

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANGEL ERNEST RODRIGUEZ A/K/A
ANGEL EARNEST RODRIGUEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43626

FILED

SEP 28 2005

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count each of battery with the use of a deadly weapon resulting in substantial bodily harm (count I), battery with the use of a deadly weapon (count II), and conspiracy to commit murder (count III), two counts of attempted murder with the use of a deadly weapon (counts IV-V), one count of discharging a firearm out of a motor vehicle (count VI), and two counts of discharging a firearm at or into a structure or vehicle. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

On May 10, 2004, prior to the sentencing hearing, appellant Angel Ernest Rodriguez filed in the district court a motion for a new trial¹ and a motion for judgment of acquittal after verdict of guilty.² Both motions were based on the alleged insufficiency of the evidence. The State opposed the two motions. The district court conducted a hearing on the motions, heard arguments from counsel, and denied the motions. The

¹See NRS 176.515(4).

²See NRS 175.381(2).

district court subsequently sentenced Rodriguez to serve a prison term of 24-96 months for count I, a concurrent prison term of 24-72 months for count II, a concurrent prison term of 24-62 months for count III, two consecutive prison terms of 24-96 months for count IV, two consecutive prison terms of 24-96 months for count V to run concurrently with count IV, a prison term of 24-84 months for count VI to run concurrently with count V, a prison term of 12-48 months for count VII to run consecutively to count VI, and a prison term of 12-48 months for count VIII to run concurrently with count VII.

First, Rodriguez contends that the district court erred in denying his motion for a new trial based on insufficient evidence. Specifically, Rodriguez claims that he was convicted on “eyewitness testimony alone,” and that “[t]here was virtually little or no physical evidence linking [him] to the alleged crimes.” This court has stated, however, that “[a] district court lacks authority to grant a new trial based on insufficiency of the evidence; when there is truly insufficient evidence to convict, a defendant must be acquitted.”³ Therefore, we conclude that Rodriguez’s contention was not properly raised in a motion for a new trial pursuant to NRS 176.515(4).

Second, as noted above, Rodriguez also filed a motion for judgment of acquittal after the verdict of guilty based on the allegedly insufficient evidence proffered by the State. NRS 175.381(2) provides that the trial court may set aside a verdict and enter a judgment of acquittal “if the evidence is insufficient to sustain a conviction.” On appeal, Rodriguez

³Evans v. State, 112 Nev. 1172, 1193, 926 P.2d 265, 279 (1996).

contends that the district court erred in denying this motion. We disagree with Rodriguez's contention.

Our review of the record on appeal reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact.⁴ The criminal charges were based on two separate incidents involving Rodriguez and his codefendant, Joel Sanchez. The victims testified that on December 7, 2002, they were approached by Rodriguez, Sanchez, and a third individual, Dusty Mashtare, while sitting outside the home of one of the victims. After a brief verbal exchange, Mashtare struck one of the victims. One of the victims testified that the three men were armed with "[a] gun, a knife, and a chain with a lock on the end." A fight ensued, during which, Rodriguez struck the victims repeatedly with the 18-20 inch lock and chain. One of the victims received numerous bruises and lacerations across his back, head, and face requiring multiple stitches and staples.

On December 31, 2002, one of the same victims was leaving a 7-Eleven when he spotted Rodriguez and Sanchez sitting in a black Lexus SUV in the parking lot. The victim immediately recognized the codefendants from the previous incident as "the guys who tried to kill me." After calling his father from a payphone, the victim was approached and hit by Sanchez. The two started fighting, and soon Rodriguez and the driver of the SUV joined the melee, "stomping and kicking" the victim. The victim's father arrived and managed to extricate his son. The victim

⁴See Wilkins v. State, 96 Nev. 367, 609 P.2d 309 (1980); see also Mason v. State, 118 Nev. 554, 559, 51 P.3d 521, 524 (2002) (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979)).

testified that Rodriguez pointed a gun at his father, but Rodriguez, Sanchez, and a third individual returned to the Lexus and drove away.

When the victim and his father returned home and pulled into the driveway, the black Lexus SUV pulled in behind them. As the victims exited their vehicle, both Rodriguez and Sanchez, armed with guns, started shooting at them. One of the victims was shot twice in the back and the other once in the back. There was also testimony that bullets were found inside the victims' vehicle and inside their house where a New Year's Eve party was taking place. In his post-verdict motions, Rodriguez claimed that there was insufficient evidence presented demonstrating that he was one of the assailants on December 31, 2002, and noted that he presented four alibi witnesses who testified on his behalf at trial.

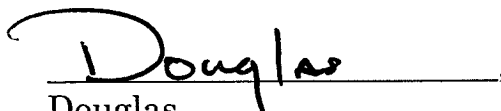
Based on the above, we conclude that the jury could reasonably infer from the evidence presented that Rodriguez committed the crimes for which he was convicted beyond a reasonable doubt.⁵ It is for the jury to determine the weight and credibility to give witness testimony, and the jury's verdict will not be disturbed on appeal where, as here, sufficient evidence supports the verdict.⁶ Therefore, we conclude that the State presented sufficient evidence to sustain the conviction, and that the district court did not err in denying his motion for a new trial and his motion for judgment of acquittal after the verdict.

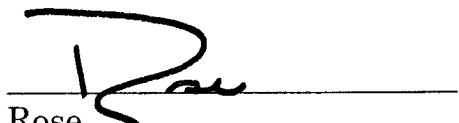
⁵See NRS 200.481(2)(e)(1), (2); NRS 199.480(1); NRS 200.010; NRS 200.030; NRS 193.330(1); NRS 193.165; NRS 202.287(1)(b); NRS 202.285(1)(b).

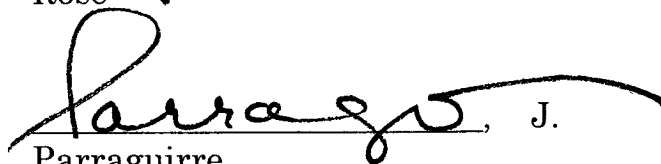
⁶See Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981); see also McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

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

ORDER the judgment of conviction AFFIRMED.

 _____, J.
Douglas

 _____, J.
Rose

 _____, J.
Parraguirre

cc: Hon. Donald M. Mosley, District Judge
Joseph A. Scalia II
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk