

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN K. O'KEEFE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46938

FILED

AUG 14 2006

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of felony battery constituting domestic violence. Eighth Judicial District Court, Clark County; Valorie Vega, Judge. The district court sentenced appellant Brian K. O'Keefe to serve a prison term of 24 to 60 months.

O'Keefe first contends that the district court abused its discretion by allowing Las Vegas Metropolitan Police Detective Daniel Holley to testify as an expert witness. In particular, O'Keefe argues that there was an insufficient foundation laid for Detective Holley's testimony on the cycle of violence in domestic violence situations because the "only training he had in dealing with domestic disputes is training designed for victim advocates." Additionally, O'Keefe argues that Detective Holley's testimony was prejudicial because he was "biased towards the victim's position." We conclude that O'Keefe's contention lacks merit.

NRS 50.275 provides that a qualified expert may testify to matters within his specialized scope of knowledge in order to aid the trier

of fact.¹ Admissible expert testimony may be excluded if it does not "withstand the challenge to all relevant evidence, i.e., whether probative value exceeds prejudicial effect."² But, the admissibility of expert testimony is within the sound discretion of the district court.³

In this case, the district court did not abuse its discretion by allowing Detective Holley to testify as an expert on domestic violence. There was sufficient foundation establishing his expertise; namely, Detective Holley testified that he had ten years of work experience in the family crimes section of the police department, had attended "hundreds of hours of training" on domestic violence, and had previously testified in "hundreds" of domestic violence cases. Further, Detective Holley's testimony was not prejudicial or biased towards the victim. To the contrary, Detective Holley gave no opinion about the credibility of the victim in O'Keefe's case, but instead generally described the cycle of domestic violence, explaining that approximately fifty percent of abuse victims recant their allegations out of fear of retaliation for having the abuser arrested. Accordingly, we conclude that the district court acted within its discretion in allowing the expert testimony.

O'Keefe next contends that there was insufficient evidence presented at trial to sustain the conviction. O'Keefe provides no further

¹Smith v. State, 100 Nev. 570, 572, 688 P.2d 326, 327 (1984).

²Townsend v. State, 103 Nev. 113, 117-18, 734 P.2d 705, 708 (1987).

³Smith, 100 Nev. at 572, 688 P.2d at 327.

argument explaining how the evidence was deficient, and 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.⁴

In particular, we note that the victim testified that she got into an argument with O'Keefe, her live-in boyfriend, and called the police on two separate occasions on the evening of April 2, 2004, because she was afraid and O'Keefe refused to leave. Although at trial the victim testified that O'Keefe did not strike her and she could not recall telling police that he did, the victim's written statement contradicted her trial testimony and stated that she was stuck by O'Keefe. Additionally, the police officer who responded to the scene testified that he observed scratching and bruising around the victim's right eye and her glasses were broken. The police officer described the victim as crying and afraid, and testified that she said O'Keefe had slapped her across the right side of the face multiple times and pulled her hair. The jury could reasonably infer from the evidence presented that O'Keefe used unlawful force upon his live-in girlfriend.⁵ 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.⁶

⁴See 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).

⁵See NRS 200.481(1)(a); NRS 200.485(1)(c); NRS 33.018(1)(a).

⁶See 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).

Having considered O'Keefe's contentions and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.

Douglas, J.
Douglas

Becker, J.
Becker

Parraguirre, J.
Parraguirre

cc: Hon. Valorie Vega, District Judge
Patrick E. McDonald
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk