Mr. Edwards was merely standing his own ground. The video recording did not depict Mr. Edwards swinging his arms in an aggressive manner until he had been maced, and the security officers were attempting to physically detain him.

After security initiated the physical altercation, Mr. Edwards began to defend himself. Responding LVMPD officer Joshua Simms characterized the

1 security officers' injuries as "minor". However, Officer Simms noted that Mr.
2 Edwards was bleeding profusely from his head.

3 Both the State and Mr. Edwards have relied upon *Byars v. State*, 130, Nev.
4 848, 852, 336 P.3d 939, 942 (2014).¹ In *Byars v. State*, a suspected drunk driver
5 began to resist a warrantless blood draw after being lawfully detained by two
6 police officers. Whereas in this case, security officers had no right to detain Mr.
7 Edwards, and in fact, failed to follow their own procedures. Instead of following
8 proper procedures, the security officers began to intimidate and ultimately attack
9 Mr. Edwards.
10

11 The States reliance on *Byars v. State*, proves Mr. Edward's argument. The
12 State is comparing a belligerent prisoner, who was physically attacking two police
13 officers after a lawful arrest with two security officers who were approaching a
14 man who was simply sleeping. The facts are easily distinguishable.
15
16
17
18

19 ¹ The State correctly notes that Mr. Edwards filed the Opening Brief which
20 contained three unpublished Nevada Supreme Court cases prior to January, 2016
21 therefore, in violation of an NRAP 36(c)(3). Counsel apologizes for this oversight.
22 However, the State's complaint that the Appellant's argument is "largely based"
23 on the unpublished cases is a serious exaggeration. In fact, Mr. Edwards has
24 drafted this Reply Brief without any necessity of reliance upon those cases. The
unpublished decisions were simply used as examples to provide guidance.
Nevertheless, the Counsel realizes that the unpublished Nevada Supreme Court
cases were outside of the scope of an NRAP 36(c)(3).

1 Additionally, neither security officer had received any training on how to
2 handle volatile situations or how to de-escalate them. A.A. Vol. 3, pgs. 388-389.
3 Moreover, Mr. Edwards is a 58 years old man who is approximately 5'5" feet tall
4 and weighed 125 pounds at the time. The two security officers are each
5 approximately 6 feet tall and both weighed over 200 pounds. They were both in
6 their early twenties. A.A. Vol. 3, pg. 397 and Vol. 4, pg. 483.

8 The security officers admitted not waiting for the appropriate 30 minutes
9 time period before insisting that Mr. Edwards leave the property. Additionally, Mr.
10 Lovato revealed he had neglected to attend mace training that was made available
11 to him. A.A. Vol.3, pg. 451.

13 In this case, the evidence demonstrates the security officers to be the initial
14 aggressors. Mr. Edwards reasonably believed that Mr. Lovato and Mr. Allison
15 were going to cause him great bodily injury.

16 After reviewing the evidence in the light most favorable to the State, the
17 evidence showed that no reasonable jury could have found Mr. Edwards guilty of
18 both, Count 1 and 2 of battery with use of a deadly weapon, resulting in substantial
19 bodily harm. See *McNair v. State*, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

21 ///

22 ///

23 ///

1 **2. The State presented insufficient evidence to convict Mr. Edwards**
2 **because the injuries to the security officers did not constitute**
3 **substantial bodily harm.**

4 At trial, the evidence revealed that neither security officer received injuries
5 that amounted to substantial bodily harm. LVMPD Officer Simms noted that the
6 injuries appeared to be “minor”. A.A. Vol. 4, pg. 533. Mr. Lovato was given an
7 adhesive bandage for his injury and received no additional treatment. Mr. Allison
8 also received adhesive bandages and was advised to wear them for two or three
9 days. A.A. Vol. 3, pg. 359 and Vol. 4, pgs. 45-46.

10 The State failed to address the fact that both security officers were simply
11 treated with adhesive bandages. More importantly, the first responding officer,
12 Officer Simms described the injuries as “minor”. The State relies upon the
13 testimony of Mr. Lovato and Mr. Allison, who apparently felt some effects from
14 the injuries for an extended period of time.

15 This Court has explained that “prolonged physical pain” is subjective but
16 must “encompass some physical suffering or injury that lasts longer than the pain
17 immediately resulting from the wrongful act.” *McNamara v. State*, 132 Nev. 606,
18 613, 377 P.3d 106, 111 (2016). In *Collins v. State*, this Court held that the
19 defendant in a battery case would not be liable for “prolonged physical pain” for
20 the touching itself, but he would be liable for the physical pain that “lasts longer
21 than the pain immediately resulting from the wrongful act”. 125 Nev. 60, 64, 203
22 than the pain immediately resulting from the wrongful act”. 125 Nev. 60, 64, 203
23 than the pain immediately resulting from the wrongful act”. 125 Nev. 60, 64, 203
24 than the pain immediately resulting from the wrongful act”. 125 Nev. 60, 64, 203

1 P.3d 90, 92-93 (2009); see also *United States v. Fitzgerald*, 935 F.3d 814, 818 (9th
2 Cir. 2019). In *LaChance v. State*, the victim suffered prolonged physical pain
3 because even after she received treatment for her initial injuries, the injuries
4 resulted in permanent shin splints, an inability to sit for long periods, and hearing
5 loss. 130 Nev. 263, 271-72, 321 P.3d 919, 925 (2014). The *LaChance* Court also
6 reiterated the *Collins* standard that the suffering must last longer than the pain
7 immediately resulting from the wrongful act. *LaChance*, 321 P.3d at 925, *see also*,
8 *Collins*, 125 Nev. at 64.

10 The State claims that both security officers suffered scars as a result of the
11 attack, which qualifies as “permanent disfigurement” pursuant to NRS 0.060.
12 RAB, at 16. However, Mr. Allison described his scars as “more of a pinker color.”
13 A. A. Vol. 3 pg. 361.

15 Mr. Lovato and Mr. Allison suffered only “minor” injuries that did not
16 amount to substantial bodily harm as defined in NRS 0.060. The statute should not
17 be extended to include relatively “minor” injuries simply because the security
18 officers felt some after effects. Almost any injury will cause a person to feel
19 “minor” residual pain but this cannot possibly be an appropriate standard.
20 Although, this issue is subjective, the facts clearly demonstrate that substantial
21 bodily harm did not occur.
22
23
24

Therefore, Mr. Edwards respectfully requests that after viewing the evidence in the light most favorable to the State, this Court find that no rational trier of fact could have found beyond a reasonable doubt the elements essential to hold that the injuries in this case amounted to substantial bodily harm.

V. CONCLUSION

Based on the arguments presented in Appellant's Opening Brief and the instant Reply, Appellant respectfully requests that this Court vacate his conviction and order a new trial.

Respectfully submitted this 31st day of May, 2022.

By: /s/ Christopher R. Oram
CHRISTOPHER R. ORAM, ESQ.
Nevada Bar No. 4349
RACHAEL E. STEWART, ESQ.
Nevada Bar No. 14122
520 S. Fourth Street, Second Floor
Las Vegas, Nevada 89101
Telephone: (702) 384-5563
Attorneys for Appellant

VI. CERTIFICATE OF COMPLIANCE

I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied on is to be found. I further certify that this brief complies with the formatting requirements of NRAP 32(a)(4)-(6) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionately spaced typeface using Microsoft Word, a word-processing program, in 14 point Times New Roman.*

///

1 I further certify that this brief complies with the type volume limitations of
2 NRAP 32(a)(7) because it is proportionately spaced, has a typeface of 14 points or
3 more and contains 1889 words. I understand that I may be subject to sanctions in
4 the event that the accompanying brief is not in conformity with the requirements of
5 the Nevada Rules of Appellate Procedure.
6

7 Dated this 31st day of May, 2022.

8 Respectfully submitted,

9 By: /s/ Christopher R. Oram
10 CHRISTOPHER R. ORAM, ESQ.
Nevada Bar No. 4349
11 RACHAEL E. STEWART, ESQ.
Nevada Bar No. 14122
12 520 S. Fourth Street, Second Floor
13 Las Vegas, Nevada 89101
Telephone: (702) 384-5563
14 *Attorneys for Appellant*
15
16
17
18
19
20
21
22
23
24

1 **VII. CERTIFICATE OF SERVICE**

2 I hereby certify and affirm that this document was filed electronically with
3 the Nevada Supreme Court on May 31, 2022. Electronic Service of the foregoing
4 document shall be made in accordance with the Master Service List as follows:
5

6 AARON FORD
Nevada Attorney General

7 STEVEN B. WOLFSON
8 Clark County District Attorney

9 BY /s/ Ashlee Hawley
10 Employee of Christopher R. Oram
11
12
13
14
15
16
17
18
19
20
21
22
23
24