

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CHAD MCCOVERY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 85340-COA

FILED

NOV 27 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *Eliza*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Chad McCovery appeals from a judgment of conviction, pursuant to a jury verdict, of one count of battery constituting domestic violence, a category B felony, and one count of battery constituting domestic violence—strangulation, a category C felony. Eighth Judicial District Court, Clark County; Elham Roohani, Judge.

McCovery and Belinda Tyler began dating in 2018 and have a child in common.¹ In March 2021, McCovery and Tyler spoke on the phone and, during the call, McCovery expressed displeasure with Tyler for not spending enough time with him. The two made plans to meet at a restaurant with their daughter the next morning.

The following morning, Tyler drove with their daughter to McCovery's residence, but the door was locked, and McCovery did not answer Tyler's phone calls. Tyler left and took their daughter to a nearby store to pass the time while waiting for McCovery to return. While they were at the store, McCovery telephoned Tyler to ask where she was, and he sounded "frustrated" that Tyler was not at his residence.

Tyler returned with their daughter to McCovery's home. McCovery asked Tyler, "are we going to have a good day today?" In

¹We recount the facts only as necessary for our disposition.

response, Tyler waved her hand up and shook her head in an effort to “knock out the question.” At that point, McCovery “took his forearm around [her] throat and slammed [her] to the floor.” He strangled her while she was on the floor for approximately 30 seconds. During this time, Tyler was struggling to breathe, her vision became blurry “like a TV with no signal,” and her ears popped. McCovery briefly released Tyler and began shouting at her. Then, according to Tyler, McCovery came up behind her again and choked her for another 15-30 seconds, during which time Tyler’s nose began to bleed, her ears were ringing, her vision stayed blurry, and she continued to have difficulty breathing.

As Tyler was leaving McCovery’s home, McCovery instructed her to “walk out like nothing happened” and threatened to harm her if she called the police or “made anything look not normal” while exiting the home. Then, Tyler and their daughter drove to Tyler’s mother’s residence. On the way, McCovery attempted to call her “more than twenty times.” Tyler called 9-1-1 while driving and made contact with Henderson Police Department Officer Douglas Arnold. However, Tyler was unable to explain the details of what had happened and disconnected the call. She continued driving to her mother’s home.

Officer Arnold eventually contacted Tyler at her mother’s home by using a different phone number. Officer Arnold testified that Tyler was “extremely emotional” on the call. After speaking to Tyler, Officer Arnold contacted LVMPD, which dispatched Officer Matthew Kehrer to Tyler’s location.

Approximately 45 minutes later, Officer Kehrer and his partner met with Tyler. Officer Kehrer testified that Tyler was “visibly emotional and upset” at this time. Officer Kehrer’s partner took photos of Tyler which

were later admitted into evidence at trial. Tyler declined medical assistance and a strangulation examination.

The State filed an amended information charging McCoverly with one count of felony battery constituting domestic violence, due to McCoverly's two prior convictions for battery domestic violence within the past seven years, and two counts of battery constituting domestic violence—strangulation.

A two-day jury trial was held in March 2022. During the trial, Tyler testified about the incident with McCoverly, and Officers Arnold and Kehrer testified about their respective investigations. The State also introduced body camera footage of Officer Kehrer's interaction with Tyler, a recording of Tyler's initial 9-1-1 call, and photos of Tyler's injuries. Officer Kehrer described the photos and testified that they appeared to show scratches, bruising, and reddening on Tyler's neck, shoulders, and nose, as well as scratches and swelling on her nose and right eye. The jury found McCoverly guilty of one count of battery constituting domestic violence and one count of battery constituting domestic violence—strangulation, but the jury acquitted McCoverly of the second charged strangulation. In August, the district court sentenced McCoverly to 12 to 30 months in prison on each count, to run concurrently. This appeal followed.

On appeal, McCoverly argues only that the evidence presented at trial was insufficient to support the convictions. McCoverly contends that there was no evidence presented at trial to corroborate Tyler's claim that he strangled or battered her. McCoverly further contends that Tyler's behavior on the day of the incident "belied her claims, thereby causing reasonable doubt."

In reviewing the sufficiency of the evidence, this court views the evidence in the light most favorable to the prosecution to determine whether “any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *McNair v. State*, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992) (emphasis omitted) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). “[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).

Here, we conclude that McCovery’s convictions were supported by substantial evidence. To obtain a conviction for battery constituting domestic violence, the prosecution had to show that McCovery committed a battery against a person with whom he has had, or is having, a dating relationship or against a person with whom McCovery has a child in common. NRS 33.018(1).² “Battery” is any willful and unlawful use of force or violence upon the person of another. NRS 200.481(1)(a). “Strangulation” is statutorily defined in NRS 200.481(1)(i) and includes “intentionally impeding the normal breathing or circulation of the blood by applying pressure on the throat or neck.”³

²The parties do not dispute that McCovery and Tyler had been in a dating relationship or that they shared a child in common.

³Effective June 12, 2023, the Nevada Legislature amended the definition of strangulation in NRS 200.481(1)(i), which was renumbered and is now NRS 200.481(1)(j), to define strangulation, in pertinent part, as “intentionally applying sufficient pressure to another person to make it difficult or impossible for the person to breathe, including, without limitation, applying pressure to the neck, throat or windpipe that may prevent or hinder breathing or reduce the intake of air.” 2023 Nev. Stat., ch. 373, § 14, at 2005 (enacting S.B. 412, 82nd Leg. (Nev. 2023)). For clarity,

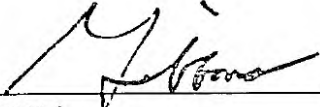
Tyler testified that McCoverly put his forearm around her throat and slammed her to the floor, which established battery constituting domestic violence. *See* NRS 200.481(1)(a). McCoverly then choked Tyler while she was on the floor, causing her to have difficulty breathing and blurry vision, which established strangulation. *See* NRS 200.481(1)(i). Tyler reported these incidents to the police, who took photographs of her injuries. Officer Kehrer testified that these photos appeared to show bruises, scratches, and reddening on several areas of Tyler's body, including on her neck and shoulders. Therefore, McCoverly's convictions for battery constituting domestic violence and battery constituting domestic violence—strangulation were supported by substantial evidence.

We reject McCoverly's argument that Tyler's testimony alone was insufficient to support the convictions. When viewed in the light most favorable to the prosecution, Tyler's testimony regarding McCoverly's actions is sufficient to permit a rational jury to find the elements of the crimes beyond a reasonable doubt. *McNair*, 108 Nev. at 56, 825 P.2d at 573. While McCoverly argues that Tyler's testimony is not credible because she did not immediately contact law enforcement or report to the police station, it is not the function of this court to reweigh credibility or evidence on appeal. *See Walker*, 116 Nev. at 676, 6 P.3d at 481. Further, though McCoverly suggests that his conviction should be overturned because Tyler did not receive a strangulation exam, he does not cogently argue that he could not be convicted absent this evidence. *See Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (explaining that this court need not consider

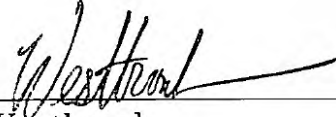
we cite to the pre-amendment version of the statute, which was the version in effect when McCoverly was found guilty.

an appellant's argument that is not cogently argued or lacks the support of relevant authority). Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Jerry A. Wiese, Chief Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk