

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANTHONY JON BUCHER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 86150-COA

FILED

JAN 19 2024

ORDER OF AFFIRMANCE

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

Anthony Jon Bucher appeals from a judgment of conviction, pursuant to a jury verdict, of aggravated stalking. Third Judicial District Court, Lyon County; John Schlegelmilch, Judge.

Jennifer Nugent called 9-1-1, alleging that her ex-boyfriend, Bucher, had been threatening her and was at her front door and she believed he was going to kill himself.¹ Nugent told police that, after sending her threatening text messages all day, including one in which Bucher stated he would “blow his head off” on her front porch, Bucher went to her residence uninvited and chased her down the street after she ran out through the back door. Deputies with the Lyon County Sheriff’s Office were dispatched and located Nugent hiding at a neighbor’s residence. Nugent provided deputies with numerous text messages Bucher sent to her containing threats of violence towards Nugent, threats to kill himself, and threats to find her.

Deputies located Bucher outside of Nugent’s residence and took him into custody. At the time he was arrested, deputies found three cell phones in Bucher’s possession. After being transported to the Lyon County Jail, Bucher requested access to one of his cell phones from which he

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

obtained Nugent's number and attempted to contact her from the telephone in his holding cell. Bucher was formally charged with one count of aggravated stalking.

A month before trial, the State filed a motion seeking to admit evidence that Bucher was convicted of stalking in Yolo County, California, in December 2018. The State argued that the prior conviction was relevant for purposes other than to show a propensity to commit crimes or bad acts; specifically, that the evidence was being introduced to demonstrate that Bucher was the sender of the threatening texts that referenced his prior conviction for stalking (i.e., to prove identity); to prove an absence of mistake or accident; and to prove that Nugent's fear of Bucher was heightened and reasonable due to her knowledge of Bucher's past conviction for stalking, which was necessary to help meet the statutory elements of stalking and aggravated stalking. *See* NRS 200.575(1), (3). Bucher argued that the State failed to overcome the presumption that his prior conviction was inadmissible because it was not relevant, and because its probative value was substantially outweighed by the danger of unfair prejudice, and that the State thus failed to meet its burden of proof under the bad acts admissibility test.

At the hearing on the motion, the State presented a certified copy of the prior stalking conviction and Nugent testified that she was in fear for her life, and that her fear was intensified by text messages she received from Bucher indicating that he had been previously convicted of stalking. The district court found that Nugent's testimony about the prior conviction, as stated in the text messages she received from Bucher and her reaction, could be introduced into evidence. The court, however, would not publish the certified copy of the conviction to the jury and would issue a limiting instruction explaining that Nugent's knowledge of the conviction

could only be considered in evaluating whether she feared Bucher and whether a reasonable person would feel that way—elements of the charged crime.

At the beginning of Nugent's testimony at trial, after she identified Bucher in the courtroom, the district court gave the jury a limiting instruction explaining that the testimony "of other collateral acts of the defendant" which they were about to hear "may not be considered by you to prove the character of the defendant in order to show that the defendant acted in conformity therewith." But rather, the court explained, the evidence of the prior conviction was "to be used and considered by you as evidence to provide the jury with the context of the alleged conduct as reasonable people, and the victim's state of mind during the commission of the acts alleged."

During Nugent's testimony, the State presented the threatening text messages that Bucher had sent to Nugent in the days and hours leading to the night of the arrest—including text messages in which Bucher discussed his prior conviction for stalking. Nugent testified that when she began to receive an increase in messages that were darker and intimidating, knowledge of Bucher's prior conviction increased her fear for her life. She testified that the flurry of text messages culminated in Bucher showing up at her residence unexpectedly. When Bucher arrived at her residence, Nugent's front door doorbell camera system alerted her, and it began recording.

The State played the video footage to the jury during Nugent's testimony. In the video, Nugent can be heard asking Bucher what he wanted and telling him to leave through the camera's built-in speaker. Bucher refused to leave, and he appeared to be reaching for the doorknob while telling Nugent to open the door. Nugent testified that she saw an

object in Bucher's hand, which she believed could have been a weapon, or maybe a flare gun.² She testified that she was in fear that Bucher would hurt or kill her, so she called 9-1-1, then ran out the back door when Bucher refused to leave. Nugent testified that she saw Bucher hopping the fence from the front into her backyard as she was running towards the fence separating her property from her next-door neighbor's. She ran to her neighbor's house and knocked on the back door, but no one answered. Nugent testified that she ran another mile or two in the dark until she came upon a group of people sitting around a bonfire, where sheriff's deputies later located her. Bucher presented no evidence.

The jury found Bucher guilty of aggravated stalking. After the clerk read the verdict, the district court thanked the jurors for their service, provided final instructions, and advised them that they were excused. The court remanded Bucher to the custody of the sheriff's office to await sentencing. At that point, as the excused jurors began to privately exit the courtroom through the jury room, Bucher turned and charged towards the public entrance and through the courtroom doors, attempting to flee and evade deputies. This caused a commotion in the courtroom and Bucher later claimed "hearing the jury foreperson make a statement along the lines of, 'Does that happen often? That's how you know he was guilty.'" Bucher was taken into custody in the hallway of the courthouse.

At the sentencing hearing, which was approximately two months later, Bucher made an oral request to continue the sentencing so he could file a motion for a new trial and to allow the district court more time

²It was later discovered that the object in Bucher's hand was, in fact, an artificial rose, which police found on Nugent's doorstep when they arrived.

to consider letters he had submitted in support of mitigation. The district court continued the sentencing hearing but did not address whether Bucher could have additional time to file his motion. Bucher filed his motion approximately three weeks later. In his motion, Bucher requested that the verdict be set aside and a new trial be granted based on five grounds: (1) his trial counsel was ineffective for refusing to allow Bucher to determine which witnesses to call and what arguments to make, (2) prosecutorial misconduct occurred because the prosecutor "should have known the alleged victim was not being truthful," (3) he should have been charged with the crime of stalking instead of aggravated stalking, (4) judicial misconduct occurred because the judge should have seen "that the case had no merit and that the alleged victim was not telling the truth," and (5) that juror misconduct occurred due to disparaging comments about Bucher that Bucher's girlfriend allegedly heard in the courthouse's "parking lot immediately after trial."³

The district court denied Bucher's motion on the grounds that Bucher did not comply with NRS 176.515(4) because he failed to file the motion or request an extension of time in which to file the motion within seven days of the verdict. A judgment of conviction was entered shortly thereafter.

Bucher advances three arguments on appeal. First, he contends that the district court abused its discretion in admitting evidence of his previous stalking conviction because its prejudicial effect on the jury

³After trial ended, Bucher's girlfriend purportedly overheard a phone conversation in the courthouse's parking lot in which the jury foreperson stated that Bucher "seemed guilty all along." Bucher's girlfriend did not provide testimony or an affidavit stating she overheard this conversation.

substantially outweighed its probative value. Second, he avers that the State failed to produce sufficient evidence to support a conviction; specifically, he argues that the State's witnesses lacked credibility. And third, he argues that the district court abused its discretion by denying his motion to vacate the judgment and grant a new trial after he presented evidence of juror misconduct.⁴

The district court did not abuse its discretion in admitting evidence of Bucher's prior stalking conviction for nonpropensity purposes

Bucher contends that the district court abused its discretion when it admitted evidence of his prior stalking conviction because its probative value was substantially outweighed by its prejudicial effect on the presumption of innocence. The State argues that the district court properly analyzed whether to admit the evidence and made findings that the evidence of the prior conviction was relevant and being offered only for nonpropensity purposes, and the probative value was not substantially outweighed by the danger of unfair prejudice.

This court reviews the district court's decision to admit evidence of prior bad acts for a manifest abuse of discretion. *Bigpond v. State*, 128 Nev. 108, 117, 270 P.3d 1244, 1250 (2012) (citing *Ledbetter v. State*, 122 Nev. 252, 259, 129 P.3d 671, 676 (2006)). NRS 48.045(2) prohibits the

⁴Bucher also seeks relief from the district court's order denying his motion for a new trial based on insufficient evidence to support his conviction. However, Bucher fails to cogently argue how the district court abused its discretion in denying this motion; therefore, this court need not address it, and as explained hereinafter, sufficient evidence supports the verdict. See *Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (explaining that this court need not consider an appellant's argument that is not cogently argued or lacks the support of relevant authority).

introduction of evidence of other crimes, wrongs, or acts as proof of a person's character, but allows such evidence for other purposes including to prove motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. *See id.* at 110, 270 P.3d at 1245.

In order to overcome the presumption of inadmissibility, the prosecutor must request a hearing and establish that: (1) the prior bad act is relevant to the crime charged and for a purpose other than proving the defendant's propensity, (2) the act is proven by clear and convincing evidence, and (3) the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice.

Id. at 117, 270 P.3d at 1250. “[T]he trial court must give a limiting instruction explaining the purposes for which the evidence [of a prior bad act] is admitted immediately prior to its admission and a general instruction at the end of trial reminding the jurors that certain evidence may be used only for limited purposes.” *McLellan v. State*, 124 Nev. 263, 270, 182 P.3d 106, 111 (2008).

Here, the State requested a pretrial hearing pursuant to *Petrocelli v. State*, 101 Nev. 46, 692 P.2d 503 (1985), *superseded by statute in part as stated in Thomas v. State*, 120 Nev. 37, 44-45, 83 P.3d 818, 823 (2004). At the hearing, the district court heard from Nugent, who testified that knowledge of Bucher's prior conviction that Bucher described in his threatening text messages to her had a direct bearing on her state of mind, leaving her more afraid than she otherwise would have been when she began receiving frequent, threatening texts from Bucher. The district court concluded that the prior conviction was relevant as evidence as to whether Nugent felt terrorized, harassed, or fearful, and whether a reasonable person under similar circumstances would feel intimidated, harassed,

threatened, or fearful because the statute requires proof of both an objective and a subjective fear in the victim. With the State providing a certified copy of the conviction, the prior conviction was proven by clear and convincing evidence.

Bucher only challenges, and therefore we need only discuss, the third prong of the test under *Bigpond*. The district court found that the probative value of Bucher's prior act of stalking was not substantially outweighed by the danger of unfair prejudice. However, the court restricted this evidence to testimony regarding how Bucher's discussion of the conviction via text messages affected Nugent's state of mind and the state of mind of a reasonable person under similar circumstances. The court ruled that the judgment of conviction itself would not be published to the jury. Thus, no witnesses testified about the facts of the prior conviction, only its existence as described by Nugent during her testimony and Bucher from his text messages directed to her. Further, before the existence of Bucher's prior conviction was described in Nugent's testimony, the district court gave a limiting instruction to the jury in accordance with *McLellan*, so that the jury would understand that the evidence was not being admitted for propensity purposes, but rather for the permissible purpose of showing that Bucher's discussion of his past conviction increased Nugent's fear of Bucher's actions as he began to send her increasingly threatening text messages, and the fear a reasonable person would feel under similar circumstances. Thus, the district court properly provided the jury with a limiting instruction before the evidence was introduced to the jury and later during the formal charge to the jury. See *Summers v. State*, 122 Nev. 1326, 1333-34, 148 P.3d 778, 783 (2006) (noting that the supreme court has recognized "that jurors are intellectually capable of properly following

instructions regarding the limited use of prior bad act evidence”) (citing *Tavares v. State*, 117 Nev. 725, 733, 30 P.3d 1128, 1133 (2001)).

Therefore, even though this evidence was prejudicial, it was not unfairly prejudicial because Bucher fails to show how the district court abused its discretion in admitting the testimony from Nugent that she felt more fearful because of the reference to the prior conviction by Bucher.⁵ Thus, he has not demonstrated a manifest abuse of discretion by showing that the district court unreasonably determined that the probative value was not substantially outweighed by the danger of unfair prejudice as permitted by NRS 48.045(2) and *Bigpond*.⁶ Further, the district court

⁵Although not argued by the parties, Bucher’s prior conviction was likely *res gestae* evidence that is allowed by NRS 48.035(3) because the content of the text messages contained part of the corpus of the crime (the threats) and that statute allows for the admission of the same.

⁶We note that while the record indicates the parties stipulated to the admission of 18 screenshots of text messages, none were included in the record on appeal. The trial transcript reflects that many of the threatening text messages were read during trial, which is how this court was able to review them. The text messages containing Bucher’s discussion of his prior conviction for stalking, however, were not read during trial; therefore, the context in which Bucher discussed his prior conviction in these messages to Nugent is unclear. As the appellant, Bucher has the “responsibility to provide the materials necessary for this court’s review.” *Jacobs v. State*, 91 Nev. 155, 158, 532 P.2d 1034, 1036 (1975). Because Bucher did not include these text messages in the record on appeal, this court presumes that they support the district court’s determination that their probative value was not substantially outweighed by the danger of unfair prejudice. See *Riggins v. State*, 107 Nev. 178, 182, 808 P.2d 535, 538 (1991) (“It is the responsibility of the objecting party to see that the record on appeal before the reviewing court contains the material to which they take exception. If such material is not contained in the record on appeal, the missing portions of the record are presumed to support the district court’s decision . . .”), *reversed on other grounds*, 504 U.S. 127 (1992).

limited the manner and amount of testimony about the prior conviction because witnesses neither testified about the facts of the prior case nor did the jury see the certified copy of the judgment of conviction. Thus, we conclude there is no basis for reversal on this issue.

The State presented sufficient evidence to support Bucher's conviction

Bucher argues that the State produced insufficient evidence at trial to support his conviction. Specifically, Bucher argues that the State's witnesses lacked credibility. Bucher claims that each of the State's witnesses at trial were thoroughly inconsistent and unbelievable in their demeanor, appearances, and their recollection of facts. The State contends that sufficient evidence supported the conviction and that resolving issues of credibility was a task for the jurors—not this court. We agree with the State.

“A reviewing court will not disturb a verdict on appeal if it is supported by substantial evidence.” *Moore v. State*, 122 Nev. 27, 35, 126 P.3d 508, 513 (2006). “In deciding a challenge to the sufficiency of the evidence, the reviewing court does not ‘ask itself whether it believes that the evidence at the trial established guilt beyond a reasonable doubt.’” *Alfaro v. State*, 139 Nev., Adv. Op. 24, 534 P.3d 138, 144 (2023) (emphasis omitted) (quoting *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979) (internal quotation marks omitted)). “Instead, it asks ‘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.’” *Id.* (emphasis omitted) (quoting *Jackson*, 443 U.S. at 319). When “there is conflicting testimony presented, it is for the jury to determine what weight and credibility to give to the testimony.” *Bolden v. State*, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981) (internal quotation marks omitted).

In order to prove a defendant committed aggravated stalking, the State must prove the following elements beyond a reasonable doubt: (1) the defendant, "without lawful authority," (2) "willfully or maliciously engage[d] in a course of conduct directed towards a victim," (3) "that would cause a reasonable person under similar circumstances to feel terrorized, frightened, intimidated, harassed or fearful for his or her immediate safety, or the immediate safety of a family or household member," (4) "actually cause[d] the victim to feel terrorized, frightened, intimidated, harassed, or fearful for his or her immediate safety or the immediate safety of a family or household member," and (5) "threaten[ed] the person with the intent to cause the person to be placed in reasonable fear of death or substantial bodily harm." NRS 200.575(1), (3).

Here, a review of the trial transcript reveals that there was overwhelming evidence showing that Bucher engaged in a willful course of conduct toward Nugent to the point that she reasonably feared for her life. This was evidenced by eyewitnesses, dozens of text messages, and a surveillance video of Bucher refusing to leave Nugent's house after sending her threatening text messages containing graphic threats against Nugent such as, "Fucking ignoring me [is] not the best move, goddamn you"; "[Y]ou will get what you are asking for if you keep this up"; "[I]f you turn on me, and you are, you're my mortal enemy"; "This is making things unsafe for you"; "If you don't call me, then I'll have to surprise you"; and, "You give me no choice. You should have called me. Have fun with this." The jury could reasonably find that the video and threatening text messages supported Nugent's testimony that the messages, paired with Bucher's refusal to leave her residence constituted a willful and malicious course of conduct by Bucher toward Nugent that caused her, and would cause a reasonable person, to feel fearful for their safety, and was intended by Bucher to cause

fear of substantial bodily harm or death. Additionally, testimony from the sheriff's deputy who responded to Nugent's neighbor's house supported Nugent's testimony. He testified that he observed Nugent feeling extremely distressed and frightened, as if her life was in danger.

Finally, Bucher fails to point to a specific instance in the record where there were inconsistencies in any of the witnesses' testimonies, and a careful review of the record does not show any instances of material inconsistencies. Even if there were material inconsistencies, this court presumes that the jury properly determined what weight and credibility to give to each testimony. Therefore, we conclude that the State presented sufficient evidence to convict Bucher beyond a reasonable doubt, and the evidence was in fact, overwhelming.

The district court did not abuse its discretion in denying Bucher's motion for a new trial

Bucher argues that he should have been granted a new trial, asserting that the jury foreperson's alleged remark after Bucher attempted to flee the courtroom—after the jury rendered its verdict—amounted to material juror misconduct and reflected bias. Bucher also argues that a phone conversation that his girlfriend purportedly overheard in the courthouse's parking lot—in which, again, after the rendering of the verdict, a jury foreperson stated that Bucher “seemed guilty all along”—further displayed a personal animus toward him.⁷ In contrast, the State argues that the district court appropriately found it lacked jurisdiction to hear the

⁷Neither Bucher, his girlfriend, nor the juror provided testimony or affidavits regarding the alleged statements. *See Meyer v. State*, 119 Nev. 554, 565, 80 P.3d 447, 456 (2003) (explaining that a defendant must demonstrate that jury misconduct occurred “through admissible evidence”).

motion because it was untimely filed and Bucher failed to request an extension of time to file the motion within the statutory period.

We note at the outset that Bucher neither addressed the jurisdiction issue cited by the district court in his opening brief nor filed a reply brief challenging the State's argument further explaining the district court's basis for denial (that his motion was untimely filed). Therefore, we can treat his lack of an initial argument and a response as a concession that the State's position is meritorious. *See Colton v. Murphy*, 71 Nev. 71, 72, 279 P.2d 1036, 1036 (1955) (concluding that when respondents' argument was not addressed in appellants' opening brief, and appellants declined to address the argument in a reply brief, "such lack of challenge . . . constitutes a clear concession by appellants that there is merit in respondents' position"); *Hung v. Genting Berhad*, 138 Nev., Adv. Op. 50, 513 P.3d 1285, 1289 (Ct. App. 2022) (holding that when a district court provides independent and alternative grounds to support its ruling, the appellant must properly challenge all of the grounds otherwise the ruling will be affirmed).

"[T]he district court enjoys discretion in granting or denying motions for new trials" *State v. Carroll*, 109 Nev. 975, 977, 860 P.2d 179, 180 (1993). "[T]his court will not set aside a district court[s] new trial ruling absent an abuse of discretion." *Id.* "[W]e understand that district courts hesitate to grant new trials in criminal matters and do so cautiously, only when it is absolutely necessary." *Id.* If a defendant's motion for a new trial is based on something other than a matter of law or newly discovered evidence, it must be filed within seven days after the verdict or finding of guilt or within a timeframe the district court sees fit during the seven-day period. NRS 176.515(4); *see also DePasquale v. State*, 106 Nev. 843, 851, 803 P.2d 218, 223 (1990) (upholding a district court's decision to decline to

hear a motion for a new trial filed “eight days after the conclusion of the proceedings” and “thus missed the seven day deadline imposed by NRS 176.515(4)”. “The district court cannot consider the merits of a motion for a new trial if the defendant files it late.” *See, e.g., Tom v. State*, No. 80719-COA, 2021 WL 631573, at *2 (Nev. Ct. App. Feb. 17, 2021) (Order of Affirmance) (citing *Ross v. Giacomo*, 97 Nev. 550, 553, 635 P.2d 298, 300 (1981), *abrogated on other grounds by Winston Prods. Co. v. DeBoer*, 122 Nev. 517, 134 P.3d 726 (2006)).




Here, Bucher first orally raised the issue of filing a motion for a new trial at the sentencing hearing nearly two months after the verdict was reached. The district court continued the hearing and said he could file the motion. However, the court neither extended the seven-day time limitation, nor did Bucher request an extension before the deadline to file a timely motion expired. Instead, Bucher filed the motion for a new trial well beyond the seven-day statutory deadline—even after the original sentencing date—and without ever requesting an extension of time. We note that the statute itself states that the request for an extension must be made before the seven-day period expires. *See* NRS 176.515(4); *DePasquale*, 106 Nev. at 851, 803 P.2d at 223. Thus, the district court would not have had the discretion to even grant a request for an extension at the sentencing hearing. Therefore, we conclude that the district court did not abuse its discretion by denying Bucher’s motion for a new trial.

Further, Bucher does not explain why the district court should have granted his motion based on his bare and unsupported *allegations* of juror misconduct and failure to demonstrate the probability that the purported posttrial misconduct affected the verdict. Therefore, this court need not consider the arguments. *See Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (explaining that this court need not consider an

appellant's argument that is not cogently argued or lacks the support of relevant authority); *Meyer*, 119 Nev. at 565, 80 P.3d at 456 ("The defendant must, through *admissible evidence*, demonstrate the nature of the juror misconduct and that there is a reasonable probability that it affected the verdict." (emphasis added)).

Accordingly, we

ORDER the judgment of conviction AFFIRMED.⁸

	 _____, C.J.	
	Gibbons	
 _____, J.		 _____, J.
Bulla		Westbrook

cc: Hon. John Schlegelmilch, District Judge
Walther Mansfield Brock Mayo, PLLC
Attorney General/Carson City
Lyon County District Attorney
Third District Court Clerk

⁸Insofar as Bucher has raised arguments that are not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.