

IN THE SUPREME COURT OF THE STATE OF NEVADA

ZACHERY BLAKE SIMMONS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 47027

**FILED**

**JAN 09 2007**

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction and sentence. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge.

On March 9, 2006, the district court convicted appellant Zachery Blake Simmons, pursuant to a jury verdict, of robbery, victim 60 years of age or older. The district court adjudicated Simmons a habitual criminal and sentenced him to serve a term of 10 years to life in prison.

Simmons's sole claim on appeal is that there was insufficient evidence to support the jury's verdict. "The question for the reviewing court '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."<sup>1</sup>

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<sup>1</sup>Mason v. State, 118 Nev. 554, 559, 51 P.3d 521, 524 (2002) (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979)).


Our review of the record reveals there was sufficient evidence to support the jury's verdict. Defense counsel conceded that the victim was robbed but disputed that Simmons was the perpetrator. The victim testified that he knew Simmons from around their neighborhood and had spoken with him for approximately one minute before Simmons took the victim's wallet from his pocket and knocked him to the ground. The victim identified Simmons as the perpetrator shortly after the robbery and again at trial. Defense counsel cross-examined the victim about whether his memory or physical or visual health were impaired, his opportunities to observe Simmons, the suggestiveness of the one-on-one identification procedure an hour after the robbery, and his alleged initial inability to identify Simmons at the preliminary hearing. Defense counsel also elicited testimony establishing a difference between the victim's description of the perpetrator's clothing and the clothing Simmons was wearing when he was arrested. "The jury determines the weight and credibility to give conflicting testimony, and the jury's verdict will not be disturbed on appeal where substantial evidence supports the verdict."<sup>2</sup> We conclude that the State presented sufficient evidence to sustain the conviction.


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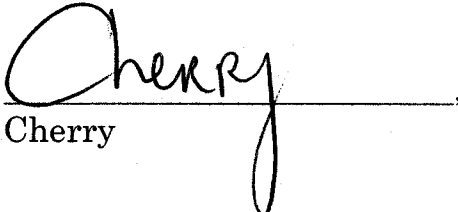
<sup>2</sup>Id.

Having reviewed Simmons's argument and concluded he is not entitled to relief, we

ORDER the judgment of the district court AFFIRMED.<sup>3</sup>

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Cherry

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<sup>3</sup>We note that there is a clerical error in the judgment of conviction. The judgment incorrectly states that Simmons was convicted pursuant to a guilty plea. In fact, Simmons was convicted pursuant to a jury verdict. Following this court's issuance of its remittitur, the district court shall correct this error in the judgment of conviction. See NRS 176.565 (providing that clerical errors in judgments may be corrected at any time); Buffington v. State, 110 Nev. 124, 126, 868 P.2d 643, 444 (1994) (explaining that the district court does not regain jurisdiction following an appeal until the supreme court issues its remittitur).

cc: Hon. Stewart L. Bell, District Judge  
Clark County Public Defender Philip J. Kohn  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk