

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CITY OF LAS VEGAS,  
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK; AND THE HONORABLE ROB  
BARE, DISTRICT JUDGE,

Respondents,

and

ELLA MESHKIN,  
Real Party in Interest.

No. 73435-COA

**FILED**

MAR 14 2019

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

*ORDER GRANTING PETITION*

This is an original petition for a writ of mandamus. Petitioner City of Las Vegas (City) seeks an order directing the respondent district court to vacate its order reversing a misdemeanor conviction stemming from a municipal court proceeding.

City filed this original writ petition challenging the district court's decision to reverse the real party in interest Ella Meshkin's conviction of battery constituting domestic violence. City argues the district court demonstrated a manifest abuse of discretion or an arbitrary and capricious exercise of discretion by reversing Meshkin's conviction because the district court did not apply the correct standard of review for a sufficiency of the evidence claim. City contends the district court did not view the evidence in a light most favorable to the prosecution, but rather viewed it favorably toward Meshkin.

This court has the discretion as to whether to consider a petition for a writ of mandamus. *City of Las Vegas v. Eighth Judicial Dist. Court*

(*Kamide*), 133 Nev. \_\_\_, \_\_\_ 405 P.3d 110, 112 (2017). This court will generally not issue a writ of mandamus “if the petitioner has a plain, speedy, and adequate remedy at law, but there is no such remedy for the City in this matter as district courts are granted exclusive final appellate jurisdiction in cases arising in Justices Courts and such other inferior tribunals.” *Id.* (internal citation and quotation marks omitted). This court will generally decline “to entertain [writ petitions] that request review of a decision of the district court acting in its appellate capacity,” as this court is “mindful of undermin[ing] the finality of the district court’s appellate jurisdiction.” *Id.* (internal quotation marks omitted). However, this court will entertain such a petition “where the district court has exercised its discretion in an arbitrary or capricious manner.” *Id.* (internal quotation marks omitted). “A decision is arbitrary or capricious when it is founded on prejudice or preference rather than on reason, or is contrary to the evidence or established rules of law.” *Id.* (internal quotation marks omitted).

We elect to exercise our discretion and consider whether the district court’s appellate decision in this case was contrary to the evidence and established rules of law. As we explain below, the district court did not consider Meshkin’s appeal under the appropriate standard of review.

City alleged Meshkin battered her ex-husband Cyrus Zarganj and charged Meshkin with battery constituting domestic violence. During the bench trial in municipal court, Zarganj testified that, although they were divorced, he resided in Meshkin’s condominium and Meshkin became enraged when he discussed altering his cell phone plan. He testified she hit and scratched him, and in an effort to stop the attack, he picked up their one-year-old child and retreated to a bedroom. He further testified that in the bedroom he turned on a video recording device in order to have a

recording in case she continued to harm him. He stated that Meshkin entered the bedroom, struck him as he held the child, and then took the child away from him. He testified Meshkin set the child down and then struck him additional times. The City also entered into evidence the video recording depicting the bedroom altercation and photographs depicting Zarganj's injuries.

In contrast, Meshkin testified Zarganj did not reside at the condominium and that he had attacked her first. She also stated she had hit him during the portion of the altercation that occurred in the bedroom order to get him to release the child and to force him to leave the condominium after she had retrieved the child. Meshkin explained they were involved in a contentious family court proceeding and she struck Zarganj while he held the child out of fear that he would abscond with the child.

After the presentation of the evidence, the municipal court found Meshkin guilty. The municipal court stated that it believed Zarganj had set up the video recording in order to aid with the family court proceeding, found Meshkin could use a reasonable amount of force to get Zarganj to release the child, but that her use of force after he had released the child was not reasonable under these circumstances.

Meshkin appealed to the district court, alleging there was insufficient evidence to support her conviction. Specifically, Meshkin asserted she used justifiable force in the defense of her child from a kidnapping and to repel a trespasser from her residence.

The district court conducted a hearing concerning Meshkin's appeal. During the hearing, the district court noted the municipal court did not make a finding as to whether Zarganj actually resided in the

condominium and whether Meshkin could use force to repel him as a trespasser. The district court also explained that it believed Meshkin's conviction to be unfair when Zarganj apparently orchestrated the event and informed the parties it would have found Meshkin not guilty had it been the trier of fact. Following the hearing, the district court issued a written order finding the municipal court had erred by convicting Meshkin. The district court concluded the municipal court should not have found Meshkin's right to use force ceased when she retrieved the child from Zarganj and placed the child down. The district court found the threat from Zarganj was ongoing as the child was still in the room and Meshkin's use of force was justifiable under the circumstances presented by the exchange of the child. The district court also found Zarganj was trespassing in the condominium, and Meshkin could use force to defend against a trespasser. The district court therefore ordered Meshkin's conviction to be reversed.

Meshkin's claim on appeal was whether the City presented sufficient evidence to support her conviction. Therefore, the relevant inquiry was "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Mitchell v. State*, 124 Nev. 807, 816, 192 P.3d 721, 727 (2008) (internal quotation marks omitted). When evaluating whether a conviction was based upon sufficient evidence, an appellate court "will not reweigh the evidence or evaluate the credibility of witnesses because that is the responsibility of the trier of fact." *Id.*

A review of the district court hearing and the order reversing Meshkin's conviction demonstrates the district court's decision was contrary to the evidence and the established rules of law. *See Kamide*, 133 Nev. at \_\_\_, 405 P.3d at 112. The record before this court demonstrates that


at the hearing and in its written order, the district court did not view the evidence presented at the trial in the light most favorable to the prosecution. Instead, the district court reevaluated Meshkin's use of force in a light favorable to her, but such a reevaluation of the evidence was improper. *See Mitchell*, 124 Nev. at 816, 192 P.3d at 727. In addition, whether Zarganj was trespassing was a fact in dispute at trial, yet the district court found Meshkin's testimony that Zarganj did not reside at the condominium to be credible. Such a finding on appeal was not appropriate. *See id.*

Rather, when viewing the evidence produced at trial in the light most favorable to the prosecution, there was sufficient evidence to support the municipal court's finding of guilt. *See* NRS 33.018(1)(a); NRS 200.481(1)(a); NRS 200.485(1). The record before this court demonstrates that testimony and video evidence show Meshkin retrieved the child from Zarganj, placed the child down, and struck Zarganj. The municipal court found the facts as presented at trial demonstrated Meshkin was not justified in using force against Zarganj after she retrieved the child and placed the child down and, therefore, Meshkin struck Zarganj in an unlawful manner.

Because the evidence was sufficient to support the municipal court's finding of guilt, the district court erred by reevaluating the evidence and substituting its own findings in place of those made by the municipal court. Therefore, the district court arbitrarily and capriciously reversed the municipal court's finding of guilt. Accordingly, we

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the

district court to vacate its order reversing Meshkin's conviction and enter an appropriate disposition of Meshkin's appeal consistent with this order.<sup>1</sup>

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Bulla

cc: Hon. Rob Bare, District Judge  
Las Vegas City Attorney  
Las Vegas City Attorney/Criminal Division  
Goodman Law Group  
Eighth District Court Clerk

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<sup>1</sup>In light of our conclusion that City is entitled to relief, we need not consider its assertion that the district court erred by finding Meshkin had properly preserved for appeal a claim that she was justified to use force to expel a trespasser.