

IN THE SUPREME COURT OF THE STATE OF NEVADA

VERNON MICHAEL BYNON,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 59062

FILED

MAR 07 2012

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
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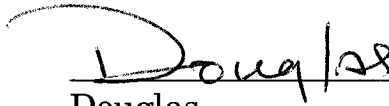
ORDER OF AFFIRMANCE


This is an appeal from a judgment of conviction, pursuant to a guilty plea, of battery with the use of a deadly weapon and assault with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Doug Smith, Judge.

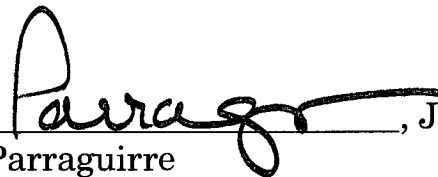
Relying on Buschauer v. State, 106 Nev. 890, 804 P.2d 1046 (1990), appellant argues that the district court erred by refusing to allow him to cross-examine his ex-girlfriend, who witnessed the battery and assault on the victim, at sentencing after the ex-girlfriend referred to specific prior bad acts by appellant. In particular, appellant contends that the ex-girlfriend's statement that appellant stalked and intimidated her and held her hostage referenced prior bad acts, which, under Buschauer, permitted him to cross-examine her. In Buschauer, we held that if a victim impact statement includes specific prior acts of the defendant, due process requires reasonable notice, that the accuser be under oath, and opportunity for cross-examination. Id. at 894, 804 P.2d at 1048. Because the facts and circumstances of the offenses are not detailed in the record, it is unclear whether the challenged statements refer to the charged offenses or prior events. But even assuming that Buschauer applies and appellant should have been afforded the opportunity to cross-examine the

ex-girlfriend, we conclude that the error is harmless for two reasons. See id. at 895, 804 P.2d at 1049 (applying the harmless error test). First, the ex-girlfriend's statement centered on the difficulties she has experienced in her life since the crimes, including that she has lost her sense of security, has lost her home and her job, and that she suffers from depression, stress, and anxiety. The challenged comments comprise only a small portion of her statement. Second, in sentencing appellant, the district court made no mention of the ex-girlfriend's statement but rather focused on appellant's assault on the victim by firing a gun at him. Accordingly, we conclude that no relief is warranted, and we

ORDER the judgment of conviction AFFIRMED.<sup>1</sup>

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Gibbons

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

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

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<sup>1</sup>To the extent appellant argues that he was not provided sufficient notice of the contents of the victim impact statement and that the ex-girlfriend was not under oath in violation of Buschauer, we conclude no relief is warranted, as appellant did not object below on those grounds and he fails to demonstrate plain error. McLellan v. State, 124 Nev. 263, 267, 182 P.3d 106, 109 (2008).