

IN THE SUPREME COURT OF THE STATE OF NEVADA

LLOYD DONALD GREER,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 50880

**FILED**

MAR 03 2009  
TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, entered pursuant to a jury verdict, of one count of battery constituting domestic violence. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge. The district court sentenced appellant Lloyd Donald Greer to serve a prison term of 12 to 48 months.

First, Greer contends that the district court abused its discretion by limiting questions about the victim's alcohol consumption to the night of the incident for two reasons: (1) Citing to NRS 48.059, Greer claims that evidence of the victim's general alcohol consumption was relevant because it showed that she "was in the habit of drinking alcohol, asking [him] to go to her apartment, getting in a fight with him, and putting [him] in the position where he had to use reasonable force to leave the premises;" and (2) citing to Mirin v. State, 93 Nev. 57, 560 P.2d 145 (1977), Greer claims that "even though [he] raised the issue of the victim's alcoholic status, the trial court failed to hold a hearing outside the presence of the jury to determine whether the victim was competent as a witness and failed to give a limiting jury instruction regarding her competency as a witness."

The district court has considerable discretion in determining the relevance and admissibility of evidence, and this court will not disturb the trial court's decision to exclude evidence absent manifest error. See Lucas v. State, 96 Nev. 428, 431-32, 610 P.2d 727, 730 (1980). "When the competency of any witness has been questioned, it is within the discretion of the trial court to consider factors relative to qualification and to determine if such person is competent to testify." Mirin, 93 Nev. at 59, 560 P.2d at 145 (emphasis added) (quoting Shuff v. State, 86 Nev. 736, 738, 476 P.2d 22, 24 (1970)).

Here, the district court heard argument on the State's pretrial motion to limit questions regarding the victim's use of alcohol to the night of the incident. Greer's trial counsel argued:

The victim in this case is an alcoholic. She drinks all the time. This is a pattern of behavior. She gets drunk. She calls my client to her house. My client goes over. Then she won't let him leave, and he's forced to move her out of the way in order to get out of the house.

Greer did not argue that the victim was incompetent to testify at trial or allege that the victim was intoxicated at the time of the trial. The district court ruled that evidence of the victim's alcohol use "the day before, or week before, or over a period of time" was not relevant to the case and granted the State's motion. Under these circumstances, we perceive no error.

Second, Greer contends that insufficient evidence was adduced at trial to support his conviction. Greer claims that the victim testified that she shared a 40-ounce can of beer with him, "could not remember where she was in the apartment when [he] pushed her," "speculated she may have been downstairs when she was pushed," and "could not remember how she was pushed or how she landed after being pushed."

Greer asserts that he “testified that the victim had been drinking even before he went into her apartment,” and that “the victim had told him that she had passed out after having a couple of beers and that was why she did not hear him knock the first time he came to her apartment.” Greer argues that because the evidence was insufficient to support the jury’s verdict, we should reverse the judgment of conviction and instruct the district court to enter a judgment of acquittal.

“[I]t is the function of the jury, not the appellate court, to weigh the evidence and pass upon the credibility of the witness.” Walker v. State, 91 Nev. 724, 726, 542 P.2d 438, 439 (1975). Accordingly, the standard of review for a challenge to the sufficiency of the evidence is “whether, after viewing the evidence in the light most favorable to the prosecution, any rational [juror] could have found the essential elements of the crime beyond a reasonable doubt.” McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992) (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979)). Circumstantial evidence is enough to support a conviction. Lisle v. State, 113 Nev. 679, 691-92, 941 P.2d 459, 467-68 (1997), holding limited on other grounds by Middleton v. State, 114 Nev. 1089, 1117 n.9, 968 P.2d 296, 315 n.9 (1998).

Here, the victim testified that she had a dating relationship with Greer and that they had lived together, but they were not living together on August 22, 2008. On that date, she let Greer into her apartment, they shared a beer, and they argued. As the arguing escalated, Greer threw her computer, television, and stereo to the ground and knocked her table over. She attempted to stop him and tried to calm him down. However, Greer pushed her to the ground and she sustained injuries to both of her knees and an elbow. After Greer left the apartment, she locked the door and called 911.

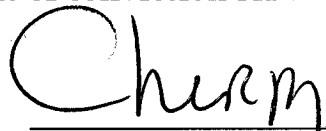
Police Officer Charles Huff testified that he was dispatched to the victim's apartment. When he made contact with the victim, he observed that she had abrasions to her knees and marks on her elbow and a finger. The apartment appeared to be "in a destroyed condition." The victim did not appear to be intoxicated in any way.

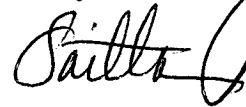
Greer testified that he had a dating relationship with the victim and that he pushed her down while he was in her apartment. Greer did not recall seeing the victim's injuries when he arrived at her apartment and he "guessed" that they occurred while he was in the apartment.


Based on this testimony, we conclude that a rational juror could reasonably infer that Greer battered a person with whom he had a dating relationship. See NRS 33.018(1)(a); NRS 200.481(1)(a). 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. See Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981).

Having considered Greer's contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Saitta

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Douglas W. Herndon, District Judge  
Law Office of Betsy Allen  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk