

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,
Appellant,

vs.

KYLE WARNER TURPIN,
Respondent.

KYLE WARNER TURPIN,
Appellant,

vs.

THE STATE OF NEVADA,
Respondent.

No. 44630

FILED

APR 21 2006

No. 44892

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

ORDER AFFIRMING IN PART, VACATING IN PART AND
REMANDING

These are consolidated appeals. Docket No. 44630 is an appeal from an order of the district court granting Kyle Warner Turpin's motion for acquittal, and Docket No. 44892 is an appeal from a judgment of conviction, pursuant to a jury verdict, of two counts of battery with the use of a deadly weapon, and one count of grand larceny of an automobile. Eighth Judicial District Court, Clark County; John S. McGroarty, Judge. The district court adjudicated Turpin a habitual criminal and sentenced him to three consecutive terms of 5 to 20 years.

Turpin contends that prosecutorial misconduct warrants reversal of his convictions in Docket No. 44892. Specifically, Turpin argues that the prosecutor improperly argued that one of the jury instructions was wrong. The instruction to which the prosecutor took exception was number 18, which was an advisory instruction of acquittal.

We conclude that the prosecutor's comments were proper closing argument.¹ The judgment of conviction is therefore affirmed.

The State contends in Docket No. 44630, that the district court erred by granting Turpin's motion for acquittal of two charges of first degree kidnapping, based on the district court's finding that there was insufficient evidence to support the jury's verdict of guilty as to the kidnapping.

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.² In particular, we note that Turpin bound each of the victims, stabbed one of the victims, and confined the victims in a cupboard in a garage for a period of approximately 12 hours.

The jury could reasonably infer from the evidence presented that Turpin willfully held or detained the victims for the purpose of killing or inflicting substantial bodily harm upon them. It is for the jury to determine the weight and credibility to give conflicting testimony, and we conclude that substantial evidence supported the jury's verdict.³ We therefore conclude that the district court erred by granting the motion for acquittal.⁴ Accordingly, the judgment of acquittal is vacated, and this

¹See Owens v. District Court, 104 Nev. 265, 266, 756 P.2d 1183, 1184 (1988).

²See 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).


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).


⁴Cf. Evans v. State, 112 Nev. 1172, 1193, 926 P.2d 265, 279 (1996) (holding that "where there is insufficient evidence to support a conviction,

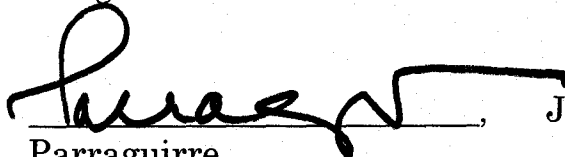
continued on next page . . .

matter is remanded for the district court to sentence Turpin for the kidnapping counts and enter an amended judgment of conviction pursuant to the jury's verdicts.

It is so ORDERED.


_____, C.J.
Rose


_____, J.
Douglas


_____, J.
Parraguirre

cc: Eighth Judicial District Court Dept. 16, District Judge
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Kocka & Bolton
Michael H. Schwarz
Clark County Clerk

... continued

the trial judge may set aside a jury verdict of guilty and enter a judgment of acquittal").