

IN THE SUPREME COURT OF THE STATE OF NEVADA

CLIFFORD KING A/K/A CLIFFORD
KING, III,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52141

FILED

JAN 22 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; Sally L. Loehrer, Judge. The district court sentenced appellant Clifford King to serve a prison term of 18 to 60 months.

King's sole contention is that insufficient evidence was adduced at trial to support his conviction. King claims that the testimony of the victim, security officer, and police officer "do not present a coherent account of an event that can be believed with any certainty."

"[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).

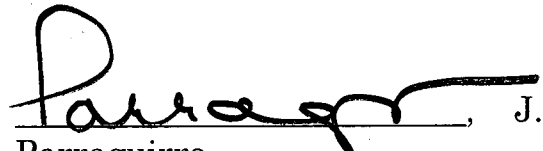
Here, the victim testified that she had been dating King for eight years and that he was her boyfriend. During an evening get-together, King became disrespectful and was asked to leave. King exited the apartment, but began knocking on the apartment door. When the victim opened the door, King grabbed her, choked her, and threw her to the ground. Security Guard Rommel Dacmous testified that he was on routine patrol when he heard a woman screaming. Dacmous observed the victim pushing King out of the apartment and he called the police. Dacmous stayed with the victim until the police arrived. The victim showed Dacmous her injuries and Dacmous testified that the photographs that were admitted into evidence accurately depicted the injuries he saw on the victim that night. Police Officer Antonio Delatorre testified that he was dispatched to the apartment complex. When he arrived, Officer Delatorre contacted the security guard, brought King back to the apartment, and spoke with the victim. Officer Delatorre observed that the victim had scratches on the back of her neck and a bump on her forehead, determined that these injuries were consistent with the victim's representations as to what happened, and placed King under arrest.

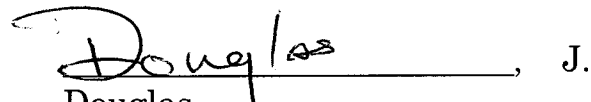
Based on this testimony, we conclude that a rational juror could reasonably infer that King battered a person with whom he had a dating relationship. See NRS 33.018(1); NRS 200.481(1)(a). It is for the jury to determine the weight and credibility to give conflicting testimony, and the jury's verdict will not be disturbed on appeal where, as here,

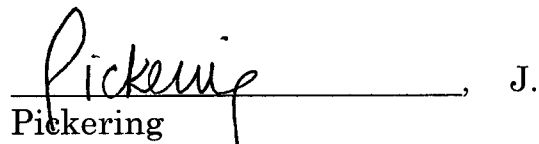
substantial evidence supports the verdict. See Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981); see also McNair, 108 Nev. at 56, 825 P.2d at 573.

Having considered King's contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.

 J.
Parraguirre

 J.
Douglas

 J.
Pickering

cc: Hon. Sally L. Loehrer, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk