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IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

No. A-1-CA-41235

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

ESTEBAN CERECERES ALVAREZ,

Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF LEA COUNTY
Lee A. Kirksey, District Court Judge

Raúl Torrez, Attorney General
Santa Fe, NM
Tyler Sciara, Assistant Solicitor General
Albuquerque, NM

for Appellee

Bennett J. Baur, Chief Public Defender
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for Appellant

MEMORANDUM OPINION

WRAY, Judge.

{1} Defendant appeals his convictions after a bench trial for aggravated battery (great bodily harm), NMSA 1978, § 30-3-5(C) (1969); embezzlement (over \$500), NMSA 1978, § 30-16-8(A), (D) (2007, amended 2025);¹ and bribery or intimidation of a witness, NMSA 1978, § 30-24-3 (1997). Defendant challenges the sufficiency of the

¹Because the 2025 amendment to Section 30-16-8 does not impact our analysis, we refer to the current statute.

evidence to support each of these convictions and argues that (1) for aggravated battery (great bodily harm), the evidence did not establish that Victim's injuries rose to the level of great bodily harm; (2) for embezzlement, the State did not establish that Defendant converted the car for his own use, had the requisite fraudulent intent, or that the value of the car exceeded \$500; and (3) for bribery or intimidation of a witness, that Victim did not credibly testify. We affirm.

DISCUSSION

{2} Because this is a memorandum opinion, prepared solely for the benefit of the parties, we omit a recitation of the background and refer to those record facts that are necessary to our review of whether the evidence was sufficient to sustain Defendant's convictions. "In reviewing the sufficiency of evidence used to support a conviction, we resolve all disputed facts in favor of the [s]tate, indulge all reasonable inferences in support of the verdict, and disregard all evidence and inferences to the contrary." *State v. Rojo*, 1999-NMSC-001, ¶ 19, 126 N.M. 438, 971 P.2d 829. We do not substitute our judgment for that of the jury in deciding whether the State met its burden beyond a reasonable doubt but instead scrutinize the evidence "to ensure that, indeed, a rational jury *could* have found beyond a reasonable doubt the essential facts required for a conviction." See *State v. Garcia*, 1992-NMSC-048, ¶ 27, 114 N.M. 269, 837 P.2d 862. We consider each conviction in turn.

I. Aggravated Battery Involving Great Bodily Harm

{3} Generally, "[a]ggravated battery consists of the unlawful touching or application of force to the person of another with intent to injure that person or another." Section 30-3-5(A). The manner of aggravated battery determines the level of the penalty associated with the offense. A violation of Section 30-3-5(B) is a misdemeanor and results from an aggravated battery that "is not likely to cause death or great bodily harm, but does cause a painful temporary disfigurement or temporary loss or impairment of the functions of any member or organ of the body." Defendant was convicted under Section 30-3-5(C), which elevates the penalty if a person "commits aggravated battery inflicting great bodily harm or does so with a deadly weapon or does so in any manner whereby great bodily harm or death can be inflicted." As the parties note, UJI 14-131 NMRA defines "great bodily harm" as "an injury to a person which creates a high probability of death or results in serious disfigurement or results in loss of any member or organ of the body or results in permanent or prolonged impairment of the use of any member or organ of the body." Defendant contends that the evidence only showed that Victim's injuries were temporary and not inflicted in a manner likely to cause death or great bodily harm. We disagree.

{4} The district court found that Defendant struck Victim's "face, chin, ear, and arm repeatedly with a closed fist" and that these acts "created a high probability of death." Victim testified that Defendant repeatedly punched her head with a closed fist while he was driving, and Victim described the car as "swerving from side to side, just going everywhere." Victim's eye became so swollen that she had to turn her head to see.

When Victim was able to get away from the car, her head felt “bouncy and heavy,” she was “a little bit” disoriented, and eventually, she tripped and had no memory until she was discovered by emergency workers. Law enforcement found Victim unconscious on the roadway the following morning, and they described her as “severely beaten” and “semiconscious.” Her face was “extremely swollen,” with a laceration and “a lot of blood running down.” The district court viewed photographs that depicted her injuries. Victim described ongoing pain and difficulty moving for a week to a week and a half, which caused her to miss work for that time.

{5} Defendant suggests that the evidence of Victim’s injuries did not cross the legal line from “painful temporary disfigurement or temporary loss or impairment,” see § 30-3-5(B), to great bodily harm, see § 30-3-5(C), and argues that Victim’s testimony was otherwise inconsistent and that the State did not offer medical evidence to establish the seriousness of the injuries. Defendant encourages this Court not to “shy away” from “providing lower courts guidance” about the different evidentiary requirements for Section 30-3-5(B) and (C). We decline the invitation to provide further guidance in the present case. New Mexico law makes clear that the fact-finder decides the question of great bodily harm, determines the credibility and weight of the evidence, and may draw reasonable inferences about the severity of the injuries. See *State v. Cordova*, 2016-NMCA-019, ¶ 19, 366 P.3d 270 (concluding that “it was for the jury to determine whether the impairment was for a sufficiently extended period of time so as to meet” the definition of great bodily harm); *State v. Garcia*, 2011-NMSC-003, ¶ 5, 149 N.M. 185, 246 P.3d 1057 (“New Mexico appellate courts will not invade the jury’s province as fact-finder by second-guessing the jury’s decision concerning the credibility of witnesses, reweighing the evidence, or substituting its judgment for that of the jury.” (alterations, internal quotation marks, and citation omitted)); *State v. Bell*, 1977-NMSC-013, ¶ 15, 90 N.M. 134, 560 P.2d 925 (“[T]he law does not require that ‘great bodily harm’ be proved exclusively by medical testimony” and “[t]he jury is entitled to rely upon rational inferences deducible from the evidence.”).

{6} Viewing the evidence in the light most favorable to the verdict, a reasonable fact-finder could conclude that Victim suffered great bodily harm. See *Cordova*, 2016-NMCA-019, ¶ 19. The fact-finder in the present case viewed the photographs of Victim’s injuries and heard the testimony about how the injuries looked, felt, and impacted Victim afterward. At the least, the evidence supported a conclusion that when Defendant repeatedly hit Victim with a closed fist while driving a vehicle, he committed aggravated battery “in any manner whereby great bodily harm or death can be inflicted.” See § 30-3-5(C); *State v. Pettigrew*, 1993-NMCA-095, ¶ 7, 116 N.M. 135, 860 P.2d 777 (“Section 30-3-5(C) requires only that great bodily harm could result, not that it must result.”); see also *Garcia*, 2011-NMSC-003, ¶ 5 (“So long as a rational jury *could* have found beyond a reasonable doubt the essential facts required for a conviction, we will not upset a jury’s conclusions.” (internal quotation marks and citation omitted)).

II. Embezzlement

{7} To establish embezzlement in the present case, the State was required to prove that Defendant was entrusted with Victim's car that had a market value greater than \$500, converted the car for his own use, and fraudulently intended to deprive Victim of the car. See UJI 14-1641 NMRA. The evidence showed that Victim agreed to give Defendant a ride to a friend's house and allowed him to drive. Victim expected to pick up Defendant, drop him off at his friend's house, and then go home. After the aggravated battery, Defendant drove the car to another person's house, took the keys, and went into the house. Defendant argues that the evidence did not support a finding that he converted Victim's car for his use, that he had the requisite fraudulent intent, or that the market value of the car was greater than \$500. We consider each argument.

{8} A reasonable fact-finder could conclude that Defendant converted Victim's car to his own use. "Conversion occurs when a person who has been entrusted with another's property treats the property as [their] own and uses it for [their] own purpose." *State v. Curry*, 2002-NMCA-092, ¶ 10, 132 N.M. 602, 52 P.3d 974. Defendant contends that Victim left the car behind and that Defendant's intentions thereafter regarding the car were not clear. The evidence, however, showed that Victim's car was later found with some of Defendant's belongings inside, and it appeared as if he had been using the car as his own. Defendant had possession of the car keys. From this evidence and Victim's testimony, the fact-finder could reasonably infer that Defendant's use of the car was other than what Victim had authorized. See *State v. Archie*, 1997-NMCA-058, ¶ 9, 123 N.M. 503, 943 P.2d 537 ("The statutory reference that the wrongdoer's conversion must be to [their] own use is more a reference to a use other than that authorized by the owner." (internal quotation marks omitted)); *State v. Bankert*, 1994-NMSC-052, ¶ 17, 117 N.M. 614, 875 P.2d 370 ("A conviction will be upheld if based upon a logical inference from circumstantial evidence.").

{9} The evidence also supported the fraudulent intent element. "Fraudulent intent is defined as the intent to cheat or deceive and may be inferred by reasonable inferences and circumstantial evidence." *Curry*, 2002-NMCA-092, ¶ 11. Defendant argues that the State provided no evidence that Victim did not agree for him to take the car and asserts both that Victim left the car behind and "there were legitimate barriers to him or anyone returning her car to her at that time." Victim testified, however, that although it was common for Defendant to drive her car when they were together, he had never kept her car after they parted. After hitting her repeatedly, Defendant took the keys and left Victim in the car. When he was gone, Victim "took off running." Victim testified that she did not give Defendant permission to take the car. From this evidence, the fact-finder could reasonably infer that Defendant knew that when Victim left the car behind, she did not intend to give him permission to keep or continue to use it.

{10} Last, the evidence was sufficient to establish that the value of the car exceeded \$500. Defendant maintains that the amount that Victim paid for the car did not establish its value because Victim bought the car a year before and the car had "issues." This argument appears to rely on the investigator's testimony that Victim had reported that the car was older, it was "not the cleanest," one door did not open easily, and the tint was not "the best." Regardless, Victim testified that she bought the car the year before

the incident for \$2200, it was a 2007 make, and “it functioned good.” From the testimony of both witnesses, the fact-finder could reasonably infer that the present market value of the car was more than \$500. See *State v. Barr*, 1999-NMCA-081, ¶ 30, 127 N.M. 504, 984 P.2d 185 (permitting an inference of market value from the purchase price together with the age and condition of the goods).

III. Bribery or Intimidation of a Witness

{11} To establish bribery or intimidation of a witness, the State was required to prove that Defendant knowingly “intimidate[ed] or threaten[ed] any witness or person likely to become a witness in a judicial, administrative, legislative or other official cause or proceeding for the purpose of preventing such individual from testifying to any fact, abstain from testifying or to testify falsely.” See § 30-24-3(A)(2). Defendant argues that Victim’s testimony about threats “was unreliable and repeatedly contradicted by physical evidence.” The testimony of a single witness, however, can be sufficient to support a verdict, see *State v. Notah*, 2022-NMCA-005, ¶ 11, 503 P.3d 418, and “[r]esolution of conflicts in the evidence, the credibility and [the] weight to be given the testimony of witnesses is the function of the fact[-]finder,” *State v. Casteneda*, 1982-NMCA-046, ¶ 42, 97 N.M. 670, 642 P.2d 1129.

{12} We conclude that Victim’s testimony sufficed to support the verdict. Victim testified that before and during the battery, Defendant stated that her daughter would be an orphan, that he needed to find a place to dump her body, and that he would not let her go “call the cops on [him].” Defendant told Victim that even if she reported to the cops, he would not stay in jail for more than a few days and wouldn’t “do time,” and as a result, Victim felt threatened. Despite any other conflicting evidence, Victim’s testimony supported the conclusion that Defendant intimidated Victim to prevent her from reporting the incident in the car. See *Notah*, 2022-NMCA-005, ¶ 11 (holding that the “[v]ictim’s testimony alone provided sufficient evidence to support [the d]efendant’s conviction”).

CONCLUSION

{13} We affirm Defendant’s convictions.

{14} **IT IS SO ORDERED.**

KATHERINE A. WRAY, Judge

WE CONCUR:

JACQUELINE R. MEDINA, Chief Judge

ZACHARY A. IVES, Judge