

IN THE SUPREME COURT OF THE STATE OF NEVADA

HOLLY AIKMAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44204

FILED

MAY 04 2005

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

ORDER OF AFFIRMANCE AND LIMITED REMAND TO CORRECT
THE JUDGMENT OF CONVICTION

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count each of conspiracy to commit robbery with the use of a deadly weapon (count I), robbery with the use of a deadly weapon, victim 60 years of age or older (count II), carrying a concealed firearm or other deadly weapon (count III). Eighth Judicial District Court, Clark County; John S. McGroarty, Judge. The district court sentenced appellant Holly Aikman to serve a prison term of 12-60 months for count I, a concurrent prison term of 24-60 months plus an equal and consecutive prison term of 24-60 months for count II, and a concurrent jail term of 12 months for count III; all three counts were ordered to run concurrently to the sentence imposed in an unrelated case.

Aikman contends that the evidence presented at trial was insufficient to support the jury's finding that she was guilty beyond a reasonable doubt of robbery and conspiracy to commit robbery. Aikman argues the robbery was "unsuccessful" and that "an attempt[ed] robbery verdict is more fair and appropriate" because: (1) no violence was used during the taking of the Kmart Store items, and (2) she lost control of the stolen items after she was tackled by the security guard. Aikman also contends that she never told the two friends who accompanied her to the

store that she intended on stealing, and thus, there was no conspiracy. We disagree with Aikman's contentions.

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.¹ Initially, we note that Aikman testified at her trial and admitted that she traveled to the store with her co-conspirator and another individual, and that after she entered the store, she decided to steal some personal items. Further, the 66-year-old security guard on duty at the time testified that he witnessed Aikman "picking things off the rack," specifically, clothing and costume jewelry, and that she removed a black handbag from a display and placed all of the items inside the handbag. Aikman, carrying the handbag with the stolen items inside, was walking arm in arm with her co-conspirator past the cash registers, making no attempt to pay for the items, towards the exit doors, when the security guard confronted the two of them. The co-conspirator then pulled out a knife and told the security guard to get out of his way and threatened to "cut [him] up." Aikman started to run away and the co-conspirator attempted, but failed, to stop the security guard from pursuing her. The security guard caught up to Aikman and grabbed her before she exited the store. According to Aikman's testimony, she abandoned the stolen handbag carrying the clothing and jewelry prior to being stopped by the security guard. The security guard, however, testified that Aikman used the handbag in the ensuing fight, hitting him with the bag and her

¹See 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)).

fists, and that the handbag eventually flew out of her hand, causing the stolen items inside to scatter.

Based on all of the above, we conclude that the jury could reasonably infer from the evidence presented that Aikman committed the crimes of robbery with the use of a deadly weapon, victim 60 years of age or older, and conspiracy to commit robbery.² 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, sufficient evidence supports the verdict.³ We also note that circumstantial evidence alone may sustain a conviction.⁴ Therefore, we conclude that the State presented sufficient evidence to sustain the conviction.

Finally, Aikman contends that it was "structural error" to be charged and convicted of carrying a concealed weapon. Aikman argues that she should have been charged instead with possession of a switchblade under NRS 202.350(1)(a) because the concealed weapon statute, NRS 202.350(1)(d), "does not mention any specific prohibition against carrying a switchblade." Aikman raises this issue for the first time on appeal and contends that the structural error, "alleging the wrong crime," requires this court to vacate the conviction. We disagree with Aikman's contention.

²See NRS 200.380(1) (defining "robbery"); NRS 193.165(1); NRS 193.167(1)(f); NRS 199.480(1).

³See 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).

⁴See Buchanan v. State, 119 Nev. 201, 217, 69 P.3d 694, 705 (2003).

We conclude that the State did not err by charging Aikman and ultimately convicting her of carrying a concealed weapon, specifically, a switchblade knife. The criminal information charged Aikman with carrying a concealed weapon in violation of NRS 202.350(1)(d)(3), which provides in part that “a person within this state shall not . . . [c]arry concealed upon his person any . . . [p]istol, revolver or other firearm, or other dangerous or deadly weapon.” (Emphasis added.) This court has stated that whether a weapon is a “dangerous or deadly weapon” is a determination to be made by the finder of fact, in this case, the jury.⁵ Aikman has not offered any cogent argument that a switchblade knife does not fit the description of a “dangerous or deadly weapon” pursuant to the statute. Further, Aikman has not provided any persuasive or relevant authority in support of her proposition that, because “switchblade” is not specifically prohibited by the “concealed weapon” statute, one cannot be convicted of carrying a concealed switchblade knife. Therefore, we conclude that Aikman’s contention is without merit.

Having considered Aikman’s contentions and concluded that they are without merit, we affirm the judgment of conviction. Our review of the judgment of conviction, however, reveals a clerical error. The judgment of conviction incorrectly states that Aikman was convicted pursuant to a guilty plea. The judgment of conviction should have stated that Aikman was convicted pursuant to a jury verdict. We therefore conclude that this matter should be remanded to the district court for the correction of the judgment of conviction. Accordingly, we

⁵See Knight v. State, 116 Nev. 140, 147, 993 P.2d 67, 72 (2000).

ORDER the judgment of the district court AFFIRMED and
REMAND this matter to the district court for the limited purpose of
correcting the judgment of conviction.

Maupin, J.
Maupin

Douglas, J.
Douglas

Parraguirre, 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