

IN THE SUPREME COURT OF THE STATE OF NEVADA

DANIEL EVERETT GOODWIN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44502

FILED

OCT 21 2005

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of violation of an extended protective order, a category C felony. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge. The district court sentenced appellant Daniel Everett Goodwin to a prison term of 12-36 months, suspended execution of the sentence, and placed him on a term of probation with several conditions for an indeterminate period not to exceed two years.

First, Goodwin contends that the evidence presented at trial was insufficient to support the jury's finding that he was guilty beyond a reasonable doubt of violating an extended protective order. We disagree.

Our review of the record on appeal reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact.¹ The jury could reasonably infer from the evidence presented that Goodwin committed the crime of violation of an extended protective order.² In particular, we note that Goodwin dropped off a letter at the home of the victim's parents, while the victim was present in the home,

¹See Wilkins v. State, 96 Nev. 367, 609 P.2d 309 (1980); see also Mason v. State, 118 Nev. 554, 559, 51 P.3d 521, 524 (2002) (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979)).

²See NRS 200.591(5).

requesting that her parents keep him informed about her well-being. Goodwin also dropped off items belonging to the victim at the home of her parents. It is for the jury to determine the weight and credibility to give conflicting testimony, and the jury's verdict should not be disturbed on appeal where, as here, sufficient evidence supports the verdict.³ Moreover, we note that circumstantial evidence alone may sustain a conviction.⁴ Therefore, we conclude that the State presented sufficient evidence to sustain the conviction.

Second, Goodwin contends that the prosecutor improperly elicited prior bad act testimony thus violating his right to due process and denying him a fair trial. At one point during the State's direct examination, the victim stated that Goodwin "broke the temporary protective order before." The district court sustained defense counsel's objection, and the direct examination proceeded. Goodwin now argues that the prior bad act testimony amounted to impermissible character evidence and requires the reversal of his conviction.⁵ We disagree.

The test for determining whether a witness has referred to a defendant's "criminal history is whether 'a juror could reasonably infer from the facts presented that the accused had engaged in prior criminal activity.'"⁶ In this case, we conclude that any error was harmless beyond a reasonable doubt because the statement by the victim was not solicited by

³See 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).

⁴See Buchanan v. State, 119 Nev. 201, 217, 69 P.3d 694, 705 (2003).

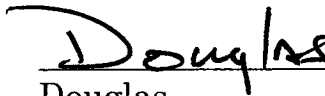
⁵See NRS 48.045(2).

⁶Manning v. Warden, 99 Nev. 82, 86, 659 P.2d 847, 850 (1983) (quoting Commonwealth v. Allen, 292 A.2d 373, 375 (Pa. 1972)).

the prosecutor and defense counsel did not request an admonition to the jury.⁷ This conclusion is bolstered by consideration of the convincing nature of the evidence of Goodwin's guilt.⁸ We further note that the jury was instructed prior to deliberations "to disregard any evidence to which an objection was sustained by the court."⁹ Goodwin has not demonstrated that the challenged testimony could have affected the outcome of the trial, and we conclude that the alleged error did not have a prejudicial impact on the verdict.¹⁰

Therefore, having considered Goodwin's contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Douglas


_____, J.
Rose


_____, J.
Parraguirre

⁷See Rice v. State, 108 Nev. 43, 44, 824 P.2d 281, 282 (1992).

⁸See Allen v. State, 99 Nev. 485, 490-91, 665 P.2d 238, 241-42 (1983).

⁹See Allred v. State, 120 Nev. 410, 415, 92 P.3d 1246, 1250 (2004) (stating that this court presumes that a jury follows the orders and instructions of the district court).

¹⁰See NRS 178.598 ("Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.").

cc: Hon. Michelle Leavitt, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk