

IN THE SUPREME COURT OF THE STATE OF NEVADA

ESAU DOZIER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44908

FILED

JAN 11 2006

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 two counts of robbery with the use of a firearm and one count of burglary. Second Judicial District Court, Washoe County; Janet J. Berry, Judge. The district court sentenced appellant Esau Dozier to serve four consecutive prison terms of 72 to 180 months and one concurrent prison term of 72 to 180 months. Dozier presents three issues for our review.

First, Dozier contends that insufficient evidence was adduced at trial to support his convictions for robbery and burglary. The standard of review for a challenge to the sufficiency of the evidence to support a criminal conviction is “whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.”¹

¹McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992) (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979)).

Here, victims Demissie Kelemework and Mulunesh Gutema both testified that at about 10:15 pm on May 25, 2002, a man with a gun entered their El Ray Motel room and ordered them to be quiet and to give him whatever they had. They were scared and gave the man their leather fanny packs, each of which contained several hundred dollars. The man also took a small gift bag that belonged to a black female friend of theirs from Pleasanton, California. The man packed the things he was taking into a red traveling bag with a black strap. Kelemework described the man as a 30 to 40-year-old black male, well-shaven, and dressed in nice clothes. Gutema described the man as a black male with a clean-shaven head. Neither woman was 100 percent sure that Dozier was the robber.

Reno Police Officer Thomas Mueller testified that, at about 10:50 pm on May 25, 2002, he was called to the area of The Sands Casino regarding a robbery that occurred at the El Ray Motel. He stated that the victims described the robber as a clean-shaven black male, 30 to 40 years of age, who had a shaven head, was dressed in a black top and black pants, and was armed with a black pistol.

Katherine Stewart, Dozier's former girlfriend, testified that on May 25, 2002, she drove from Concord, California to Reno to visit Dozier. She was tired and they did not have money for a hotel room, so they parked by The Sands and Sundowner sometime after nightfall and Stewart slept in the car. Dozier, however, wanted to go to the casinos and do some hustling. He got out of the car, opened and closed the trunk, and left. Stewart knew that Dozier's handgun was in the trunk. When Dozier

returned, he had a red canvas bag with a black strap, which Stewart described as "like a gym bag." Dozier was excited, sweating, and wanted to leave. They drove from Reno to Sparks where they got a hotel room. Dozier dumped the contents of the red bag onto the bed. They included a small gift bag, a leather fanny pack, a purse, and \$200.00. Stewart also saw a California driver's license, it had a picture of black woman and listed a Pleasanton address. Stewart stated that Dozier was dressed in a black leather jacket, black T-shirt, dark Levi's, and black boots.

We conclude that the jury could reasonably infer from the circumstantial evidence presented at trial that Dozier committed the crimes of robbery and burglary.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

Second, Dozier claims that insufficient evidence was adduced at trial to show he used a deadly weapon or handgun. However, both Kelemework and Gutema testified that the robber had a big black gun, which they indicated was about a foot long. And Stewart testified that she had actually handled Dozier's handgun, it was a black revolver about a

²See NRS 200.380(1); NRS 205.060(1); see also Buchanan v. State, 119 Nev. 201, 217, 69 P.3d 694, 705 (2003) (providing that circumstantial evidence alone may sustain a conviction).

³See Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981); see also McNair, 108 Nev. at 56, 825 P.2d at 573.

foot long, and it was in Dozier's suitcase in the trunk of her car on the night of the robbery. We conclude that a jury could reasonably infer from this testimony that Dozier used a handgun to commit robbery, and that there is sufficient evidence to support the jury's verdict.

Third, Dozier contends that the district court improperly applied the deadly weapon enhancement to his robbery sentences. He argues that because the deadly weapon enhancement must be "equal to and in addition to the term of imprisonment prescribed by statute for the crime"⁴ and that the term of imprisonment prescribed by statute for the crime of robbery is 2 to 15 years,⁵ the district court erred when it sentenced him to an equal and additional term of 6 to 15 years. However, our review of the record reveals that the district court properly sentenced Dozier for his robbery convictions and correctly enhanced the sentences with equal and consecutive terms of imprisonment for the use of a deadly weapon. The district court imposed enhancements that fell within the sentencing limits prescribed by NRS 200.380(2) as required by NRS 193.165(1).⁶ Accordingly, we conclude that the district court did not err.

⁴NRS 193.165(1).

⁵NRS 200.380(2).

⁶See NRS 193.130(1) (providing that "a person convicted of a felony shall be sentenced to a minimum term and a maximum term of imprisonment which must be within the limits prescribed by the applicable statute" (emphasis added)).

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

ORDER the judgment of conviction AFFIRMED.⁷

Douglas, J.
Douglas

Becker, J.
Becker

Parraguirre, J.
Parraguirre

cc: Hon. Janet J. Berry, District Judge
Scott W. Edwards
Michael V. Roth
Attorney General George Chanos/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk
Esau Dozier

⁷Because Dozier is represented by counsel in this matter, we decline to grant him permission to file documents in proper person in this court. See NRAP 46(b). Accordingly, the clerk of this court shall return to Dozier unfiled all proper person documents he has submitted to this court in this matter.