IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROBERT ADAM MCGUFFEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 88105-COA

ORDER OF AFFIRMANCE

Robert Adam McGuffey appeals from a judgment of conviction, entered pursuant to a jury verdict, of aggravated stalking. Second Judicial District Court, Washoe County; Lynne K. Jones, Chief Judge.

McGuffey argues the district court abused its discretion by granting the State's motion in limine to introduce evidence of his prior felony convictions for the purpose of impeachment.

Generally, evidence of prior felony convictions may be admitted for the purpose of impeachment if the convictions are not too remote in time. *See* NRS 50.095; *see also Wesley v. State*, 112 Nev. 503, 510, 916 P.2d 793, 798 (1996). The prior felony convictions need not be "directly relevant to truthfulness or veracity" to be used for the purpose of impeachment. *Pineda v. State*, 120 Nev. 204, 210, 88 P.3d 827, 832 (2004). However, the probative value of such evidence must not be substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. *See Givens v. State*, 99 Nev. 50, 52-53, 657 P.2d 97, 99 (1983), *disapproved of on other grounds by Talancon v. State*, 102 Nev. 294, 301 & n.3, 721 P.2d 764, 768-69 & n.3 (1986); *see also* NRS 48.035(1). We review a district court's ruling on a motion in limine for an abuse of discretion. *Whisler v. State*, 121

Nev. 401, 406, 116 P.3d 59, 62 (2005); *see also Pineda*, 120 Nev. at 210, 88 P.3d at 832 (stating "the decision whether to admit a prior conviction for impeachment purposes . . . will not be reversed absent a clear showing of abuse" (internal quotation marks omitted)).

Here, the State sought to admit evidence that McGuffey had previously been convicted of the following felonies if he elected to testify at trial: burglary, intimidating a witness, and intimidating a public officer. The district court determined that (1) McGuffey's prior felonies would be relevant to McGuffey's credibility if he elected to testify, (2) the instant offense of aggravated stalking was not so similar to the prior offenses so as to confuse the jury or magnify the risk that the jury would convict on an improper basis, and (3) an appropriate limiting instruction would be provided to the jury.

After review, we conclude the district court did not abuse its discretion by granting the State's motion and permitting this evidence to be introduced.[1] *See Givens*, 99 Nev. at 53-54, 657 P.2d at 99 (holding the district court did not abuse its discretion in allowing the State to present evidence that the defendant, who was charged with first-degree kidnapping with the use of a deadly weapon and three counts of sexual assault with the use of a deadly weapon, had previously been convicted of assault with the intent to commit rape). Here, the State did not offer McGuffey's prior felony

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[1]We note the jury was instructed that a prior felony conviction could only be considered "for the purpose of determining the credibility of that witness" and that "[t]he fact of such a conviction does not necessarily destroy or impair the witness's credibility" but is "one of the circumstances that you may take into consideration in weighing the testimony of such a witness." We presume the jury followed this instruction. *See McNamara v. State*, 132 Nev. 606, 622, 377 P.3d 106, 117 (2016).

convictions at trial because McGuffey admitted to them during his direct examination after the district court ruled they would be admissible.

Next, McGuffey argues the district court abused its discretion by denying his motion in limine, which sought to exclude evidence relating to a video that he had previously sent to the victim. Specifically, McGuffey contends a text message referencing the video and the victim's testimony regarding the content of the video constituted inadmissible hearsay. "An out-of-court statement offered at trial to prove the truth of the matter asserted in the statement is hearsay, and is inadmissible unless it falls within one of the recognized exceptions to the hearsay exclusionary rule." *Franco v. State*, 109 Nev. 1229, 1236, 866 P.2d 247, 252 (1993); NRS 51.035; NRS 51.065. A party's own statement is not hearsay when it is offered against them. *See* NRS 51.035(3)(a).

At trial, the victim testified McGuffey sent her a text message that read as follows: "I will not rest until I do to you, witch, that – what was in, that video I sent you. Baby thieves will die and I will take back what is mine, your little Kevin has no power over me. Nice driveway." This text message does not constitute hearsay because it was authored by McGuffey and offered against him. *Cf. Carroll v. State*, 132 Nev. 269, 276-77, 371 P.3d 1023, 1029 (2016) (recognizing a defendant's statements captured via wire recording would be admissible pursuant to NRS 51.035(3)(a)).

The victim also testified McGuffey had previously sent her a video through Facebook Messenger that depicted "a man cutting up another man while he was still alive." The victim testified that, given the gruesome nature of the video, she interpreted McGuffey's text message as saying he was going to kill her and that the text message made her "more afraid."

The victim did not repeat any statements made by anyone appearing in the video, nor did she describe any conduct in the video that was intended as an assertion. Thus, the victim's testimony did not recite or refer to any out-of-court statement. *See* NRS 51.045 (defining "statement" to mean "[a]n oral or written assertion" or "[n]onverbal conduct of a person, if it is intended as an assertion"). Therefore, the victim's testimony regarding the content of the video does not constitute hearsay,[2] *see Holmes v. United States*, 92 A.3d 328, 331 (D.C. 2014) (compiling cases where courts concluded testimony describing the content of a video was not hearsay), and we conclude the district court did not abuse its discretion by denying McGuffey's motion in limine.

Finally, McGuffey argues the district court abused its discretion by denying his objection to the aforementioned text message and testimony based upon the best evidence rule. McGuffey contends the video had to be produced before any evidence referencing the video could be admitted. "The best evidence rule requires production of an original document where the actual contents of that document are at issue and sought to be proved." *Young v. Nev. Title Co.*, 103 Nev. 436, 440, 744 P.2d 902, 904 (1987); *see also* 2 Kenneth S. Broun et al., *McCormick on Evidence* § 243.1 (Robert P. Mosteller ed., 9th ed. 2025) (stating the "purpose [of the best evidence rule]

[2]We also note the victim's testimony regarding the content of the video was not hearsay because it was not offered for the truth of the matter asserted but rather to explain why McGuffey's text message caused her to be afraid. *See Wallach v. State*, 106 Nev. 470, 473, 796 P.2d 224, 227 (1990) ("A statement merely offered to show that the statement was made and the listener was affected by the statement, and which is not offered to show the truth of the matter asserted, is admissible as non-hearsay.").

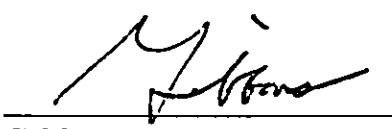
is to secure the most reliable information as to the contents of documents, *when those terms are disputed*" (emphasis added)).

During his trial testimony, McGuffey did not dispute the contents of the aforementioned text message or video. Rather, McGuffey admitted to sending the text message, and when asked what he meant in the text message, McGuffey stated "I didn't mean anything. It means that I believe that she was a witch, that she has no power over me and that her covenant has no power . . . ." Therefore, the contents of the text message and video were not in dispute, and the best evidence rule did not require the State to admit the video into evidence. Accordingly, we conclude the district court did not abuse its discretion in admitting the aforementioned text message and testimony even though the video referenced therein was not produced.

For the foregoing reasons,[3] we

ORDER the judgment of conviction AFFIRMED.

_____, C.J.
Bulla



_____, J.
Gibbons

_____, J.
Westbrook

[3]Insofar as McGuffey raises other arguments on appeal that are not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.

cc: Hon. Lynne K. Jones, Chief Judge
Oldenburg Law Office
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk