

IN THE SUPREME COURT OF THE STATE OF NEVADA

TYSON EUGENE STEVE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43555

FILED

DEC 02 2004

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of assault with a deadly weapon. Seventh Judicial District Court, Eureka County; Steve L. Dobrescu, Judge. The district court sentenced appellant to a prison term of 12 to 48 months.

Appellant first contends that the evidence presented at trial was insufficient to support the jury's finding of guilt. Specifically, appellant argues that there was insufficient evidence that the victim was placed in reasonable apprehension of immediate bodily harm. Our review of the record on appeal, however, reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact.¹

In particular, we note that the evidence was uncontroverted that appellant grabbed the victim by the shirt, threatened to beat up the victim, threatened to break the victim's ribs, punched through a plastic covering on a window in order to grab the victim, and finally left the house, stating that he was going to get his gun. Appellant then returned

¹See Wilkins v. State, 96 Nev. 367, 609 P.2d 309 (1980); see also Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998).

to the house carrying a loaded rifle, at which point a third party intervened and took the rifle from him.

The jury could reasonably infer from the evidence presented that the victim was placed in apprehension of immediate bodily harm, even though appellant did not actually enter the house with the rifle. 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.²

Appellant next contends that the jury was not sufficiently instructed regarding the element of "unlawfulness." Appellant failed to object to the jury instructions regarding the elements of assault with a deadly weapon or request an instruction regarding the State's burden of proving, beyond a reasonable doubt, that appellant did not act in self-defense. Therefore, this issue has not been preserved for appeal.³

Appellant further argues that comments made by the prosecutor during closing argument regarding the presumption of innocence exacerbated the lack of adequate jury instructions. Defense counsel failed to contemporaneously object to the prosecutor's allegedly improper comments or ask for a curative instruction.⁴ Moreover, we

²See Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981); see also McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).


³See Etcheverry v. State, 107 Nev. 782, 784, 821 P.2d 350, 351 (1991) (failure to object or to request special instruction to the jury precludes appellate review).

⁴See Parker v. State, 109 Nev. 383, 391, 849 P.2d 1062, 1067 (1993) (holding that the failure to object to prosecutorial misconduct generally precludes appellate consideration).

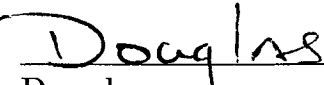
conclude that although the prosecutor's comments were improper, any error was harmless and not reversible plain error.⁵

Having considered appellant's contentions and concluded that they are either without merit or have not been preserved for appellate review, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Douglas

cc: Hon. Steve L. Dobrescu, District Judge
Lockie & Macfarlan, Ltd.
State Public Defender/Ely
Attorney General Brian Sandoval/Carson City
Eureka County District Attorney
Eureka County Clerk

⁵See NRS 178.598 ("Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded."); Rowland v. State, 118 Nev. 31, 40, 39 P.3d 114, 118-19 (2002); Gallego v. State, 117 Nev. 348, 365-66, 23 P.3d 227, 239 (2001).