

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LAMAR MARQUES GOSEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 88578-COA

FILED

FEB 11 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

Lamar Marques Gosey appeals from a judgment of conviction, pursuant to a jury verdict of battery constituting domestic violence by strangulation, battery constituting domestic violence with a prior felony conviction for domestic battery, and false imprisonment. Second Judicial District Court, Washoe County; Kathleen M. Drakulich, Judge.

First, Gosey argues that there was insufficient evidence to support the jury's finding of guilt for his two convictions related to battery constituting domestic violence because the evidence produced at trial failed to prove that he and the victim were in a dating relationship as defined in NRS 33.018(3).¹ Gosey acknowledges that he and the victim were in a sexual relationship but contends that they had long periods of no communication and that he merely came to Reno to work as a handyman for the victim. 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 when viewing the evidence in the light most favorable to the prosecution. *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).

NRS 33.018(3) states that a "dating relationship" means frequent, intimate associations primarily characterized by the expectation of affectional

¹We recount the facts only as necessary for our disposition.

or sexual involvement. The term does not include a casual relationship or an ordinary association between persons in a business or social context.” During trial, the victim testified concerning the sexual nature of her relationship with Gosey over the course of two-and-a-half years. By the time of the violent attack against her in February 2022, Gosey had been living rent-free in the victim’s home for several months, sharing a bed with her as he completed renovations on her house. While the victim did not characterize her relationship with Gosey as “serious” and said that they were not seeing each other exclusively, she did state that she fell in love with Gosey.

The victim testified that she and Gosey had a disagreement and she asked him to leave her house. She further testified that Gosey later pushed her and slapped her face several times. The victim also testified that Gosey strangled her and she almost lost consciousness. After those actions, the victim was ultimately able to leave the home and call the police from a neighbor’s house. Upon arrival, police officers took photographs of the victim’s injuries, including red marks on the victim’s neck, and detained Gosey. Officer Matt Durio later testified that Gosey confirmed to him that he and the victim had been in a dating relationship for over two years.

The victim’s testimony, when viewed in the light most favorable to the prosecution, satisfies the definition of “dating relationship” in NRS 33.018(3). NRS 33.018(3) by its plain terms merely requires “frequent, intimate associations primarily characterized by the expectation of affectional or sexual involvement,” and, based on the victim’s testimony, such was the nature of the relationship she had with Gosey. In addition, based on the testimony of the victim and Officer Durio, the jury could reasonably find that Gosey and the victim were in a dating relationship and that, through his actions, he committed battery constituting domestic violence by strangulation and battery constituting domestic violence. See NRS 33.018(3); NRS 200.485(2), (3). While Gosey contends the evidence failed to demonstrate that

he was actually in a dating relationship with the victim, 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). We therefore conclude that Gosey's argument that there was insufficient evidence that he and the victim were in a dating relationship lacks merit.


Second, Gosey argues that his dual convictions for battery constituting domestic violence by strangulation and battery constituting domestic violence with a prior felony conviction violate the Double Jeopardy Clause. Gosey contends his conviction for battery constituting domestic violence with a prior felony should be reversed because it is a lesser included offense of domestic battery by strangulation and was therefore duplicative of that offense. The State responds that this is a new argument and it is not preserved because Gosey never raised it below and did not argue plain error on appeal. The State further argues that even if considered, it is without merit. We note that Gosey did not file a reply brief. *See Colton v. Murphy*, 71 Nev. 71, 72, 279 P.2d 1036, 1036 (1955) (concluding that when the respondents' argument was not addressed in the appellants' opening brief, and the appellants declined to address the argument in a reply brief, "such lack of challenge . . . constitutes a clear concession by [the] appellants that there is merit in respondents' position").

Because Gosey raises this argument for the first time on appeal and does not argue plain error, we agree with the State that we need not consider it. *See Grey v. State*, 124 Nev. 110, 120, 178 P.3d 154, 161 (2008) (recognizing that, in order to properly preserve an objection, a defendant must object at trial on the same grounds he asserts on appeal); *Jeremias v. State*, 134 Nev. 46, 52, 412 P.3d 43, 49 (2018) ("[T]he decision whether to correct a

forfeited error is discretionary.”). We thus reject his double jeopardy argument.²

Accordingly, we
ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. Kathleen M. Drakulich, District Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

²Insofar as Gosey has raised any other arguments that are not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.