

IN THE SUPREME COURT OF THE STATE OF NEVADA

TODD LOUIS GUNNELS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 51132

**FILED**

MAR 26 2009

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of felony battery constituting domestic violence. Fourth Judicial District Court, Elko County; J. Michael Memeo, Judge. The district court sentenced appellant Todd Louis Gunnels to serve a prison term of 12 to 36 months.

First, Gunnels contends that there was insufficient evidence presented at trial to sustain the conviction. Specifically, he contends that the only evidence that he battered the victim consisted of out-of-court statements that the victim made while she was intoxicated and that she later recanted under oath.

“[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 (1997), holding limited on other grounds by Middleton v. State, 114 Nev. 1089, 1117 n.9, 968 P.2d 296, 315 n.9 (1998).

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. At trial, Carlin Police Officer Dennis Fobes testified that the victim flagged him down at 1:30 a.m. on April 16, 2006, so that she could report that a bartender at the Peacock Bar was drinking while tending bar and had been mean to her. During the conversation, Officer Fobes noticed that the victim's eye appeared puffed out and asked her about it. The victim stated that Gunnels struck her. However, she refused to pursue charges and the two parted. About two hours later, Officer Fobes was dispatched to Gunnels' address, where he observed the victim with additional facial injuries. Officer James Mathes testified that the victim told him that Gunnels punched her in the face. The victim recanted her statements that Gunnels struck her at the preliminary hearing and at trial. The parties stipulated that they had a domestic relationship.

We conclude that the jury could reasonably infer from this evidence that Gunnels used unlawful force upon a woman with whom he had a domestic relationship. See NRS 200.481(1)(a); NRS 33.018(1)(a). Although the victim recanted her statements, it was for the jury to determine the weight and credibility to give the 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); see also McNair, 108 Nev. at 56, 825 P.2d at 573.

Second, Gunnels argues that the district court erred in enhancing his sentence based on one of his prior misdemeanor convictions that was constitutionally infirm. Specifically, he asserts that the prior judgment of conviction violates the Double Jeopardy Clause on its face because it convicts him of both domestic violence and battery for the same conduct. Thus, he argues, the prior conviction did not satisfy the spirit of constitutional principles.

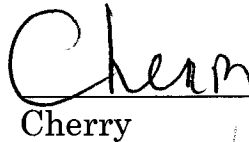
To establish the validity of a prior misdemeanor conviction, the State must “affirmatively show either that counsel was present or that the right to counsel was validly waived, and that the spirit of constitutional principles was respected in the prior misdemeanor proceedings.” Dressler v. State, 107 Nev. 686, 697, 819 P.2d 1288, 1295 (1991). “[I]f the state produces a record of a judgment of conviction which shows that the defendant was represented by counsel, then it is presumed that the conviction is constitutionally adequate, *i.e.*, that the spirit of constitutional principles was respected.” Davenport v. State, 112 Nev. 475, 478, 915 P.2d 878, 880 (1996). Once the State has demonstrated that the defendant was represented by counsel, the burden is on the defendant to present evidence to rebut the presumption that the conviction is constitutionally adequate. Id.


The record reflects that Gunnels was represented by counsel when he entered his guilty plea to the prior misdemeanor offense. Thus, Gunnels had the burden of rebutting the presumption that the prior conviction was constitutionally adequate. Gunnels challenged the constitutionality of the prior conviction by introducing the complaint, which indicated that the charges of domestic violence and battery were pleaded as alternative theories by the State in the prior proceedings.


However, at the motions hearing, Carlin Justice Court Judge Barbara Nethery testified that Gunnels was only sentenced for domestic violence. Specifically, he received the statutory minimum sentence for domestic violence. Further, the judgment of conviction provided that Gunnels must pay a domestic violence administrative fee and attend domestic violence counseling sessions. Under these circumstances, Gunnels has failed to rebut the presumption "that the spirit of constitutional principles was respected." Id. Therefore, we conclude that the district court did not err in admitting the prior misdemeanor conviction for enhancement purposes.

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

ORDER the judgment of conviction AFFIRMED.

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

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

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

cc: Hon. J. Michael Memeo, District Judge  
Edwin T. Basl  
Attorney General Catherine Cortez Masto/Carson City  
Elko County District Attorney  
Elko County Clerk