

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KEVIN TROY DAVIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 73268

FILED

JUL 31 2018

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

ORDER OF AFFIRMANCE

Kevin Troy Davis appeals from a judgment of conviction, entered pursuant to a jury verdict, of domestic violence causing substantial bodily harm. Second Judicial District Court, Washoe County; A. William Maupin, Senior Justice.

Davis argues the district court erred by giving a reasonable doubt instruction because the instruction impermissibly reduced the State's burden of proof. The district court gave a verbatim instruction to the one required in NRS 175.211. Davis did not object to the giving of this instruction and he has failed to demonstrate plain error on appeal. See *Berry v. State*, 125 Nev. 265, 282-83, 212 P.3d 1085, 1097 (2009) (reviewing unpreserved challenges to jury instructions for plain error), *abrogated on other grounds by State v. Castenada*, 126 Nev. 478, 245 P.3d 550 (2010); *Valdez v. State*, 124 Nev. 1172, 1190, 196 P.3d 465, 477 (2008) (discussing plain-error review). The Nevada Supreme Court has repeatedly upheld the constitutionality of that instruction. *Garcia v. State*, 121 Nev. 327, 340 & n.26, 113 P.3d 836, 844 & n.26 (2005).

Davis also argues that because the reasonable doubt instruction given reduced the State's burden, the State did not prove Davis committed

the domestic battery causing substantial bodily harm beyond a reasonable doubt. However, as stated above, Davis fails to demonstrate error with regard to the giving of this instruction.


To the extent Davis contends the evidence presented at trial was insufficient to support the jury's finding of guilt, we disagree. When reviewing a challenge to the sufficiency of the evidence, 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); accord *Mitchell v. State*, 124 Nev. 807, 816, 192 P.3d 721, 727 (2008). "[I]t is the function of the jury, 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). And circumstantial evidence is enough to support a conviction. *Lisle v. State*, 113 Nev. 679, 691-92, 941 P.2d 459, 467-68 (1997), holding limited on other grounds by *Middleton v. State*, 114 Nev. 1089, 1117 n.9, 968 P.2d 296, 315 n.9 (1998).


Davis and his wife spent most of the day of the incident drinking and periodically arguing. At some point, Davis' wife locked him out of the apartment, so he kicked the door in. When she left the apartment, he followed her out, grabbed her by the neck, threw her into the elevator door, and kicked her in the chest. Davis broke her clavicle and she had to have surgery to repair it. It still causes her lingering pain and it has affected her ability to do her job.


The jury could reasonably infer from the evidence presented that Davis committed domestic battery causing substantial bodily harm. See NRS 33.018; NRS 200.481(2)(b); NRS 200.485. It is for the jury to determine the weight and credibility to give conflicting testimony, and the

jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict. *See Bolden v. State*, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981); *see also McNair v. State*, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992). Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Chief Judge, Second Judicial District Court
Hon. A. William Maupin, Senior Justice
Law Office of Thomas L. Qualls, Ltd.
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk