

IN THE SUPREME COURT OF THE STATE OF NEVADA

DOYLE TERVORT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56177

FILED

JAN 14 2011

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 battery causing substantial bodily harm. Seventh Judicial District Court, White Pine County; Dan L. Papez, Judge.

Appellant Doyle Tervort first contends that insufficient evidence supports his conviction because the State did not prove beyond a reasonable doubt that he caused the victim's broken ribs. 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. See Jackson v. Virginia, 443 U.S. 307, 319 (1979); Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998).

At trial the victim testified that Tervort grabbed her by the throat and knocked her to the ground. He punched her multiple times in the face and kicked her repeatedly in the head, face, and body. The victim testified that she recalled a particularly hard kick to the back. Afterwards, the victim was in excruciating pain, found it difficult to breathe, and could barely lift her arm because of the pain. Around 24 hours after these events, the victim's neighbor saw boot prints on the

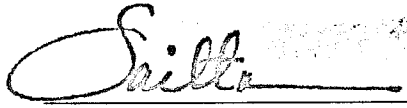
victim's back and several large bruises over her ribs that the victim indicated were extremely painful. During the ensuing days, the victim suffered from severe pain when attempting to lift a four-pound package and once passed out from the pain. Approximately ten days after the events the victim was diagnosed as having three broken ribs and treated for her pain. The treating physician testified that the victim's injuries were consistent with being kicked. Based on this evidence, a rational juror could reasonably infer that Tervort inflicted substantial bodily harm on the victim. See NRS 0.060; NRS 200.481(1)(a). It is for the jury to determine the weight and credibility to give to conflicting testimony, and 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).

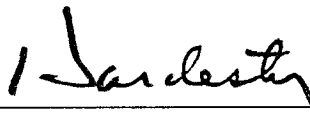
Tervort also contends that the district court erred by admitting the victim's hearsay statements under the excited utterances exception to the hearsay rule. See NRS 51.095. The district court's decision to admit evidence under the excited utterance exception is reviewed for manifest error. Medina v. State, 122 Nev. 346, 353 143 P.3d 471, 475 (2006).


The State sought to introduce evidence of two sets of statements made by the victim, the first made to her son around 24 hours after the altercation with Tervort, and the second made to her son and her neighbor 3 to 4 hours after the first statements. Testimony at the hearing on the motion in limine established that at the time she made the statements the victim was covered in blood—both old and fresh—crying hysterically, and visibly shaking. Although the statements were made a significant time after the altercation, the time elapsed between the

altercation and the statements is only one factor to be considered, and “[t]he proper focus of the excited utterance inquiry is whether the declarant made the statement while under the stress of the startling event.” Id. at 352, 143 P.3d at 475. Accordingly, we cannot conclude that the district court manifestly erred by determining that the victim was still under the stress of the altercation when she made the statements, see id. at 353, 143 P.3d at 475, and we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Saitta


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. Dan L. Papez, District Judge
Joel M. Mann, Chtd.
Attorney General/Carson City
White Pine County District Attorney
White Pine County Clerk