

IN THE SUPREME COURT OF THE STATE OF NEVADA

HILARY MICHAEL MILKO,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 34900

**FILED**

MAY 25 2000

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. R. [Signature]*  
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count each of burglary and violation of a custody order. The district court sentenced appellant to prison for a term of sixteen (16) to seventy-two (72) months for burglary and a concurrent term of twelve (12) to thirty-four (34) months for violation of a custody order.

Appellant contends that the district court abused its discretion in admitting photographs of injuries suffered by Joyce Mao on the date of the offenses and evidence of telephone messages that Mao received from appellant's counsel and appellant prior to trial. Appellant argues that the evidence was not relevant and, alternatively, that any probative value of the evidence was substantially outweighed by the danger of unfair prejudice. See NRS 48.015; NRS 48.025(1); NRS 48.035(1). We disagree.

The district court has "considerable discretion" in determining the relevance and admissibility of evidence, and this court will not disturb the district court's determination absent a clear abuse of that discretion. *Atkins v. State*, 112 Nev. 1122, 1127, 923 P.2d 1119, 1126 (1996). We conclude that the photographs of Mao's injuries were relevant to show appellant's intent. Moreover, because appellant failed to

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object to the photographs on the basis of NRS 48.035(1), we need not consider this evidentiary theory. See NRS 47.040(1); see also State v. Bolton, 896 P.2d 830, 844 (Ariz. 1995). We further conclude that evidence of the telephone messages was relevant to show appellant's consciousness of guilt and that the probative value of the evidence was not substantially outweighed by the danger of unfair prejudice. We therefore conclude that the district court did not abuse its discretion in admitting the photographs and telephone messages.

Appellant next contends that the evidence presented at trial was insufficient to support the jury's finding of guilt with respect to the burglary conviction. In particular, appellant argues that the State adduced insufficient evidence that appellant entered Mao's home with the specific intent to commit a crime. 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. See Wilkins v. State, 96 Nev. 367, 609 P.2d 309 (1980).

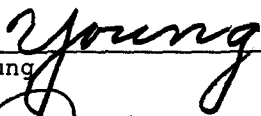
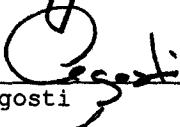
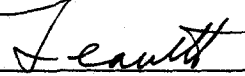
In particular, we note that the State presented evidence of a valid court order awarding Mao sole physical and legal custody of the couple's minor child and that appellant had been served with a valid extended protective order against him. Although appellant claimed to have had a court order giving him visitation rights from noon Friday to noon Sunday, the order was not file-stamped. Moreover, law enforcement officers had repeatedly indicated to appellant prior to his forcibly removing the child from Mao's home on June 26, 1998, that the order was not enforceable because it had not been file-stamped. Additionally, evidence demonstrated that appellant ran into Mao's home through the garage as Mao departed for work at approximately 3:30 in the morning. Evidence further demonstrated that appellant pushed Mao away as

she tried to stop him from taking the child and dragged Mao along the ground as she tried to hold onto the steering wheel of his car to stop him from leaving.

The jury could reasonably infer from the evidence presented that appellant entered Mao's home with the specific intent to commit the crime of violation of a custody order. It is for the jury to determine the weight and credibility to give conflicting evidence, 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, 624 P.2d 20 (1981).

Having considered appellant's contentions and concluded that they lack merit, we

ORDER this appeal dismissed.

 _____ Young	J.
 _____ Agosti	J.
 _____ Leavitt	J.

cc: Hon. Ronald D. Parraguirre, District Judge  
Attorney General  
Clark County District Attorney  
Clark County Public Defender  
Clark County Clerk