

IN THE SUPREME COURT OF THE STATE OF NEVADA

DANIEL LONGORIA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43444

FILED

JUN 08 2005

ORDER OF AFFIRMANCE

JANEY M. SLODGE
CLERK OF SUPREME COURT
DEPUTY CLERK

This is a judgment of conviction, pursuant to a jury verdict, of one count of battery with the use of a deadly weapon resulting in substantial bodily harm, one count of misdemeanor assault and one count of assault with the use of a deadly weapon. Eighth Judicial District Court, Clark County; John S. McGroarty, Judge. The district court sentenced appellant to: a prison term of 35 to 156 months for battery; a consecutive prison term of 13 to 60 months for assault with a deadly weapon; and time served for the misdemeanor assault.

Appellant first contends that the evidence presented at trial was insufficient to support the jury's finding of guilt as to the charge of assault with a deadly weapon. Specifically, appellant argues that the evidence does not support a conviction for assault and a separate conviction for battery involving the same victim, Christina Nava. 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.¹

¹See Wilkins v. State, 96 Nev. 367, 609 P.2d 309 (1980); see also Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998).

In particular, we note that eyewitnesses testified that appellant waved a knife at Nava and another victim while walking toward them. When Nava turned and ran, appellant chased her and cut her on the back.

The jury could reasonably infer from the evidence presented that appellant both assaulted and battered Nava. 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.²

Appellant also contends that the district court erred by allowing evidence of appellant's prior felony conviction as impeachment evidence. The State provided a certified copy of a 1993 conviction from Texas in the name of Daniel Longoria. Appellant argues that the State did not prove beyond a reasonable doubt that the appellant was the individual named in the conviction, and that the State did not prove beyond a reasonable doubt that the conviction expired within 10 years of the date of appellant's testimony.

Deciding whether to admit or exclude evidence of prior felony convictions "rests in the sound discretion of the trial court and will not be disturbed unless manifestly wrong."³

At trial, appellant stipulated "that the State offered and the Court accepted evidence of a 1993 conviction out of Texas for a felony with Daniel Longoria being the person named in that conviction. And that is proved up by court's Exhibit Two and Three." NRS 50.095(6) provides

²See Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981); see also McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

³Anderson v. State, 92 Nev. 21, 23, 544 P.2d 1200, 1201 (1976) (citing Brown v. State, 81 Nev. 397, 404 P.2d 428 (1965)).

that "[a] certified copy of a conviction is prima facie evidence of the conviction." Instead of providing evidence at trial that the conviction was not his, appellant elected to stipulate to the existence of the conviction. Appellant will not now be heard to complain that the State failed to prove the conviction.

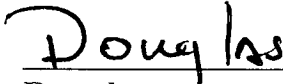
Turning next to appellant's argument that the State failed to prove that the conviction was not too remote, NRS 50.095 allows a prior felony conviction to be used to attack the credibility of a witness as long as the conviction was for a felony, and not "more than 10 years has elapsed since: (a) The date of the release of the witness from confinement; or (b) The expiration of the period of his parole, probation or sentence, whichever is the later date."

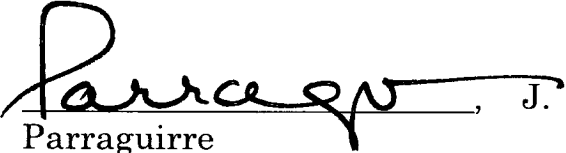
The State provided a copy of an NCIC printout at trial that showed the appellant's sentence on the Texas conviction commenced on June 24, 1993, and ended on June 24, 2003. Appellant testified in the instant matter on January 16, 2004, and so the expiration of the sentence was well within the 10 year period.

Having considered appellant's contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Maupin


_____, J.
Douglas


_____, J.
Parraguirre

cc: Hon. John S. McGroarty, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk