IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID SEAN DENTON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56108

FILED

MAR 17 2011

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

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count each of robbery, malicious destruction of property, violation of an extended protective order and aggravated stalking, and two counts of battery constituting domestic violence. Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

Appellant David Sean Denton claims that insufficient evidence supports his convictions for robbery, aggravated stalking, and battery constituting domestic violence because the victim was not credible and no extrinsic evidence supported these convictions. This claim lacks merit because the evidence, when viewed in the light most favorable to the State, is sufficient to establish guilt beyond a reasonable doubt as determined by a rational trier of fact. Jackson v. Virginia, 443 U.S. 307, 319 (1979); McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

The victim testified that on April 26, 2009, Denton demanded that she give him her rental assistance money and she refused. When the victim tried to leave their apartment, Denton grabbed her, pushed her face-down onto the bed, and got on top of her, pinning her down with her

face in the mattress so she could not breathe. Denton eventually "flipped" the victim over onto her back, but he continued to lie on top of her, pinning her down. The victim took a breath and attempted to scream, but Denton placed his hand over her nose and mouth and threatened to kill her. Denton told the victim that she would have to suffer before he killed her and suggested that he would break her wrists and possibly her arms. Denton demonstrated what he would do to the victim and bent her wrists back until they "felt like crunching" and he put his arms around her throat and held tight. Denton twisted the victim's wrists approximately 20 times and threatened to kill her approximately 8 times throughout the ordeal. Denton also threatened that after he killed the victim he would kill one of her friends and her dog. The victim ultimately went with Denton to her car and gave him some money. The victim testified that she did not refuse to give him the money at that time because she was afraid he would kill her.

The victim further testified that on May 2, 2009, Denton asked her to go with him to check the amount of money on her food stamp card. Although the victim did not want to go with Denton, she agreed to go because Denton placed his arm across her chest as he did on April 26. The victim attempted to leave the apartment and get away from Denton, but he caught up to her outside of the apartment and threatened to kill her if she did not do what he said. The victim returned to the apartment with Denton. When she attempted to get away a second time, Denton "yanked" her to the ground, causing her to hit her head on the concrete, and then he "dragged" her back into the apartment. The police responded and took a report. Shortly after the police left, Denton started calling the victim, telling her that he was watching her and he knew when the police were

there and when they left. Denton returned to the apartment two more times within the next several hours. The last time Denton returned to the apartment, the victim had barricaded herself in the apartment because she was afraid of Denton. Denton attempted to enter the apartment and threatened to kill the victim. When Denton could not enter the apartment, he told the victim that he would damage her car.

The victim testified that at the time of the incidents she and Denton were in a dating relationship and living together. She further testified that Denton's actions caused her to be "scared out of her mind" and "totally panicked." As a result of these incidents, she obtained a temporary protective order against Denton and had the protective order extended. Shortly after the court extended the protective order, Denton started calling her repeatedly and he left one message on her cell phone that frightened her.

The fact that the victim was often confused regarding the sequence of events, her testimony was sometimes inconsistent with written reports and her preliminary hearing testimony, and no physical evidence was presented to support her allegations does not demonstrate that the evidence was insufficient to support Denton's convictions. It was for the jury to assess the victim's credibility and determine the weight to give her testimony and "[c]ircumstantial evidence alone may sustain a conviction." McNair, 108 Nev. at 56, 61, 825 P.2d at 573, 576. We conclude that the evidence was sufficient to establish that Denton unlawfully took property from the victim by force or fear of force, NRS 200.380(1), he willfully and maliciously engaged in conduct that would cause a reasonable person to feel terrorized, frightened or harassed and his conduct actually caused such a reaction in the victim, NRS 200.575(1),

and on two occasions he used force or violence on a person with whom he was residing or in a dating relationship, NRS 33.018(1), NRS 200.481(1)(a), NRS 200.485(1). The jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict. Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981).

Denton also claims that insufficient evidence supports his gross misdemeanor conviction for malicious destruction of property because the victim was not credible, no one saw who damaged the vehicle, and the prosecutor failed to prove that the cost to repair the vehicle was $250 or more.

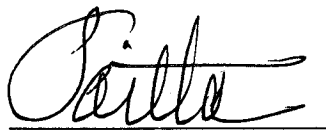
The victim testified that her car, a Mercedes Benz, was not damaged before Denton threatened to damage the car, but when she inspected the car with the police there was a large hole in the back window, a concrete block in the back seat, and a gash on top of the hood that went through the paint and bent the metal. Also, the bumpers were scratched and the driver's door was kicked in. The victim testified that her insurance deductible was $250 and, although she did not have her car repaired, she took the car to several places and obtained estimates for the repairs. Copies of the estimates were not introduced at trial.

We conclude that the evidence was sufficient for a rational jury to infer that Denton willfully broke, injured, or tampered with the victim's car for the purpose of injuring, defacing, or destroying the car, however, the evidence was insufficient to establish the conviction as a gross misdemeanor conviction because the victim's insurance deductible, standing alone, did not establish that the cost to repair the car was $250 or more. See NRS 193.155(2); NRS 205.274(1); Romero v. State, 116 Nev. 344, 348, 996 P.2d 894, 897 (2000); McNair, 108 Nev. at 56, 61, 825 P.2d at

573, 576; Bolden, 97 Nev. at 73, 624 P.2d at 20. Because the State presented no evidence establishing the cost to repair the car, we reverse the conviction for gross misdemeanor malicious destruction of property and remand to the district court for entry of a conviction for malicious destruction of property pursuant to NRS 205.274(1) and NRS 193.155(4).

Having considered Denton's claims, we

ORDER the judgment of conviction AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.



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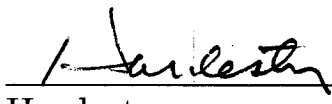

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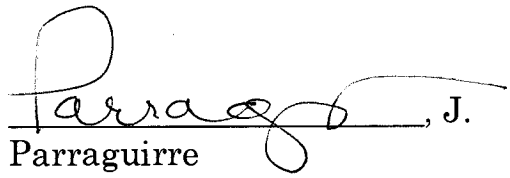

_____, J.
Parraguirre

cc: Hon. Valerie Adair, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk