

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT EDWARD ENTRIKIN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49928

FILED

SEP 05 2008

ORDER OF AFFIRMANCE

TRACIE K. LINDEMAN
CLERK OF THE SUPREME COURT
BY  DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count each of aggravated stalking and assault with a deadly weapon. Eighth Judicial District Court, Clark County; Valerie Adair, Judge. The district court sentenced appellant Robert Edward Entrikin to serve concurrent prison terms of 32-144 months and 24-72 months.

First, Entrikin contends that the evidence presented at trial was insufficient to support the jury's finding that he was guilty beyond a reasonable doubt. 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, the victim testified that pursuant to an extended protective order, Entrikin was prohibited from having any contact with her and, ignoring the order, called her "like 10 to 20 times a day" and repeatedly threatened to kill her. Additionally, the victim testified that on September 25, 2005, as she was returning

¹See Mason v. State, 118 Nev. 554, 559, 51 P.3d 521, 524 (2002) (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979)).

home from work in the evening, she was confronted by Entrikin, hiding near her front door. The victim screamed, noticed that Entrikin was holding a golf club over his head, and sprayed him with pepper spray. As the victim attempted to further spray Entrikin, he swung the golf club several times in the direction of her head. According to the victim, "about three guys" heard the screams and ran across the street to her house, causing Entrikin to flee. One of the men, Monte Mock, testified that he heard the victim scream and saw Entrikin with a golf club raised over his head. Mock positively identified Entrikin at trial as the perpetrator.

Based on all of the above, we conclude that the jury could reasonably infer from the evidence presented that Entrikin committed the crimes beyond a reasonable doubt.² 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.³ Moreover, we note that circumstantial evidence alone may sustain a conviction.⁴ Therefore, we conclude that the State presented sufficient evidence to support the jury's verdict.

Second, Entrikin contends that the district court erred by allowing the admission of prior bad act evidence at trial. Specifically, Entrikin claims that his right to due process was violated by the

²See NRS 200.575(2); NRS 200.471(1)(a).

³See Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 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).

admission of evidence relating to an earlier trial and aggravated stalking charge of which he was acquitted.⁵ We disagree.

Entrikin was charged by way of a criminal indictment with one count of aggravated stalking for conduct occurring between July 25, 2005, and September 25, 2005.⁶ On appeal, Entrikin fails to demonstrate that any reference was made by the prosecutor or the State's witnesses to incidents occurring outside the relevant timeframe. In fact, the prosecutor instructed the witnesses, prior to questioning, to restrict their testimony to events occurring only during the two-month period noted in the indictment. Therefore, we conclude that Entrikin's contention is without merit.

Third, Entrikin contends that the prosecutor and district court judge committed misconduct by offering personal opinions and vouching for the credibility of the victim, thus shifting the burden of proof onto the defendant. We disagree. Initially, we note that Entrikin did not object to any of the challenged comments.⁷ Moreover, Entrikin has failed to demonstrate that he was prejudiced in any way amounting to reversible

⁵In district court case no. C217605, Entrikin was convicted, pursuant to a jury verdict, of one count each of violation of an extended protective order and violation of a temporary protective order.

⁶Entrikin was also charged with one count each of assault with a deadly weapon and attempted murder with the use of a deadly weapon for an incident occurring on September 25, 2005.

⁷Parker 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); Oade v. State, 114 Nev. 619, 621-22, 960 P.2d 336, 338 (1998) (generally, the failure to object to judicial misconduct at the time of trial precludes appellate review).

plain error.⁸ In fact, all of the alleged misconduct challenged by Entrikin occurred during the sentencing hearing, after the jury returned its guilty verdict.⁹ Therefore, we conclude that Entrikin's contention is without merit.

Fourth, Entrikin contends that the district court erred by not instructing the jury to disregard testimony from the victim regarding an alleged videotape of someone damaging her vehicle. We disagree. The prosecutor asked the victim if she saw who smashed her windshield, to which she responded, "We had it on tape." Defense counsel's objection was overruled and, after a bench conference, the district court instructed the prosecutor to "rephrase your question." Entrikin did not ask the court to strike the testimony from the record or to provide the jury with a limiting instruction. Moreover, Entrikin has failed to demonstrate that he was prejudiced by the brief exchange. Therefore, we conclude that the district court did not err.

Finally, Entrikin contends that the district court erred by denying his motion for a new trial. Entrikin has not proffered any argument whatsoever or provided citation to any relevant legal authority in support of his contention. This court has repeatedly stated that "[i]t is

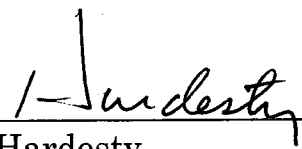
⁸See NRS 178.602 ("Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court."); Green v. State, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003) (stating that when conducting a review for plain error, "the burden is on the defendant to show actual prejudice or a miscarriage of justice").

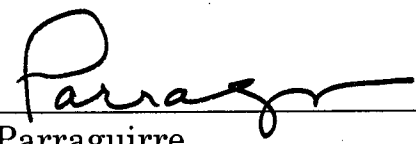
⁹Delo v. Lashley, 507 U.S. 272, 278 (1993) ("Once the defendant has been convicted fairly in the guilt phase of the trial, the presumption of innocence disappears.").

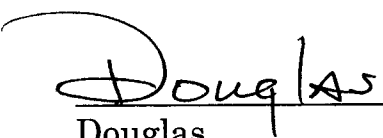
appellant's responsibility to present relevant authority and cogent argument; issues not so presented need not be addressed by this court."¹⁰ Therefore, we will not address Entrikin's argument.

Having considered Entrikin's contentions and concluded that they are without merit or need not be addressed, we

ORDER the judgment of conviction AFFIRMED.¹¹


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Valerie Adair, District Judge
Bunin & Bunin
Kristina M. Wildeveld
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

¹⁰Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987).

¹¹We also reject Entrikin's claim that cumulative error denied him his right to a fair trial. See Pascua v. State, 122 Nev. 1001, 1008 n.16, 145 P.3d 1031, 1035 n.16 (2006).