

IN THE NEBRASKA COURT OF APPEALS

**MEMORANDUM OPINION AND JUDGMENT ON APPEAL  
(Memorandum Web Opinion)**

STATE V. GRAY

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STATE OF NEBRASKA, APPELLEE,

v.

SONDRA M. GRAY, APPELLANT.

Filed April 2, 2024. No. A-23-407.

Appeal from the District Court for Lancaster County: KEVIN R. MCMANAMAN, Judge.  
Affirmed.

Kyle J. Flentje, of Flentje Law, L.L.C., for appellant.

Michael T. Hilgers, Attorney General, and Jordan Osborne for appellee.

MOORE, BISHOP, and ARTERBURN, Judges.

MOORE, Judge.

INTRODUCTION

Sondra M. Gray appeals her conviction and sentence for two counts of second degree assault and two counts of use of a deadly weapon to commit a felony following a jury trial in the district court for Lancaster County. Gray claims that there was insufficient evidence to sustain her convictions and that she received excessive sentences. For the reasons contained herein, we affirm.

STATEMENT OF FACTS

In May 2022, Anthony McManaman and his girlfriend, Kristeen Dickson, traveled from their home in Wymore, Nebraska, to stay with McManaman's longtime friend, Edward Yohe, in Lincoln. Dickson's teenage daughter, Roxie, and McManaman's three young children accompanied the couple. On the evening of May 13, the tires of the couple's van were slashed and both McManaman and Dickson were stabbed and hospitalized as a result of their injuries.

On August 31, 2022, Gray was charged by information with two counts of second degree assault, a Class IIA felony, in violation of Neb. Rev. Stat. § 28-309 (Reissue 2016). On February 21, 2023, an amended information was filed, charging Gray with two additional counts of use of a deadly weapon (knife) to commit a felony, a Class II in violation of Neb. Rev. Stat. § 28-1205(1)(b).

A jury trial was held in March 2023 and the following evidence was adduced.

#### YOHE'S TESTIMONY

Yohe testified that he had been dating Gray a few weeks before McManaman and Dickson came to stay with him. Prior to their visit to Lincoln, Yohe and Gray traveled to Wymore in Gray's green Honda to help McManaman repair the couple's van. Gray interacted with Dickson, McManaman, and McManaman's children in the couple's backyard for the 2 hours she was in Wymore.

In the days leading up to the incident on May 13, 2022, Yohe told Gray that he no longer wanted to be in a romantic relationship with her. In text messages to Yohe, Gray expressed her anger over the breakup and accused Yohe of using Gray for access to drugs and of seeing other women. After a conversation on the phone, Yohe and Gray decided to continue seeing one another as friends and Gray picked Yohe up from his home on Thursday, May 12. However, by the morning of Friday, May 13, Yohe learned information that caused him to formally end his relationship with Gray. Gray dropped Yohe back off at his house on the morning of May 13 and briefly came inside with Yohe. After Gray dropped Yohe off, she told Yohe that he was probably, "messing with the girl with the van," referring to Dickson.

Later in the day on May 13, Yohe received a call from Gray's brother, with whom Yohe was also acquainted. The brother was upset that Yohe had broken up with Gray, and from his speech, Yohe inferred that the brother was intoxicated. After the phone call, Yohe expected the brother to come to his house for a confrontation regarding Gray.

At some point, the brother arrived at Yohe's residence, where Yohe was waiting for him in the front yard. The two "squared up" to physically fight one another. Yohe was able to see the brother's hands as the two prepared to fight each other and testified that he never saw the brother with a knife. Yohe heard the screen door on the side of his house open and McManaman came outside and faced the backyard of the residence. The brother then ran past Yohe and wrestled McManaman to the ground.

Yohe attempted to get the brother off of McManaman. During this time, he saw Dickson come out of the residence through the side door and she came over to also help get the brother off of McManaman. After Yohe separated the brother and McManaman, he saw McManaman go back into the residence using the side door and he saw Dickson go back inside using the front door. Yohe then turned around to see Gray running away from the residence through the backyard to her green car that was parked near his back driveway. Yohe also saw the mother of the brother's children parked in a silver car behind Gray's green car and both cars later drove south together.

Yohe did not see anyone get stabbed during the altercation on May 13. But after the brother left, Roxie came out of the home and told him that both McManaman and Dickson had been stabbed.

Yohe acknowledged that he had used methamphetamine the day before May 13 and was still under the influence during his altercation with the brother.

#### ROXIE'S TESTIMONY

Roxie testified that she was 14 years old at the time of the incident. She first met Gray on Friday, May 13, 2022, when Gray briefly stopped by Yohe's residence, where Roxie and her family were staying at the time. Gray came into the living room of the residence and introduced herself to Roxie as "Sondra." Gray and Roxie visited for a few minutes; Gray petted Roxie's dogs and told Roxie about her family. Roxie believed that Gray and Yohe then left the home together.

Later in the day on May 13, Roxie was playing with McManaman's children in a back bedroom of Yohe's residence when, through the bedroom window, she saw Gray get out of a green car that was parked behind the house in a rear driveway. Roxie then moved to the bathroom, which had a better view of Yohe's backyard, and observed Gray stab the front tire of her mother's van with a knife and walk toward the side of the residence. Roxie described the knife as a "kitchen knife" with a red handle and a blade approximately 4-inches long.

McManaman and Dickson were in the basement of the residence doing laundry and Roxie yelled down the basement stairway that someone had just stabbed the van's tires. Surprised, McManaman and Dickson ran up the basement stairs. Roxie testified that neither person had anything in their hands as they left the basement. McManaman climbed the stairs first and exited the residence through the side door that was at the top of the basement stairway and Dickson followed.

As McManaman and Dickson exited the residence, Roxie observed Gray in the driveway from the side door. Gray had a "crazy look in her face" and Roxie saw Gray stab McManaman in his side with the knife she was holding. Roxie did not see Yohe outside but did see three other men in the driveway who had shaved heads and were wearing white tank tops and blue shorts.

After seeing Gray stab McManaman, Roxie shut the side door and locked it from the inside. Roxie then barricaded herself in a back bedroom with McManaman's three children. Roxie was in the back bedroom for a few minutes when she heard knocking on the front door of the residence and McManaman screaming to let him inside. Roxie exited the back bedroom to find McManaman and Dickson on the floor of the living room bleeding. Dickson was bleeding from her side near her lungs and Roxie recalled seeing a wound with "an uncontrollable amount of blood."

Roxie took Dickson's cellphone and called 911 and the operator instructed Roxie to hold a rag to the stab wounds and apply pressure. Roxie went to the kitchen to retrieve a rag and, through the kitchen window, which faced the front of the residence, she saw the three men who had been outside get into a silver car parked in the front driveway. She also saw Gray standing near the car.

At trial, Roxie identified Gray as the person who she saw stab McManaman. She was "a hundred percent positive" in her identification.

#### DICKSON'S TESTIMONY

Dickson recalled that Yohe had brought Gray to Wymore roughly a month before the incident, when he came to help repair the van. Gray had driven herself and Yohe to Wymore in a green Mazda and she sat inside the car for the few hours she was at Dickson and McManaman's residence and never spoke to them.

Dickson testified that sometime on May 13, 2022, while she and McManaman were at Yohe's residence, Yohe was agitated and complained to Dickson that he was going to get into a fight with Gray's brother. Dickson began packing to return to Wymore and she and McManaman went to the basement of the residence to do laundry. Roxie then yelled down the basement stairway that someone was slashing the van's tires. McManaman ran up the stairs and Dickson followed behind him.

Dickson did not see McManaman exit the residence, but by the time she exited the home through the side door, she saw that McManaman had been stabbed, and a man, unknown to her at the time, was pinning McManaman to the ground. The man was wearing a tank top and blue basketball shorts.

Dickson jumped off the steps of the side door and went over to help McManaman stand up. Dickson also saw Gray outside of the residence, roughly 10 feet away from McManaman and the man. Dickson recognized her as the woman Yohe had taken to Wymore. Dickson denied seeing Gray at Yohe's residence earlier in the day on May 13. Dickson saw Yohe's female neighbors outside the residence but did not see Yohe or any other men during the altercation.

After Dickson picked McManaman off the ground, she noticed that Gray had a knife in her right hand and "had her arms out like a crab and she was ready." McManaman then ran to the residence and entered through the side door. Gray slapped Dickson and when Dickson moved to respond, Gray swung the knife and missed Dickson. However, Gray then "shanked" Dickson twice in her side. Dickson ran to the front door of the residence, which was locked. After Dickson pounded on the front door, Roxie came and unlocked the door. Dickson recalled lying on the living room floor by the front door when the paramedics arrived.

Dickson was hospitalized for over 3 days due to her two stab wounds and had to be intubated because her lungs had filled with blood. Dickson conceded that while hospitalized she tested positive for methamphetamine but denied knowing how she had produced a positive result.

At trial, Dickson identified Gray as the person who had stabbed her.

#### MCMANAMAN'S TESTIMONY

McManaman testified consistently with Dickson regarding previous interactions with Gray. Gray had accompanied Yohe on a visit to Wymore to help repair the van sometime before the incident, but Gray stayed inside her car the entire time and did not interact with anyone. McManaman also denied that Gray had been at Yohe's residence earlier in the day on May 13.

Just prior to the incident on May 13, McManaman was inside Yohe's living room when Roxie yelled that someone was slashing the van's tires. He did not recall where Dickson was at the time. McManaman ran outside through the side door to see who was slashing the tires, and the brother tackled McManaman from behind and held him down on the ground as Gray stabbed him near the left hip. McManaman was acquainted with the brother as Yohe's friend but was unaware of the brother's relationship to Gray.

During the altercation, McManaman noticed Gray's green car parked in the back of the residence behind the van, and a silver car McManaman recognized as the brother's parked in the front. McManaman did not see any other individuals, including Yohe, during the altercation.

McManaman recalled that Dickson was outside when he ran back into the residence through the side door. McManaman did not see Dickson get stabbed but later opened the front

door of the residence to her where she fell into his arms, “gushing everywhere.” McManaman was hospitalized as a result of his stab wound but was released by the following day.

McManaman has a genetic neurological disorder which affects his balance, speech, and memory. However, McManaman was “certain” that Gray was the person who had stabbed him. McManaman had been looking directly at Gray when he was stabbed and stated, “when you’ve been traumatized like this, that’s one picture you won’t forget.”

#### GRAY’S TESTIMONY

Gray testified that she had been dating Yohe in the spring of 2022. Gray recalled traveling with Yohe to Wymore and interacting with McManaman, Dickson, and their children, while their van was being repaired. Gray was also at Yohe’s residence earlier in the day on May 13 for 2 to 3 hours. During that time, she spoke with Roxie about school and played with McManaman’s children. Gray also interacted with McManaman and Dickson, who she described as “anxious and irritable,” and potentially under the influence.

Later in the day on May 13, Yohe came to Gray’s residence and was himself under the influence. Yohe argued with her brother on the phone and then left Gray’s house. Gray learned that her brother was on his way to Yohe’s residence and so Gray also went to Yohe’s in an attempt to intervene.

Gray left her residence and parked her green Honda near Yohe’s backyard, close to where the van was parked in the back driveway. She ran to the front yard and stood between her brother and Yohe, who were engaged in an argument. While she tried to keep Yohe away from her brother, Gray noticed a silver car parked in the front yard. McManaman then came running out of the side door of Yohe’s residence and the brother ran around Gray and tackled McManaman to the ground. Gray never saw Dickson come outside. When McManaman reentered Yohe’s residence, she checked on Yohe and her brother before leaving.

Gray denied ever having a knife or stabbing anyone.

#### LAW ENFORCEMENT TESTIMONY

Lincoln Police Department officers testified to arriving on the scene and observing a blue minivan parked behind Yohe’s residence with two flat tires. Each of the flat tires had a slit mark, roughly an inch in width and appeared to have been punctured with a sharp instrument, consistent with a knife. A knife was never recovered.

Officers interviewed individuals on the scene, including a man wearing blue basketball shorts who was later identified as Gray’s brother. Officers also observed that McManaman, Yohe, and the brother, appeared to be under the influence during their respective interviews directly following the incident.

After officers had a description of the individual who had stabbed McManaman and Dickson, a photo lineup was created. The photo lineups were shown individually to Roxie and Dickson, as the police determined that the two had the best view of the person responsible and were willing to participate in the lineup. Following Roxie and Dickson’s participation in the photo lineup, police obtained an arrest warrant for Gray.

## VERDICT AND SENTENCING

The jury found Gray guilty of two counts of second degree assault and two counts of use of a deadly weapon to commit a felony. The district court accepted the jury's verdict and found Gray guilty on all four counts.

The district court sentenced Gray to a term of 12 to 15 years' incarceration for each second degree assault and to a term of 5 to 8 years' incarceration for each use of a deadly weapon to commit a felony. The court ordered the sentences to run consecutively to one another and credited Gray with 243 days for time served.

Gray appeals.

## ASSIGNMENTS OF ERROR

Restated, Gray assigns that the district court erred in (1) finding the evidence was sufficient to convict her on all four counts and (2) imposing excessive sentences.

## STANDARD OF REVIEW

Regardless of whether the evidence is direct, circumstantial, or a combination thereof, and regardless of whether the issue is labeled as a failure to direct a verdict, insufficiency of the evidence, or failure to prove a prima facie case, the standard is the same: In reviewing a criminal conviction, an appellate court does not resolve conflicts in the evidence, pass on the credibility of witnesses, or reweigh the evidence; such matters are for the finder of fact, and a conviction will be affirmed, in the absence of prejudicial error, if the evidence admitted at trial, viewed and construed most favorably to the State, is sufficient to support the conviction. *State v. Bershon*, 313 Neb. 153, 983 N.W.2d 490 (2023).

An appellate court will not disturb a sentence imposed within the statutory limits absent an abuse of discretion by the trial court. An abuse of discretion occurs when a trial court's decision is based upon reasons that are untenable or unreasonable or if its action is clearly against justice or conscience, reason, and evidence. *State v. Abligo*, 312 Neb. 74, 978 N.W.2d 42 (2022).

## ANALYSIS

### INSUFFICIENT EVIDENCE

Gray assigns that there was insufficient evidence to convict her on any of the four counts. Gray asserts that there was not evidence beyond a reasonable doubt that Gray was the individual who stabbed McManaman and Dickson. She argues that though the victims testified that Gray had stabbed them, McManaman has a disability which affects his memory and there was evidence that both McManaman and Dickson were under the influence at the time of the incident. Gray also points to inconsistent testimony regarding when the victims had first interacted with Gray and which doors the victims had used to exit and reenter Yohe's residence during the incident. Gray contends that there was testimony that Gray's brother and the mother of the brother's children were on the scene, yet they were not called by the State to testify. Gray notes that there was also a lack of physical evidence, including a recovered weapon.

Gray's arguments go only to the weight and credibility given to testimony by the jury as the finder of fact, and not to any of the elements of the crime. As stated above, in reviewing a criminal conviction, an appellate court does not resolve conflicts in the evidence, pass on the

credibility of witnesses, or reweigh the evidence; such matters are for the finder of fact. See *State v. Bershon, supra*. The jury apparently found McManaman, Dickson, and Roxie's testimony and identification of Gray to be credible, and we do not question the jury's reliance on their testimony.

The evidence here, when viewed and construed most favorably to the State, is sufficient to support Gray's convictions of second degree assault and use of a deadly weapon to commit a felony involving both McManaman and Dickson. Second degree assault in violation of § 28-309 provides:

- (1) A person commits the offense of assault in the second degree if he or she:
  - (a) Intentionally or knowingly causes bodily injury to another person with a dangerous instrument;
  - (b) Recklessly causes serious bodily injury to another person with a dangerous instrument;
  - ....
- (2) Assault in the second degree shall be a Class IIA felony.

Use of a deadly weapon to commit a felony in violation of § 28-1205 provides:

- (1)(a) Any person who uses a firearm, a knife, brass or iron knuckles, or any other deadly weapon to commit any felony which may be prosecuted in a court of this state commits the offense of use of a deadly weapon to commit a felony.
- (b) Use of a deadly weapon, other than a firearm, to commit a felony is a Class II felony.

At trial, witnesses testified that there was an altercation at Yohe's residence on May 13, 2022, as a result of Yohe having ended his romantic relationship with Gray. Roxie testified that prior to the physical altercation, she saw Gray use a knife to puncture the tires on her mother's van. When Roxie alerted McManaman and Dickson to this, both exited Yohe's residence and were then stabbed outside. McManaman testified that he was looking directly at Gray as she stabbed him in his hip while her brother held McManaman to the ground. Roxie likewise testified to seeing Gray stab McManaman. Dickson testified that she saw a knife in Gray's outstretched arm and that Gray missed Dickson the first time she swung the knife but then stabbed Dickson twice in her side. Roxie, McManaman, and Dickson were all unequivocal in their identification of Gray at trial.

We conclude that the evidence admitted at trial was sufficient to support Gray's conviction of two counts of second degree assault and two counts of use of a deadly weapon to commit a felony. This assignment of error fails.

#### EXCESSIVE SENTENCES

Gray also assigns error to the sentences imposed on her. She acknowledges that the sentences are within the statutory limits but claims that the sentences are excessive. Gray does not argue that the district court failed to consider specific statutory or mitigating factors. Gray asserts that the abuse of discretion standard of review is vague and that clear standards for reviewing excessive sentences have not been articulated. We disagree.

Gray's sentences were within the statutory limits. She was convicted of two counts of a Class II felony, which is punishable by a minimum of 1 year and a maximum of 50 years'

imprisonment. See Neb. Rev. Stat. § 28-105 (Cum. Supp. 2022). She was also convicted of two counts of a Class IIA felony, which is punishable by a maximum of 20 years' imprisonment. See *id.* There is no evidence that the district court failed to consider the well-established factors and applicable legal principles in its sentencing decision. As noted by the Nebraska Supreme Court, these factors and principles have been repeated so often as to not require citation. See *State v. Applehans*, 314 Neb. 653, 992 N.W.2d 464 (2023).

However, for the sake of completeness we note that the presentence investigation report prepared in this case indicates that Gray was 42 years old at the time of sentencing and had completed her GED and some professional certificates. Her criminal history includes convictions for stealing money or goods less than \$300 (twice), battery, making false statement to police officer (three times), driving under the influence (three times), theft by shoplifting \$200-\$500, attempt of a Class IIIA or Class IV felony (amended from possess controlled substance), driving during revocation/suspension (numerous times), first degree forgery, attempt of a Class III or IIIA felony (amended from possess deadly weapon – prohibited person), attempt of a Class IV felony (amended from possess controlled substance), third degree assault, criminal mischief, and numerous traffic violations. Gray has a history of alcohol and drug use, as well as some mental health issues. Gray scored as a very high risk to reoffend on the overall Level of Service/Case Management Inventory assessment.

At the sentencing hearing, the district court stated that it had reviewed the entirety of the presentence investigation report and had considered all statutory factors in determining the appropriate sentence. The court noted that it was taking the safety of the community into account and described the assault as a “violent . . . heinous attack on two innocent individuals.”

We find no abuse of discretion in the sentences imposed. See *State v. Abligo*, 312 Neb. 74, 978 N.W.2d 42 (2022). This assignment of error fails.

#### CONCLUSION

For the reasons set forth above, we affirm Gray's convictions and sentences.

AFFIRMED.