


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DEANDRE PAUL MCDOWELL, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 78934-COA

FILED

OCT 21 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Deandre Paul McDowell, Jr., appeals from a judgment of conviction, pursuant to a jury verdict and a guilty plea, of battery constituting domestic violence, coercion, assault, and ownership or possession of a firearm by a prohibited person. Eighth Judicial District Court, Clark County; Eric Johnson, Judge.

During a domestic dispute, McDowell assaulted and battered his live-in girlfriend, Shantae Gauff.¹ McDowell also confined Gauff to their apartment for approximately five hours through the use of physical restraint and threats of force and by depriving her of her car keys. Eventually, McDowell passed out from intoxication, enabling Gauff to retrieve her spare car keys and leave the apartment. Gauff then met her sister at nearby location. Once McDowell realized that Gauff was gone, he called her cellphone and threatened to burn down the apartment if she did not return immediately. When Gauff and her sister returned to the apartment, it appeared to be on fire, so Gauff's sister promptly called 9-1-1. Once law enforcement and the fire department arrived, Gauff gave a detailed recorded statement to Detective Laura Coates, explaining that McDowell attacked her, threatened her, and prevented her from leaving the

¹We do not recount the facts except as necessary to our disposition.

apartment from approximately 5:30 a.m. to 10:30 a.m. Gauff also informed Detective Coates that McDowell was in possession of a handgun during the incident.

The State charged McDowell with battery constituting domestic violence, second degree kidnapping with use of a deadly weapon, coercion, assault with a deadly weapon, preventing or dissuading a witness or victim from reporting a crime or commencing prosecution, first degree arson, and ownership or possession of a firearm by a prohibited person. Because Gauff became uncooperative and unwilling to testify at trial, the State sought a material witness warrant to ensure her presence and testimony. The district court issued the warrant, and Gauff ultimately testified at trial. Gauff's testimony, however, was inconsistent with her recorded statement. As a result, the State moved to admit Gauff's prior inconsistent statements as substantive evidence and for impeachment, which the district court permitted. The State also presented testimony from, among others, Gauff's sister, Detective Coates, and first responders. After a five-day trial, the jury returned a guilty verdict on the counts of battery constituting domestic violence, coercion, and assault. The district court sentenced McDowell to an aggregate term of 42 to 144 months in prison with 265 days' credit for time served.

On appeal, McDowell challenges *only* his coercion conviction, arguing that the State presented insufficient evidence to convict him of felony coercion. Specifically, he contends that because Gauff had a spare set of car keys, and because she eventually left the apartment using those keys, he could not have "successfully coerced her" into staying in the apartment. We disagree and therefore affirm the judgment of conviction.

When reviewing the sufficiency of the evidence, this court must decide “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.” *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *see also Origel-Candido v. State*, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998). It is the jury’s role, not the reviewing court’s, “to assess the weight of the evidence and determine the credibility of witnesses.” *McNair v. State*, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992). Thus, “a verdict supported by substantial evidence will not be disturbed by a reviewing court.” *Id.* Furthermore, “circumstantial evidence alone may support a conviction.” *Hernandez v. State*, 118 Nev. 513, 531, 50 P.3d 1100, 1112 (2002).

A person is guilty of coercion if he uses violence or inflicts injury upon another person, the person’s property, or the person’s family, “[d]eprive[s] the person of any tool, implement or clothing, or hinder[s] the person in the use thereof,” or “[a]ttempt[s] to intimidate the person by threats or force” with “the intent to compel [that person] to do or abstain from doing an act which the other person has a right to do or abstain from doing.” NRS 207.190(1)(a)-(c). Coercion is felonious “[w]here physical force or the immediate threat of physical force is used” against the victim. NRS 207.190(2)(a); *see also Guerrina v. State*, 134 Nev. 338, 346, 419 P.3d 705, 712 (2018). “Whether the threat was ‘immediate’ depends on the ‘viewpoint of a reasonable person facing the same threat.’” *Guerrina*, 134 Nev. at 346, 419 P.3d at 712 (quoting *Santana v. State*, 122 Nev. 1458, 1459, 148 P.3d 741, 742 (2006)).

At trial, Detective Coates testified that she interviewed Gauff the afternoon of the incident and that she recorded the interview using a

portable recording device. Because Gauff's trial testimony was inconsistent with the statement she provided to Detective Coates previously, the district court admitted the recording into evidence, without objection, and the State played the recording for the jury.² *Crowley v. State*, 120 Nev. 30, 35, 83 P.3d 282, 286 (2004) (holding that pursuant to NRS 51.035(2)(a) a prior inconsistent statement "is not hearsay and may be admitted both substantively and for impeachment"); *see also* NRS 50.135(2)(a)-(b) (permitting extrinsic evidence of a prior inconsistent statement).

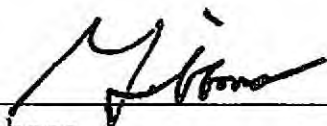
In the portions of the interview that the prosecution played for the jury, Gauff told Detective Coates that she awoke to McDowell hitting her in the face; that he kept hitting her over and over; that he choked her and then pinned her up against a bookshelf; that McDowell had her car keys and a gun in his pocket; that he blocked the front door of the apartment and would not let her leave; that he forced her to sit on the couch with him where he physically restrained her with his legs; and that she was trapped in the apartment for about five hours. Gauff stated further that McDowell threatened to hurt her family if she left the apartment or called the police. Gauff also told Detective Coates that once she finally escaped from the apartment, McDowell called her cellphone, threatening to set the apartment on fire unless she returned home immediately, which he allegedly attempted to do.


Thus, the record demonstrates that the State presented evidence in support of each element of coercion. Specifically, that McDowell

²McDowell argued that he believed some of Gauff's statements were not inconsistent with Gauff's trial testimony; however, he did not object to the admissibility of the recorded statement or the use of the inconsistent statements generally.

used physical force, as well as threats of force, against Gauff, that he deprived her of her car keys, and that he used those means to detain Gauff in their apartment for approximately five hours, even though she had the lawful right to leave. Moreover, that Gauff eventually left the apartment using her spare car keys does not negate the fact that she was coerced into staying in the first place, and McDowell has failed to present any authority in support of such a proposition. *Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (“It is appellant’s responsibility to present relevant authority and cogent argument.”). Therefore, we conclude that “[a] rational trier of fact could have found the essential elements of [felony coercion] beyond a reasonable doubt.” *Jackson*, 443 U.S. at 319. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Eric Johnson, District Judge
Law Office of Julian Gregory, L.L.C.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk