

IN THE SUPREME COURT OF THE STATE OF NEVADA

XUE BAO CHEN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 57074

**FILED**

**JUL 15 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 two counts of battery with the use of a deadly weapon. First Judicial District Court, Carson City; James Todd Russell, Judge.

Appellant Xue Boa Chen contends that insufficient evidence supports his convictions because the State failed to establish, beyond a reasonable doubt, that the victims' injuries were caused by a deadly weapon—specifically, a knife. We disagree because the evidence, when viewed in the light most favorable to the State, is sufficient to support Chen's convictions beyond a reasonable doubt. See Jackson v. Virginia, 443 U.S. 307, 319 (1979); Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998).

The jury heard testimony from three eyewitnesses that Chen was positioned over the first victim, holding a wooden-handled knife with a serrated blade in his right hand, and moving it in an up-and-down motion. One witness testified that Chen said, "I'm going to kill you. I'm going to stab you to death." And two medical doctors testified that the injury to the victim's neck was consistent with a knife wound. The jury also heard testimony that the second victim did not have an injury to her

arm when she entered the bedroom, did not hit anything while in the bedroom or bathroom, made physical contact with Chen while trying to separate him from the first victim, and had an injury on her arm when she left the bedroom. While the second victim was in close proximity to Chen, he was waving the knife around in a side-to-side motion and resisting attempts to take the knife from his hand. One of the medical doctors testified that the second victim's injury was consistent with a knife wound and another testified that it could have been caused by a knife. From this evidence, a rational juror could reasonably infer that the victims' injuries were caused by a knife.<sup>1</sup> 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); see also NRS 200.481(1)(a) (defining battery); Hernandez v. State, 118 Nev. 513, 531, 50 P.3d 1100, 1112 (2002) (holding that "circumstantial evidence alone may support a conviction").

Chen also contends that the district court erred by admitting evidence that he had a gambling problem,<sup>2</sup> became hot-tempered, and often needed money and frequently tried to get it from one of the victims. While Chen and the State argue the admissibility of this evidence under a prior bad act analysis, the challenged evidence is not prior bad act evidence because it does not relate to acts which implicate prior bad acts

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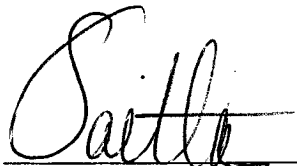
<sup>1</sup>Chen does not dispute that a knife constitutes a deadly weapon.

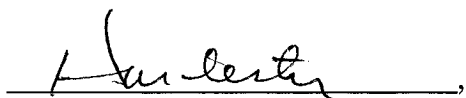
<sup>2</sup>The evidence actually adduced at trial was that Chen started "gambling a lot."

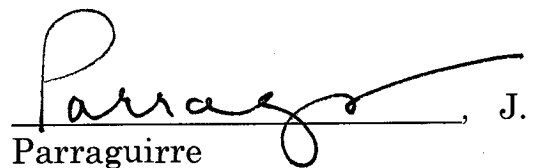
or collateral offenses for which Chen could have been charged. See Salgado v. State, 114 Nev. 1039, 1042-43, 968 P.2d 324, 326-27 (1998) (explaining that in cases where evidence does not implicate prior bad acts on the defendant's part or a collateral offense for which the defendant could have been charged, a Petrocelli hearing is not required; however, cases where a previous act is a collateral offense or a prior bad act do require a Petrocelli hearing). Therefore, the proper inquiry is whether the challenged evidence was relevant, NRS 48.015, 48.025(2), and whether its probative value was substantially outweighed by the danger of unfair prejudice, NRS 48.035(1).

Chen objected to the admission of the evidence regarding his gambling and need for money. The district court determined that this evidence was relevant to establish Chen's motive and its probative value was not substantially outweighed by the danger of unfair prejudice. We conclude that Chen has failed to demonstrate that the district court's determination constituted an abuse of discretion. See Chavez v. State, 125 Nev. \_\_\_, \_\_\_, 213 P.3d 476, 487 (2009). Chen did not object to the testimony regarding his hot temper and we conclude that he has failed to demonstrate plain error warranting relief. See NRS 178.602; Green v. State, 119 Nev. 542, 545, 80 P.3d 93, 94-95 (2003). Accordingly, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Saitta

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

  
\_\_\_\_\_, J.  
Parraguirre

cc: Hon. James Todd Russell, District Judge  
Law Office of David R. Houston  
Attorney General/Carson City  
Carson City District Attorney  
Carson City Clerk