

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES LAVELLE CURRY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 59046

**FILED**

JUN 13 2012

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY R. NAME  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of domestic battery by strangulation and second-degree kidnapping. Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

First, appellant James Lavelle Curry contends that insufficient evidence was adduced to support the jury's verdict on the count of second-degree kidnapping. We disagree 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); Mitchell v. State, 124 Nev. 807, 816, 192 P.3d 721, 727 (2008).

Officer Matt Durio of the Reno Police Department testified that the victim told him that at a certain point during Curry's attack inside their apartment, she was able to escape, fled across the parking lot, and "ran for a pretty good distance." Curry, however, caught up to her, smashed her head against a metal box, and dragged her by her hair back to the apartment. Officer Durio testified, "She said she was not willing to go back into her apartment. It was against her will." The victim

identified the metal box outside her apartment that Curry smashed her head against through a photographic exhibit admitted at trial.

Circumstantial evidence alone may sustain a conviction. See Buchanan v. State, 119 Nev. 201, 217, 69 P.3d 694, 705 (2003). It is for the jury to determine the weight and credibility to give conflicting testimony, McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992), and a jury's verdict will not be disturbed on appeal where, as here, sufficient evidence supports the verdict, Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981); see also NRS 200.310(2). Therefore, we conclude that Garcia's contention is without merit.

Second, Curry contends that the district court erred by not adequately advising him about his right to remain silent before allowing him to make a statement on the record prior to the start of the trial. The State claims the statement was made outside the presence of the jury, and while Curry does not contradict the State's assertion, he points out that the record is not clear. Our review of the record reveals that the district court provided Curry with an admonishment, advising him that he was under "no obligation to make any statement" and that it "may be used against you." Further, Curry makes no specific allegation of prejudice and there is no indication that his statement was used against him. Therefore, we conclude that Curry fails to demonstrate that the district court erred and his contention is without merit.

Third, Curry contends that the district court erred by giving the statutory "reasonable doubt" jury instruction because it is unconstitutional. See NRS 175.211(1). Curry concedes that he did not object to the instruction and we conclude that he fails to demonstrate plain error entitling him to relief. See Berry v. State, 125 Nev. 265, 282-

83, 212 P.3d 1085, 1097 (2009) (this court reviews challenges to unobjected-to jury instructions for plain error), abrogated on other grounds by State v. Castaneda, 126 Nev. \_\_\_, 245 P.3d 550 (2010); Green v. State, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003) (reviewing for plain error, “the burden is on the defendant to show actual prejudice or a miscarriage of justice”); Bollinger v. State, 111 Nev. 1110, 1114-15, 901 P.2d 671, 674 (1995) (rejecting challenge to constitutionality of reasonable doubt instruction); see also NRS 178.602. Accordingly, we

ORDER the judgment of conviction AFFIRMED.



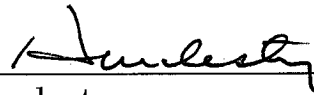
Saitta

, J.



Pickering

, J.



Hardesty

, J.

cc: Hon. Brent T. Adams, District Judge  
Law Office of Thomas L. Qualls, Ltd.  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk