

IN THE SUPREME COURT OF THE STATE OF NEVADA

DANIEL PATRICK ADAMS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 53373

**FILED**

JUN 21 2010

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of assault with a deadly weapon, second-degree kidnapping, and battery constituting domestic violence with use of a deadly weapon resulting in substantial bodily harm. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

Appellant Daniel Adams attacked his girlfriend, Deborah Borman, with a knife, chased her from their residence when she tried to escape, and forced her into a car. A jury convicted Adams, and the district court sentenced him to 15 years in prison with eligibility for parole after 3 years. On appeal, Adams raises two arguments: (1) the district court erred by allowing the State to introduce inadmissible prior bad act and character evidence by playing recordings of phone calls without first conducting a Petrocelli hearing, and (2) the State failed to produce sufficient evidence to support a kidnapping conviction and to prove use of a deadly weapon. We conclude that Adams's arguments lack merit and affirm.

Admission of telephone calls

We will not overturn a district court's decision to admit or exclude evidence absent an abuse of discretion. Johnson v. State, 118 Nev. 787, 795, 59 P.3d 450, 456 (2002). Prior bad acts are inadmissible to prove

a person's character or conformity therewith. NRS 48.045(2). However, prior bad acts may be admissible to prove "motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." Id. Additionally, Nevada law prohibits the use of specific conduct to show a propensity to commit the crime charged. Berner v. State, 104 Nev. 695, 697, 765 P.2d 1144, 1145-46 (1988).

The district court allowed the State to admit jail phone calls between Adams and Borman. In these calls, Adams and Borman discuss hiring a lawyer for Adams. Adams argues that the context of the conversation indicates that he had a prior relationship with his defense counsel. Specifically, he refers to the attorney by nickname. In the calls, Adams also mentions that he was charged with attempted murder in this case. The district court, however, subsequently dismissed that charge. Adams contends that these conversations contained inadmissible prior bad act and character evidence. We disagree for three reasons.

First, Adams's reference to his attorney by nickname does not necessarily imply that Adams has a prior criminal history. Rather, it merely suggests a relationship with the attorney. The phone calls do not reveal the nature of that relationship. Evidence of a preexisting relationship with an attorney, by itself, does not suggest a prior bad act, and thus admission of such evidence did not violate NRS 48.045(2).

Second, the attempted murder charge arose out of the same criminal acts forming the basis of this case. The context of the phone conversations made that point clear. The jury therefore had no reason to believe that Adams had a prior, unrelated attempted murder charge. Accordingly, the attempted murder charge was not a prior bad act used to prove Adams's character or used to indicate criminal propensity.

Third, the tapes were admissible as evidence of Borman's bias and motive. In the tapes, Borman professes her love for Adams and states that she wants Adams released from jail. Adams then tells her to change her story to facilitate his release. The tapes thus showed that Borman's testimony was biased in Adams's favor and that she had a motive to lie to minimize Adams's conduct.

Because the phone calls did not reference prior bad acts, we conclude that a Petrocelli hearing was unnecessary. Petrocelli v. State, 101 Nev. 46, 51-52, 692 P.2d 503, 507-08 (1985). We further conclude that the district court properly admitted the evidence to show Borman's bias and motive to lie.

#### Sufficiency of evidence

On appeal, the test for determining sufficiency of evidence is "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Diomampo v. State, 124 Nev. 414, 433, 185 P.3d 1031, 1043 (2008) (internal quotations omitted). Additionally, "circumstantial evidence alone may support a conviction." Bolden v. State, 121 Nev. 908, 912, 124 P.3d 191, 194 (2005) (internal quotations omitted), abrogated on other grounds by Cortinas v. State, 124 Nev. \_\_\_, \_\_\_, 195 P.3d 315, 317 (2008). Conflicting evidence does not necessarily create a problem with respect to the sufficiency of the evidence. Rather, where evidence conflicts, it is the jury's role to assess its weight and credibility. Buchanan v. State, 119 Nev. 201, 217, 69 P.3d 694, 705 (2003).

Adams claims that the state failed to produce sufficient evidence to convict him of second-degree kidnapping. Similarly, he asserts

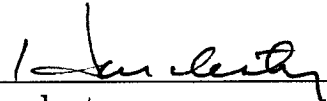
that the state did not offer sufficient evidence to prove he used a deadly weapon during the commission of the crimes.

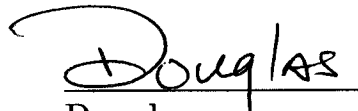
A person is guilty of second-degree kidnapping when he willfully and unlawfully seizes or carries away a victim with the intent to confine the victim against his or her will. NRS 201.310(2). Here, the jury heard differing accounts of how Borman ended up in the car. An independent witness testified that Adams forced Borman into the vehicle. Borman, however, maintains that she willingly entered the vehicle. In light of this conflicting testimony, the jury determined that Borman's account was not credible. The state also produced circumstantial evidence of the kidnapping at trial. This evidence included the fact that Adams struck Borman while they were in the vehicle, the fact that Borman immediately sought police assistance after exiting the vehicle, and the fact that Adams ran from the vehicle upon encountering the police officer. Based on the witness testimony and circumstantial evidence, we conclude that the state produced sufficient evidence for a rational trier of fact to conclude that Adams willfully and unlawfully carried away Borman with the intent to confine her against her will.

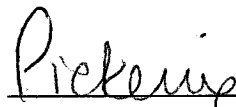
The jury also heard conflicting evidence regarding Adams's use of a knife to attack Borman. At trial Borman testified that she did not see a knife and did not know if Adams used a knife to attack her. However, a neighbor claimed to have seen Adams wielding what appeared to be a pocketknife during the attack. Also, Borman originally told both the police and a paramedic that Adams cut her with a knife, and her treating physician testified that her wound was consistent with a laceration caused by a knife. Finally, Borman testified that she was minimizing Adams's conduct to protect him. Accordingly, we conclude

that this evidence was sufficient for a rational jury to conclude that Adams used a knife when he attacked Borman. In light of the foregoing, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Pickering

cc: Hon. Donald M. Mosley, District Judge  
Law Offices of Cynthia Dustin, LLC  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk