

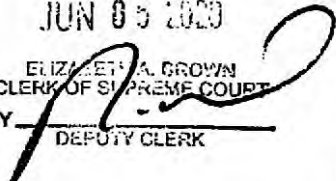
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RAPHAEL PALMA ROCCO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 78843-COA

FILED

JUN 05 2020

ELIZABETH A. GROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Raphael Palma Rocco appeals from a judgment of conviction entered pursuant to a jury verdict of aggravated stalking. Eighth Judicial District Court, Clark County; Ronald J. Israel, Judge.

First, Rocco argues the district court abused its discretion by denying his motion to continue trial. “This court reviews the district court’s decision regarding a motion for continuance for an abuse of discretion.” *Rose v. State*, 123 Nev. 194, 206, 163 P.3d 408, 416 (2007). “Each case turns on its own particular facts, and much weight is given to the reasons offered to the trial judge at the time the request for a continuance is made.” *Higgs v. State*, 126 Nev. 1, 9, 222 P.3d 648, 653 (2010). “[A] denial of a motion to continue is an abuse of discretion if it leaves the defense with inadequate time to prepare for trial.” *Id.* “However, if a defendant fails to demonstrate that he was prejudiced by the denial of the continuance, then the district court’s decision to deny the continuance is not an abuse of discretion.” *Id.*

At the beginning of trial, Rocco moved for a continuance because he wished for more time to locate information regarding his phone. Rocco asserted that he had recently remembered that his phone had been stolen shortly before the victim had received the threatening phone calls

and he may have been able to obtain a report concerning the theft. The district court found that information concerning Rocco's phone could have been discovered months prior to the beginning of trial and a continuance was not appropriate given the circumstances.


A review of the record demonstrates that Rocco had an adequate amount of time to prepare for trial. Moreover, Rocco did not demonstrate he was prejudiced by the district court's decision to deny his request for a continuance. Therefore, we conclude Rocco fails to demonstrate the district court abused its discretion by denying the motion to continue trial.

Second, Rocco argues there was insufficient evidence produced at trial to support the jury's finding of guilt. Rocco argues that the State failed to prove that the victim was reasonably in fear for his immediate safety. Our review of the record on appeal, however, reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact. *See Origel-Candido v. State*, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998); *see also Jackson v. Virginia*, 443 U.S. 307, 319 (1979).

The victim testified that he asked Rocco to move out of his home after he heard Rocco discussing beheading people and Rocco burned a tree. The victim stated that Rocco was upset, but left the home. However, the victim stated that he subsequently received numerous phone calls from Rocco. The victim testified Rocco left 59 voicemails and that Rocco threatened to physically harm him and his family members. Many of the voicemails were played during the trial. The victim testified that Rocco's threatening statements caused him to feel frightened, intimidated, and terrorized. Given the evidence and testimony, the jury could reasonably

find Rocco committed aggravated stalking. See NRS 200.575(1), (3). While Rocco contends the victim did not have a reasonable fear for his safety, it is for the jury to determine the weight and credibility to give conflicting testimony, and the jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict. See *Bolden v. State*, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981). Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Ronald J. Israel, District Judge
Lipp Law LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk