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STATE OF NEBRASKA, APPELLEE, V. ELLUMINATI EGODDESS ENIKKO PRESTIGE, FORMERLY KNOWN AS ERICA A. JENKINS, APPELLANT.

___ N.W.3d ___

Filed November 20, 2026. No. S-25-718.

1. **Effectiveness of Counsel: Appeal and Error.** In reviewing claims of ineffective assistance of counsel on direct appeal, an appellate court decides only whether the undisputed facts contained within the record are sufficient to conclusively determine whether counsel did or did not provide effective assistance and whether the defendant was or was not prejudiced by counsel's alleged deficient performance.
2. **Effectiveness of Counsel: Records: Appeal and Error.** The record on direct appeal is sufficient to conclusively determine a claim of ineffective assistance of counsel if it establishes either that trial counsel's performance was not deficient, that the appellant will not be able to establish prejudice as a matter of law, or that trial counsel's actions could not be justified as a part of any plausible trial strategy.
3. **Effectiveness of Counsel: Proof.** To prevail on a claim of ineffective assistance of counsel under *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984), the defendant must show that his or her counsel's performance was deficient and that this deficient performance actually prejudiced the defendant's defense.
4. ____: ____. To show that counsel's performance was deficient, a defendant must show that counsel's performance did not equal that of a lawyer with ordinary training and skill in criminal law.
5. ____: ____. To show prejudice in a claim of ineffective assistance of counsel, the defendant must demonstrate a reasonable probability that but for counsel's deficient performance, the result of the proceeding would have been different.
6. **Effectiveness of Counsel: Proof: Appeal and Error.** When a claim of ineffective assistance of counsel is raised in a direct appeal, the appellant is not required to allege prejudice; however, an appellant must make

specific allegations of the conduct that he or she claims constitutes deficient performance by trial counsel.

7. **Convictions: Confessions: Due Process.** A defendant in a criminal case is deprived of due process of law if his or her conviction is founded, in whole or in part, upon an involuntary confession, without regard for the truth or falsity of the confession.
8. **Confessions.** Under *Jackson v. Denno*, 378 U.S. 368, 84 S. Ct. 1774, 12 L. Ed. 2d 908 (1964), trial courts must institute fair procedures to determine whether a confession is voluntary, because involuntary or coerced confessions cannot be introduced into evidence.
9. **Effectiveness of Counsel: Records: Appeal and Error.** The argument section of the brief is to elaborate on the ineffective assistance of counsel claims by discussing legal authority and its application to the trial record, not to set forth, for the first time, the allegedly deficient act.
10. **Effectiveness of Counsel: Appeal and Error.** Claims of alleged failures by counsel respecting motions must set forth in the assignments of error on what grounds a motion should have been made.
11. **Appeal and Error.** Absent plain error, an issue not raised to the trial court will not be considered by the Nebraska Supreme Court on appeal.
12. **Trial: Motions for Mistrial: Waiver: Appeal and Error.** When a party has knowledge during trial of irregularity or misconduct, the party must timely assert his or her right to a mistrial. One may not waive an error, gamble on a favorable result, and, upon obtaining an unfavorable result, assert the previously waived error.
13. **Motions for Mistrial: Proof.** A defendant faces a higher threshold than merely showing a possibility of prejudice when attempting to prove error predicated on the failure to grant a mistrial. Instead, the defendant must prove the alleged error actually prejudiced him or her, rather than creating only the possibility of prejudice.
14. **Jury Instructions: Appeal and Error.** Whether jury instructions are correct is a question of law, which an appellate court resolves independently of the lower court's decision.
15. **Jury Instructions: Proof: Appeal and Error.** To establish reversible error from a court's refusal to give a requested instruction, an appellant has the burden to show that (1) the tendered instruction is a correct statement of the law, (2) the tendered instruction is warranted by the evidence, and (3) the appellant was prejudiced by the court's refusal to give the tendered instruction.
16. **Self-Defense: Jury Instructions.** A trial court is required to give a self-defense instruction where there is any evidence in support of a legally cognizable theory of self-defense.

17. **Self-Defense: Evidence.** To determine whether the evidence supports a legally cognizable claim of self-defense under Nebraska law, a trial court assesses the evidence without deciding factual issues.
18. **Self-Defense: Jury Instructions.** A defendant who is the initial aggressor is not entitled to a self-defense instruction.
19. **Self-Defense.** If a defendant has unjustifiably placed himself or herself in harm's way, a court may properly find that such facts do not support a lawful claim of self-defense.
20. **Evidence: Words and Phrases.** Unfair prejudice means an undue tendency to suggest a decision based on an improper basis.
21. ____: ____. Unfair prejudice speaks to the capacity of some concededly relevant evidence to lure the fact finder into declaring guilt on a ground different from proof specific to the offense charged, commonly on an emotional basis.
22. **Effectiveness of Counsel: Appeal and Error.** Any claim of ineffective assistance of counsel alleging deficient conduct must be more specific than generalities of inadequate preparation or failures to introduce beneficial evidence.
23. **Effectiveness of Counsel: Postconviction: Witnesses: Appeal and Error.** When the claim of ineffective assistance on direct appeal involves uncalled witnesses, the defendant must give the names or descriptions of any uncalled witnesses forming the basis of a claim of ineffective assistance of trial counsel; what the witness would have said may be part of the witness' description when the name is unknown.

Appeal from the District Court for York County: JAMES C. STECKER, Judge. Affirmed.

Chad Wythers, of Wythers Law, for appellant.

Michael T. Hilgers, Attorney General, and Nathan A. Liss for appellee.

FUNKE, C.J., CASSEL, STACY, PAPIK, FREUDENBERG, and VAUGHN, JJ.

PAPIK, J.

Elluminati Egoddess Enikko Prestige, formerly known as Erica A. Jenkins, was serving prison sentences when she had a physical confrontation with another inmate. Following a

jury trial on the resulting criminal charges, Prestige was convicted of second degree assault and sentenced as a habitual criminal. Now on appeal, Prestige contends that the district court erroneously (1) failed to initiate a hearing on its own motion regarding the voluntariness of her statements after the incident, pursuant to *Jackson v. Denno*, 378 U.S. 368, 84 S. Ct. 1774, 12 L. Ed. 2d 908 (1964); (2) declined to give a jury instruction on self-defense; and (3) failed to grant a mistrial on its own motion due to technical difficulties that Prestige—who appeared by video—now asserts prevented her from seeing and hearing portions of the trial. Prestige also raises several claims of ineffective assistance of counsel, some of which are related to Prestige's claims of district court error. We determine Prestige has demonstrated no reversible error and therefore affirm.

I. BACKGROUND

In December 2022, Prestige was serving sentences at the Nebraska Correctional Center for Women (NCCW) for multiple offenses, including first degree murder, robbery, weapons offenses, and assault by a confined person. See, e.g., *State v. Jenkins*, 294 Neb. 475, 883 N.W.2d 351 (2016) (affirming convictions for first degree murder and weapons offenses), and *State v. Jenkins*, 294 Neb. 684, 884 N.W.2d 429 (2016), *overruled on other grounds, State v. Cox*, 307 Neb. 762, 985 N.W.2d 395 (2020) (affirming robbery convictions). At that time, Prestige was involved in an altercation with another inmate. The State subsequently charged Prestige with second degree assault, in violation of Neb. Rev. Stat. § 28-309 (Reissue 2016), and sought a habitual criminal enhancement under Neb. Rev. Stat. § 29-2221 (Reissue 2016).

At trial, the jury heard evidence that Prestige was housed on the first floor of NCCW, in the same housing unit as inmate Ashley Wood. Wood's cell was on the second floor. Wood shared her cell with three other inmates, one of whom was Kenisha Prentice.

The jury also heard evidence about the rules in the housing unit. According to that evidence, the inmates in the housing unit had unlocked doors, unlimited access to central bathrooms, and "wide freedom of movement." However, the jury also heard evidence that the inmates were never permitted to go into the cells of other inmates. And overnight, the inmates were on "lockdown," that is, limited to their cells except to use the bathroom and in emergencies.

Corrections officer Robert Price testified that one day at about 2:20 a.m., he was working in the housing unit when he heard screaming. Price activated an alarm for assistance from other guards and then ran to the location of the screaming, which was Wood's cell. There, he recalled, he discovered Prestige punching Wood in the face. According to Price, he grabbed Prestige by the back of her arms and pulled her out of the cell. When Prestige tried to break free and return to the cell, Price handcuffed her. Prestige was then escorted to a holding cell.

Alyssa Sanchez, another corrections officer, was working in a different housing unit on the night of the incident. She responded to Price's alarm, and by the time she arrived at Wood's cell, the altercation was over and Prestige was in handcuffs and being escorted out of the housing unit. Sanchez testified that she spoke with Wood and Prentice about the incident and that they told her Prestige came into their cell and "assaulted" them. Sanchez observed that Wood had red marks on her face, some scratch marks on her face and ear, and a couple of "knots" on her head. Sanchez took pictures of Wood's injuries, copies of which were received into evidence.

Sanchez testified that Prestige spoke to her "voluntarily" following the incident. Sanchez did not recall whether Prestige asked to speak to her, but testified that regardless, Sanchez would have been required to interview Prestige in response to the other inmates' allegations. According to Sanchez, Prestige admitted that she struck Wood.

Wood testified that on the night of the altercation, she was asleep in her bed and woke up to screams from Prentice, who was being attacked by Prestige. According to Wood, Prestige next came over to her bed and punched her at least twice in the head, "clawed [her] whole face," and pulled out a "chunk of" her hair. Wood testified that at that point, Price entered the cell and removed Prestige. Wood recalled that Prestige tried to return to the cell and yelled, "[N]ever sleep on a G." The jury heard testimony that this meant, "[N]ever sleep on a gangster."

There was also evidence that there was a history of tension between Prestige and Wood. According to Wood, there had been "bad blood" between her and Prestige for some time. Wood testified that she had filed incident reports days before the altercation because Prestige had harassed her. Price testified that other inmates had previously told him there was "beef" between Prestige and Wood, but that he did not witness conflict between them until the altercation.

Prestige opted to testify at trial. She acknowledged that she went to the other inmates' cell and got into a fight, but she claimed that she did not initiate the fight. According to Prestige, Wood and Prentice were part of a clique at NCCW that bullied inmates and had threatened to "jump[]" her. Prestige testified that on the night of the incident at issue, Prentice "shoulder bumped" her in the bathroom and invited her to "meet" in Prentice's cell. Prestige agreed and went to Prentice's cell later that night to "hash this out" between her and Prentice, because it was the custom in the prison setting to mutually agree to "have confrontations" in other inmates' rooms, even though such meetings were violations of prison rules.

Prestige testified that she went into the other cell not expecting to "get jumped" but instead she "felt that maybe if we're in a setting like that then maybe they wouldn't be so—trying to make it look like they're really badass and maybe we could have just resolved it verbally, possibly." Prestige also testified

that she went to the other inmates' cell and "[a] physical confrontation started, which is what we mutually agreed upon," and that she "was in there with the agreement of mutually confronting and/or squashing it with Prentice."

Prestige recounted that when she entered the cell, Wood and Prentice ambushed her. Prestige testified that Prentice hit and scratched her and Wood then hit Prestige in the forehead with a hard object. Prestige testified that it was at this point that she "exchanged blows" with Wood until Price broke up the fight. She denied saying, "[N]ever sleep on a G." Contrary to Sanchez' testimony, Prestige also denied speaking to Sanchez and denied ever admitting to striking Wood.

The jury found Prestige guilty of second degree assault. The district court accepted the verdict and convicted Prestige accordingly. After an enhancement hearing, the district court found Prestige to be a habitual criminal and sentenced her to 20 to 40 years' imprisonment, to be served consecutively with any other sentences currently being served.

Represented by new counsel, Prestige appeals. We set forth additional relevant facts in the analysis section below.

II. ASSIGNMENTS OF ERROR

Reordered and restated, Prestige assigns that the district court erred in (1) allowing Prestige's "custodial statement to be presented to the jury without an independent judicial determination that the statement was freely and voluntarily made," (2) declining to give a self-defense instruction to the jury, and (3) failing to grant a mistrial on its own motion when Prestige was not able to see or hear parts of the trial.

Prestige further claims that her trial counsel rendered ineffective assistance in the following ways: (1) failing to "file a motion to suppress/motion in limine regarding the statements made by [Prestige] after she was handcuffed and placed in a holding cell"; (2) failing to request a jury instruction on self-defense; (3) failing to request that the record be recreated or to request a mistrial when Prestige, appearing virtually,

was not able to see or hear parts of the trial; (4) failing to "adequately prepare a defense with [Prestige] and/or call relevant witnesses (counsel even filed a motion stating the same)"; (5) failing to object or file a pretrial motion "regarding the violation of the prison rules as that is irrelevant and unfairly prejudicial"; and (6) failing to object or file a pretrial motion to prohibit the State from referring to Prestige by her former name.

III. STANDARD OF REVIEW

We provide the relevant standards of review in the sections below.

IV. ANALYSIS

Prestige alleges multiple instances of district court error and ineffective assistance of counsel. For each allegation of district court error, Prestige makes related claims of ineffective assistance of counsel. She also makes several additional claims of ineffective assistance of counsel unrelated to any claimed district court error. We discuss Prestige's claims of district court error and ineffective assistance of counsel under the applicable topic headings below. But first, we recite the general principles that apply to Prestige's ineffective assistance of counsel claims.

[1,2] In reviewing claims of ineffective assistance of counsel on direct appeal, an appellate court decides only whether the undisputed facts contained within the record are sufficient to conclusively determine whether counsel did or did not provide effective assistance and whether the defendant was or was not prejudiced by counsel's alleged deficient performance. *State v. Wilson*, 320 Neb. 728, 30 N.W.3d 165 (2026). The record on direct appeal is sufficient to conclusively determine a claim of ineffective assistance of counsel if it establishes either that trial counsel's performance was not deficient, that the appellant will not be able to establish prejudice as a matter of law, or that trial counsel's actions could not be justified as a part of any plausible trial strategy. *State v. Vazquez*, 319

Neb. 192, 21 N.W.3d 615 (2025). Conversely, an ineffective assistance of counsel claim will not be addressed on direct appeal if it requires examination of facts not contained in the record. *Id.*

[3-5] To prevail on a claim of ineffective assistance of counsel under *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984), the defendant must show that his or her counsel's performance was deficient and that this deficient performance actually prejudiced the defendant's defense. *State v. Wilson, supra*. To show that counsel's performance was deficient, a defendant must show that counsel's performance did not equal that of a lawyer with ordinary training and skill in criminal law. *Id.* To show prejudice in a claim of ineffective assistance of counsel, the defendant must demonstrate a reasonable probability that but for counsel's deficient performance, the result of the proceeding would have been different. *Id.*

[6] When a claim of ineffective assistance of counsel is raised in a direct appeal, the appellant is not required to allege prejudice; however, an appellant must make specific allegations of the conduct that he or she claims constitutes deficient performance by trial counsel. *Id.*

1. Prestige's Statements

As summarized above, Sanchez testified, without objection, that she spoke to Prestige after the incident and that Prestige admitted to striking Wood; Prestige denied making the statement, but she also testified that she "exchanged blows" with Wood after being attacked. On appeal, Prestige assigns that the district court erred in not initiating a hearing on its own motion to determine the voluntariness of the "custodial statement" Prestige made. Prestige also assigns that her counsel was ineffective in "[f]ailing to file a motion to suppress/motion in limine regarding the statements made by [Prestige] after she was handcuffed and placed in a holding cell." We find that neither assignment of error merits reversal.

(a) Alleged District Court Error

Apparently targeting Sanchez' testimony that Prestige admitted to striking Wood, Prestige asserts that the district court erred in not holding a hearing on its own motion to determine whether her "custodial statement" was freely and voluntarily made pursuant to *Jackson v. Denno*, 378 U.S. 368, 84 S. Ct. 1774, 12 L. Ed. 2d 908 (1964). We find no merit in Prestige's argument that the district court erred in not initiating a *Jackson v. Denno* hearing on its own motion.

[7,8] A defendant in a criminal case is deprived of due process of law if his or her conviction is founded, in whole or in part, upon an involuntary confession, without regard for the truth or falsity of the confession. *State v. Miller*, 312 Neb. 17, 978 N.W.2d 19 (2022). Under *Jackson v. Denno, supra*, trial courts must institute fair procedures to determine whether a confession is voluntary, because involuntary or coerced confessions cannot be introduced into evidence. *State v. Miller, supra.* Such a judicial determination is made after a *Jackson v. Denno* hearing, where the State has the burden to prove a defendant's statement was voluntary and not coerced. See *State v. Miller, supra*.

Our procedure to obtain a *Jackson v. Denno* hearing is longstanding. A defendant who claims a statement was obtained from him or her involuntarily may move to have the statement suppressed by filing a motion under Neb. Rev. Stat. § 29-115 (Reissue 2016). See *State v. Harris*, 263 Neb. 331, 640 N.W.2d 24 (2002). That section provides that such motion to suppress "must be filed at least ten days before trial"; otherwise, absent certain exceptions set forth in that section, "all objections to the use of such statements as evidence on these grounds shall be deemed waived."

Prestige freely grants that she did not file a timely motion to suppress pursuant to § 29-115, and she does not claim the benefit of any of its exceptions. She argues instead that because the district court was required to institute fair procedures to determine the voluntariness of her statement before

presenting it to the jury, it had a duty to initiate *Jackson v. Denno* proceedings even if Prestige did not ask for them. To the extent this argument suggests that § 29-115's motion requirement is unconstitutional, Prestige has not preserved that issue for appellate review. See *State v. Kalita*, 317 Neb. 906, 12 N.W.3d 499 (2024) (issue of constitutionality must be specifically called to trial court's attention so that court has opportunity to rule upon it; if not so raised, issue will be considered to have been forfeited). See, also, *State v. Sutton*, 319 Neb. 581, 24 N.W.3d 43 (2025) (party filing brief explicitly or implicitly challenging constitutionality of statute must strictly comply with Neb. Ct. R. App. P. § 2-109(E) (rev. 2025) or else appellate court will not address constitutional challenge).

Prestige's express position—that the district court was required to hold *Jackson v. Denno* proceedings on its own motion—also runs counter to our prior holdings. The procedure codified in § 29-115 "generally reflects the holdings of this court that '[t]he defendant may request a hearing on and a determination of voluntariness, but in the absence of such request, [the] defendant cannot complain of the failure of the court to hold such a hearing and make such determination.'" *State v. Warren*, 227 Neb. 160, 162-63, 416 N.W.2d 249, 251 (1987), quoting *State v. Oliva*, 183 Neb. 620, 163 N.W.2d 112 (1968), citing *United States v. Frazier*, 385 F.2d 901 (6th Cir. 1967), and *Woody v. United States*, 379 F.2d 130 (D.C. Cir. 1967). See, also, *State v. Escamilla*, 195 Neb. 558, 239 N.W.2d 270 (1976).

Despite all this, Prestige asserts that her position is supported by a federal case, *Lufkins v. Solem*, 716 F.2d 532 (8th Cir. 1983). In *Lufkins*, the U.S. Court of Appeals for the Eighth Circuit affirmed a writ of habeas corpus granted by the federal district court, finding a violation of *Jackson v. Denno*, 378 U.S. 368, 84 S. Ct. 1774, 12 L. Ed. 2d 908 (1964). There, a criminal defendant challenged the voluntariness of a confession he signed in the presence of a sheriff by

offering a handwritten objection to the trial court prior to trial, but his trial counsel made no pretrial motion to suppress. The sheriff later testified at trial, and the defendant's trial counsel objected to the admission of the defendant's incriminating statements on the ground that they were involuntary. The trial court overruled the objection. The Eighth Circuit found that the trial court had not made a distinct finding on the voluntariness of the confession before it was admitted at trial and that this violated *Jackson v. Denno, supra*.

Prestige urges us to follow *Lufkins* and to conclude that she was entitled to a judicial determination of voluntariness pursuant to *Jackson v. Denno, supra*, "regardless of whether her attorney filed a motion to suppress." Brief for appellant at 17. But the facts in this case do not map onto *Lufkins* like Prestige suggests. Unlike the defendant in *Lufkins*, Prestige made no objection or motion, before trial or during trial, claiming that her statements were not voluntary. And indeed, *in Patterson v. U.S.*, 133 F.3d 645, 648 (8th Cir. 1998), the Eighth Circuit rejected the argument that *Lufkins* offers "legal support for the idea that a district court must hold a hearing on voluntariness without an objection by the defendant."

Finally, we note that in *State v. Crouse*, No. A-25-213, 2026 WL 1393320 (Neb. App. May 19, 2026) (selected for posting to court website), the Nebraska Court of Appeals recently rejected the very same argument Prestige makes in this appeal. Our reasoning in this case aligns with the Court of Appeals' reasoning in *Crouse*. The district court did not err in allowing Prestige's statement to Sanchez to be presented to the jury without a sua sponte judicial determination of the statement's voluntariness.

(b) Ineffective Assistance Claim

Prestige also argues that she received ineffective assistance because her trial counsel did not make efforts to prevent the admission of statements she made. Her argument specifically identifies Sanchez' testimony that Prestige admitted that she

struck or hit Wood. This evidence appears to be cumulative of Prestige's own testimony that she "exchanged blows" with Wood. See *State v. Sawyer*, 319 Neb. 435, 22 N.W.3d 650 (2025) (even if trial counsel performed deficiently in not objecting to witness' testimony, defendant was not prejudiced because witness' testimony was cumulative of other evidence). But a closer look at Prestige's assignment of error reveals a more basic problem.

[9,10] Prestige assigns that her trial counsel was ineffective in "[f]ailing to file a motion to suppress/motion in limine regarding the statements made by [Prestige] after she was handcuffed and placed in a holding cell." Before Prestige filed her brief, we emphasized that an assignment of error must, standing alone, permit an appellate court to determine if the claim of ineffective assistance of counsel can be decided upon the trial record and also permit a district court to later recognize that the claim was raised on the direct appeal. See *State v. Rupp*, 320 Neb. 502, 28 N.W.3d 74 (2025). The argument section of the brief is to elaborate on the ineffective assistance of counsel claims by discussing legal authority and its application to the trial record, not to set forth, for the first time, the allegedly deficient act. *Id.* Claims of alleged failures by counsel respecting motions must set forth in the assignment of error on what grounds a motion should have been made. See *id.* Prestige's assignment of error did not state those grounds. Therefore, her claim is insufficiently alleged and we need not consider it. See *id*.

2. Technical Difficulties

Two of Prestige's assignments of error pertain to technical difficulties that occurred during trial. She alleges both district court error and ineffective assistance of counsel arising from these technical difficulties. As we will explain, we discern no district court error, and we cannot resolve Prestige's ineffective assistance of counsel claim on the record before us.

(a) Additional Facts

At a pretrial hearing, Prestige informed the district court that she wished to participate in the proceedings remotely, rather than in person. After Prestige affirmed that her request was not a result of threats, promises, or force, the district court found that she had elected to participate by video. Accordingly, Prestige appeared via two-way interactive video.

At trial, there were some technical difficulties. For instance, during the State's direct examination of Sanchez, the State elicited testimony about whether and where recordings of surveillance footage were stored. At that point, the bailiff stated, "We lost the inmate." The district court noted that "the connection was dropped" and took a recess to resolve the issue. The record reflects that after a 2-minute recess, the connection was restored and the jury trial resumed. The State recommenced questioning Sanchez, stating, "I believe when we left off we were talking about the recording equipment for the cameras." The State again elicited testimony about whether and where recordings of surveillance footage were stored.

Later, after a short recess, the district court stated, outside the presence of the jury, "We're back on the record with parties and counsel. We don't have . . . I'm not sure that we have Prestige on at the moment." The record shows that the bailiff and Prestige's counsel worked to remedy the technology issues. The district court then confirmed that Prestige could hear and see the proceedings and that Prestige could be seen and heard in the courtroom. The district court also confirmed that Prestige wanted to appear by video at trial that day. The jury then returned to the courtroom, and examination of witnesses resumed.

Finally, during the State's closing argument, the prosecutor described to the jury video footage of Prestige's entrance to the other inmates' cell. The prosecutor referred to footage of Price's reaction to the sound of screaming and then requiring several seconds to locate the source of the screaming. The bailiff interjected, "She can't hear. I think the mic went dead. She

can't hear." The prosecutor then said, "Can you turn it down? It's very loud. All right. So, like we were saying, it takes . . . Price a little bit of time to realize where the screams that he is hearing are coming from . . . ." The prosecutor went on to describe to the jury what Price observed in the cell. The video footage was then published to the jury.

(b) Alleged District Court Error

Prestige asserts that the district court erred by not ordering a mistrial on its own motion when, according to Prestige, she could not see or hear the proceedings, in violation of her right to be present at every stage of trial. See *State v. Fox*, 282 Neb. 957, 806 N.W.2d 883 (2011) (explaining confrontation rights). We have long held that the right to be present at trial can be waived so long as that waiver was voluntary and knowing. See *id.*, citing *Scott v. State*, 113 Neb. 657, 204 N.W. 381 (1925). Acknowledging that she waived her right to appear at trial in person, Prestige contends that she retained her right to see and hear the trial when she accepted the option of appearing by video. And Prestige claims that when technical issues interfered with her ability to see and hear at trial, she was entitled to a mistrial. We are unpersuaded.

[11,12] Despite her argument on appeal that mistrial was warranted, at no point before the district court did Prestige move for mistrial. Absent plain error, an issue not raised to the trial court will not be considered by this court on appeal. *State v. Sellers*, 279 Neb. 220, 777 N.W.2d 779 (2010). Furthermore, when a party has knowledge during trial of irregularity or misconduct, the party must timely assert his or her right to a mistrial. *Id.* One may not waive an error, gamble on a favorable result, and, upon obtaining an unfavorable result, assert the previously waived error. *Id.*

Perhaps realizing this, we understand Prestige to assert that the district court committed plain error in not declaring a mistrial on its own motion when technical difficulties arose. However, Prestige has not provided us with authority

to support her position that a trial court in these circumstances would be required to declare a mistrial sua sponte. And even if she could, her claim would fail.

[13] A defendant faces a higher threshold than merely showing a possibility of prejudice when attempting to prove error predicated on the failure to grant a mistrial. *State v. Dixon*, 286 Neb. 334, 837 N.W.2d 496 (2013). Instead, the defendant must prove the alleged error actually prejudiced him or her, rather than creating only the possibility of prejudice. *Id.* See, also, *State v. Price*, 320 Neb. 1, 26 N.W.3d 70 (2025). Prestige cannot show on this record that the technical difficulties actually prejudiced her. Indeed, the record does not illustrate what Prestige did or did not hear and see during the proceedings. It shows, at most, the possibility of prejudice, and that falls far short of proving the district court committed plain error in not granting a mistrial. See *State v. Nickels, ante* p. 1, 38 N.W.3d 544 (2026) (plain error may be found on appeal when error unasserted or uncomplained of at trial, but plainly evident from record, prejudicially affects litigant's substantial right and, if uncorrected, would result in damage to integrity, reputation, and fairness of judicial process). This assignment of error lacks merit.

(c) Ineffective Assistance Claim

Relatedly, Prestige claims that her trial counsel was ineffective in failing "to ask the record be recreated or ask for a mistrial when [Prestige] was not able to see or hear parts of the trial." As we noted above, when a claim of ineffective assistance of counsel is raised on direct appeal, the appellate court is tasked with deciding whether the undisputed facts contained within the record are sufficient to conclusively determine whether counsel did or did not provide effective assistance and whether the defendant was or was not prejudiced by counsel's alleged deficient performance. See *State v. Wilson*, 320 Neb. 728, 30 N.W.3d 165 (2026). Because it is not apparent from the record what, if anything, Prestige

did not see or hear at trial due to technical difficulties, we cannot resolve this ineffective assistance of counsel claim on direct appeal.

3. Self-Defense Instruction

After the parties presented their evidence, the district court conducted a jury instruction conference on the record. The parties disagreed about whether the evidence warranted a self-defense instruction. After a colloquy with the parties regarding the evidence and relevant case law, the district court declined to give a self-defense instruction, and the jury was instructed on the elements of second degree assault without reference to self-defense. Now on appeal, Prestige assigns both district court error and ineffective assistance of counsel related to the absence of a self-defense instruction. But we see no basis for reversal.

(a) Alleged District Court Error

[14,15] Prestige asserts that the district court erred in not including a jury instruction on self-defense. Whether jury instructions are correct is a question of law, which an appellate court resolves independently of the lower court's decision. *State v. Reeves*, 321 Neb. 427, 35 N.W.3d 46 (2026). To establish reversible error from a court's refusal to give a requested instruction, an appellant has the burden to show that (1) the tendered instruction is a correct statement of the law, (2) the tendered instruction is warranted by the evidence, and (3) the appellant was prejudiced by the court's refusal to give the tendered instruction. *State v. Case*, 304 Neb. 829, 937 N.W.2d 216 (2020). As we will explain, Prestige has not shown a self-defense instruction was warranted by the evidence.

Self-defense is a statutorily defined affirmative defense in Nebraska. See *State v. Smith*, 284 Neb. 636, 822 N.W.2d 401 (2012). Under Neb. Rev. Stat. § 28-1409(1) (Reissue 2016), "the use of force upon or toward another person is justifiable when the actor believes that such force is immediately

necessary for the purpose of protecting himself against the use of unlawful force by such other person on the present occasion." We have interpreted this section to mean that the actor must have a reasonable and good faith belief in the necessity of using force and that the force used in defense must be immediately necessary and justified under the circumstances. See, e.g., *State v. Case, supra*.

[16,17] A trial court is required to give a self-defense instruction where there is any evidence in support of a legally cognizable theory of self-defense. *Id*. We have explained that "only where the jury could reasonably find that the defendant's use of force was justified should the trial court instruct the jury on self-defense." *Id.* at 842, 937 N.W.2d at 225. To determine whether the evidence supports a legally cognizable claim of self-defense under Nebraska law, a trial court assesses the evidence without deciding factual issues. *State v. Liech*, 320 Neb. 843, 30 N.W.3d 847 (2026).

[18] A defendant who is the initial aggressor is not entitled to a self-defense instruction. See *id*. Prestige contends in part that she was entitled to a self-defense instruction because the evidence presented a factual issue as to whether she was the initial aggressor. Although Prestige may be correct that this factual issue existed, it does not matter, because, as we will demonstrate, we discern a "more fundamental reason why [she] cannot assert a cognizable claim of self-defense." See *id.* at 854, 30 N.W.3d at 856.

[19] This court has long held that if a defendant has unjustifiably placed himself or herself in harm's way, a court may properly find that such facts do not support a lawful claim of self-defense. See *State v. Logan*, 320 Neb. 554, 28 N.W.3d 510 (2025). And "application of this settled rule does not depend on determining the identity of the initial aggressor." *State v. Liech*, 320 Neb. at 857, 30 N.W.3d at 858. In fact, in *State v. Case*, 304 Neb. at 843, 937 N.W.2d at 226, we observed that although a factual dispute about who was the first aggressor "could be part of a legally cognizable case

of self-defense," it was unnecessary to analyze that issue because the undisputed evidence showed that the defendant had unjustifiably placed himself in harm's way.

Prestige attempts to distinguish cases applying the harm's way rule. She asserts that we have applied the rule only where the actor seeking a self-defense instruction exerted deadly force. Prestige is incorrect. While we have applied the rule in cases where the defendant used deadly force, see, e.g., *State v. Marshall*, 253 Neb. 676, 573 N.W.2d 406 (1998), we have also applied the rule in cases where the defendant seeking a self-defense instruction did not use deadly force. See, e.g., *State v. Liech, supra*; *State v. Johnson*, 314 Neb. 20, 988 N.W.2d 159 (2023); *State v. Case*, 304 Neb. 829, 937 N.W.2d 216 (2020); *State v. Urbano*, 256 Neb. 194, 589 N.W.2d 144 (1999).

The application of the harm's way rule in cases of both deadly and nondeadly force follows from its roots in § 28-1409(1). In *State v. Case, supra*, we explained that we have interpreted that subsection to mean that the actor must have a reasonable and good faith belief in the necessity of using force and that the force used in defense must be immediately necessary and justified under the circumstances. We then observed that we "[e]xtrapolat[ed]" the harm's way rule "from the requirement that the force used must be 'justified under the circumstances.'" See *id*. at 844, 937 N.W.2d at 226, quoting *State v. Urbano, supra*. In *State v. Case, supra*, we went on to apply the rule in circumstances much like these. We held that the evidence did not warrant a self-defense instruction where the actor left his jail cell before a nondeadly confrontation with another inmate. We reasoned that "there was no evidence that [the defendant] was prevented from remaining safely inside his cell." *Id.* at 844, 937 N.W.2d at 227. Prestige's argument that the harm's way rule does not apply in cases of nondeadly force lacks merit.

Prestige also urges that the harm's way rule should not apply by pointing to her testimony that she entered the other

inmates' cell thinking it might be possible to resolve the dispute without violence. But none of our prior cases applying the harm's way rule have depended on the defendant's subjective belief about what might transpire. See, *State v. Liech*, 320 Neb. 843, 30 N.W.3d 847 (2026); *State v. Logan, supra*; *State v. Johnson, supra*; *State v. Case, supra*; *State v. Urbano, supra*; *State v. Marshall, supra*. And we decline the invitation to make application of the rule dependent on the defendant's subjective beliefs here. A focus on the defendant's subjective expectations of what would occur after placing himself or herself in harm's way would be inconsistent with a rule that is grounded on the requirement that the use of force be immediately necessary and justified under the circumstances.

Regardless of what Prestige may have thought would occur when she entered the other inmates' cell, there was undisputed objective evidence that she unjustifiably placed herself in harm's way. Prison rules prohibited inmates from entering other inmates' cells, and during overnight hours, prison rules restricted inmates to their cells except to use the bathroom or to respond to emergencies. There was evidence that sometimes inmates violated these rules to fight by appointment. The parties presented evidence that there was longstanding "beef" or "bad blood" between Prestige and Wood. Prestige testified that Wood and Prentice were part of a clique that had threatened to "jump[]" her. She recounted that hours before the altercation at issue, Prentice "shoulder bumped" her in the bathroom and invited her to "meet" in Prentice's cell. Later, Prestige willingly left her cell, where prison rules protected her from contact with Wood and Prentice; traveled from the first floor to the second floor; and entered the cell Wood and Prentice inhabited. That is, Prestige could have avoided the altercation by remaining in her cell, but instead she unjustifiably chose to place herself in harm's way. On these facts, Prestige could not assert a legally cognizable theory of self-defense. For this reason, we conclude that the district court did not err in refusing to instruct the jury on self-defense.

(b) Ineffective Assistance of Counsel Claim

Prestige also assigns that her trial counsel was ineffective in failing to request a self-defense instruction. As we have recounted, however, Prestige's counsel did request and advocate for a self-defense instruction, and we have concluded that the district court did not err in refusing to so instruct the jury. Consequently, this claim fails.

4. VIOLATION OF PRISON RULES

As noted above, there was evidence at trial that when Prestige entered the other inmates' cell, it was a violation of prison rules. Now Prestige assigns that her trial counsel was ineffective in failing to object or to file a pretrial motion "regarding the violation of the prison rules as that is irrelevant and unfairly prejudicial." Prestige contends that this was ineffective assistance of trial counsel because the jury could have interpreted a violation of prison rules to be unlawful conduct per the elements instruction directing the jury to decide whether Prestige "did . . . unlawfully strike or wound . . . Wood." Because we can determine from the record that Prestige's trial counsel did not render deficient performance by failing to object to this evidence, the assignment of error fails.

To be admissible, evidence must be relevant, see Neb. Rev. Stat. § 27-402 (Reissue 2016), but we are not convinced by Prestige's suggestion that a lawyer of ordinary training and skill would have relied on this basis to attempt to exclude evidence that she broke prison rules in entering the other inmates' cell. "Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Neb. Rev. Stat. § 27-401 (Reissue 2016). This requires only that the probative value of the evidence be something more than nothing. See *State v. Lorello*, 314 Neb. 385, 991 N.W.2d 11 (2023). Evidence that Prestige violated prison rules in entering the other inmates' cell

clears this low bar because it had a logical connection to consequential facts—it provided insight into all the inmates' possible motives and their intent on the night of the confrontation and helped explain how events unfolded.

[20,21] But even relevant evidence may be inadmissible if, among other reasons, "its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury." See Neb. Rev. Stat. § 27-403 (Reissue 2016). See, also, *State v. Rocha*, 295 Neb. 716, 890 N.W.2d 178 (2017). Unfair prejudice means an undue tendency to suggest a decision based on an improper basis. *State v. Cook, ante* p. 114, 39 N.W.3d 49 (2026). Unfair prejudice speaks to the capacity of some concededly relevant evidence to lure the fact finder into declaring guilt on a ground different from proof specific to the offense charged, commonly on an emotional basis. *Id.*

Although Prestige may assign that her trial counsel was ineffective in not seeking to exclude evidence about the prison rules on unfair prejudice grounds, she does not argue that there was a risk that the evidence itself would lure the jury into basing its verdict on something other than the elements of second degree assault. Instead, Prestige frames her argument around the jury instructions. According to Prestige, because the jury instructions did not define "unlawfully," "[t]he reference to the violation of prison rules certainly could have confused the jury and led [it] to convict Prestige based upon the belief that the term 'unlawfully' simply included a violation of the prison rules." Brief for appellant at 22.

We are confident that any effort on the part of trial counsel to exclude evidence that Prestige violated prison rules based on the unfair prejudice argument Prestige now asserts would not have succeeded. As we have explained above, the evidence was relevant, and to the extent there was any risk that the evidence could lead the jury to convict on an improper basis, that risk could have been eliminated through appropriate jury instructions. And although Prestige makes

some suggestions in the argument section of her brief that trial counsel should have requested different jury instructions, she does not assign that as ineffective assistance. See *State v. McCree, ante* p. 326, 39 N.W.3d 660 (2026) (alleged error must be both specifically assigned and specifically argued to be considered by appellate court).

Because any attempt to exclude the evidence that Prestige violated prison rules would not have succeeded, trial counsel was not deficient in failing to do so. See *State v. Haas*, 317 Neb. 919, 12 N.W.3d 787 (2024) (counsel is not deficient for failing to file meritless motion).

5. Preparation of Adequate Defense

[22,23] Prestige assigns that her trial counsel was ineffective in "[f]ailing to adequately prepare a defense with [Prestige] and/or call relevant witnesses (counsel even filed a motion stating the same)." Whatever details Prestige may offer in the argument section of her brief, we conclude that this claim of ineffective assistance of counsel was insufficiently assigned. As noted earlier, we recently clarified that an assignment of error must, standing alone, permit an appellate court to determine if the claim of ineffective assistance of counsel can be decided upon the trial record and also permit a district court to later recognize that the claim was raised on direct appeal. See *State v. Rupp*, 320 Neb. 502, 28 N.W.3d 74 (2025). The argument section of the brief is to elaborate on the ineffective assistance of counsel claims by discussing legal authority and its application to the trial record, not to set forth, for the first time, the allegedly deficient act. *Id.* Any claim of ineffective assistance of counsel alleging deficient conduct must be more specific than generalities of inadequate preparation or failures to introduce beneficial evidence. *Id.* When the claim of ineffective assistance on direct appeal involves uncalled witnesses, the defendant must give the names or descriptions of any uncalled witnesses forming the basis of a claim of ineffective assistance of trial counsel;

what the witness would have said may be part of the witness' description when the name is unknown. *Id.* Prestige's assignment broadly asserting that her counsel was inadequately prepared or did not call relevant unnamed witnesses, when combined with her vague reference to a motion, does not meet the standard we have articulated. Accordingly, we do not consider it.

6. FORMER NAME

Prestige claims that she received ineffective assistance of counsel because her trial counsel did not file a pretrial motion or object to prohibit the State from referring to her by her former name, Erica A. Jenkins. As we explain below, this claim fails.

(a) Additional Facts

In the information, the State charged "ELLUMINATI EGODDESS ENIKKO PRESTIGE (formerly known as Erica A. Jenkins)" with second degree assault and with being a habitual criminal.

During pretrial proceedings, before jury selection, the district court introduced the parties to the prospective jury members. The district court stated, "By way of explanation before we proceed any further, you may or may not recognize . . . Prestige as she has had a name change and she was form[er]ly known as Erica Jenkins."

At trial, several witnesses referred to Prestige by her former name. First, in her testimony, Sanchez stated that she knew Prestige by her "former name," "Erica Jenkins," but noted, "She doesn't like to be called that, though, since she has had it legally changed." Sanchez mostly testified about "Prestige" in her narrative of events, but twice she referred to "Jenkins."

Later at trial, Wood testified on direct examination by the State that she knew Prestige by the name "Eri[c]a Jenkins," and the prosecutor clarified with Wood at that time that her testimony about Prestige referred to "Ms. Jenkins." Wood

later identified "Eri[c]a Jenkins" as the person who entered her room and struck her and whom she had previously reported to prison staff; she also responded to questions about "Ms. Prestige" attacking her.

Price subsequently responded to questions by the State about a report Price had authored. One question referred to "Prestige" entering the cell. The State next inquired about injuries to "Jenkins," then returned to referring to "Prestige."

And upon direct examination by her counsel, Prestige herself acknowledged that she was formerly named "Erica Jenkins."

(b) Analysis

Prestige asserts that she was charged with second degree assault under her current name; and although her former name may have been relevant to sentencing her on the habitual criminal charge, it was not relevant to the issues to be determined at trial—issues related to whether Prestige committed second degree assault. According to Prestige, the references to her former name at trial "confuse[d] the issues for the jury," led the jury to believe Prestige assaulted an inmate named "Erica Jenkins," and undermined confidence in the verdict. Brief for appellant at 24. Prestige submits that her counsel ought to have prevented all this with a pretrial motion or objections aimed at precluding references to Prestige's former name.

We conclude that Prestige cannot show deficient performance. Contrary to Prestige's assertion, the information identified her as Prestige, formerly known as Erica Jenkins. Before trial began, the district court explained to would-be jurors that Prestige was formerly known as Erica Jenkins. Multiple witnesses at trial—including Prestige—later reiterated this fact. Given these circumstances, we are unconvinced that a lawyer with ordinary training and skill would have lodged a pretrial motion or objections to prevent the jury from hearing Prestige's former name, based on the theory that it would confuse the jury. See *State v. Wilson*, 320 Neb. 728, 30

N.W.3d 165 (2026). We therefore conclude that Prestige has failed to show ineffective assistance of counsel relating to her former name.

V. CONCLUSION

For the reasons stated above, Prestige's claims of district court error and ineffective assistance of counsel are unavailing. We affirm.

Affirmed.

Bergevin, J., not participating.