

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MICHAEL ANTHONY MCGOWAN, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 71071

FILED

SEP 13 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Michael Anthony McGowan, Jr., appeals from a judgment of conviction entered pursuant to a jury verdict of battery resulting in substantial bodily harm constituting domestic violence. Eighth Judicial District Court, Clark County; Jessie Elizabeth Walsh, Judge.

McGowan claims insufficient evidence supports his conviction because the State failed to prove the victim suffered substantial bodily harm. We review the evidence in the light most favorable to the prosecution and determine whether "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979).

The victim testified McGowan struck her more than once and she suffered a facial fracture and the loss of a tooth. We conclude a rational juror could reasonably infer from this testimony the victim suffered substantial bodily harm.¹ See NRS 0.060; *Gibson v. State*, 95 Nev. 99, 100, 590 P.2d 158, 159 (1979). It is for the jury to determine the weight and

¹We note the jury was able to consider the victim's medical records during its deliberations.

credibility to give conflicting testimony, and the jury's verdict will not be disturbed on appeal where, as here, sufficient evidence supports its verdict. *See Bolden v. State*, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981).

McGowan also claims the district court erred by admitting the victim's medical records into evidence because the State did not provide him with an authenticated copy of the records before the trial and it failed to endorse the records custodian as a witness. "We review a district court's decision to admit or exclude evidence for an abuse of discretion." *McLellan v. State*, 124 Nev. 263, 267, 182 P.3d 106, 109 (2008).

The district court heard argument about the medical records on the first day of trial. McGowan claimed the State had not endorsed the record custodian as a witness and the records were not admissible under NRS 52.325. The State argued it had endorsed two of the medical doctors who had treated the victim. The doctors had not responded to subpoenas, telephone calls, or the State's investigator. Therefore, the State intended to use the victim's medical records to corroborate the victim's testimony. The State further argued its failure to endorse the records custodian was not an act of bad faith and McGowan was not prejudiced by the admission of the medical records because he received the exact same records shortly after the case was initiated.


The district court ruled if the record custodian showed up for trial with the medical records and authenticated the records, then the records could be admitted into evidence along with the diagnoses made by the doctors and the statements made by the victim for purposes of the diagnoses and treatment. Thereafter, an employee of Centennial Hills Hospital testified she was the custodian of records, she had delivered the complete medical records of the victim, the records were made at or near


the time of the victim's treatment, the records were kept in the regular course of business, and she had provided an Affidavit of Custodian of Records with this information.

We conclude McGowan has not demonstrated he was entitled to authenticated copies of the medical records before the trial, McGowan was not prejudiced by the State's failure to endorse the records custodian, and the district court did not err by admitting the victim's medical records into evidence.² See NRS 52.260; NRS 52.325; NRS 174.235; *Jones v. State*, 113 Nev. 454, 473, 937 P.2d 55, 67 (1997). Having concluded McGowan is not entitled to relief, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

²The only requirement for properly authenticating medical records is "an affidavit signed by the custodian of the medical records verifying that it is a true and complete reproduction of the original medical record and that the original record was made at or near the time of the act, event, condition, opinion or diagnosis by or from information transmitted by a person with knowledge in the course of a regularly conducted activity." NRS 52.325(2).

cc: Chief Judge, Eighth Judicial District Court
Eighth Judicial District Court, Dept. Ten
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk