

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN THOMAS KIZZIAR,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47809

FILED

MAR 22 2007

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 and sentence. Eighth Judicial District Court, Clark County; Valorie Vega, Judge.

Appellant John Thomas Kizziar was convicted, pursuant to a jury verdict, of robbery with the use of a deadly weapon and murder with the use of a deadly weapon. He was sentenced to serve four consecutive terms of life in prison without the possibility of parole.

Kizziar's sole claim on appeal is that there was insufficient evidence supporting his convictions. "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."¹

Our review of the record reveals there was sufficient evidence to support the jury's verdicts. Kerri Sautter testified that at about 6:00 a.m. on the day of the victim's death, the victim came to the apartment

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

Sautter shared with her young children, Kizziar, and his codefendant. She saw Kizziar and his codefendant each strike the victim two to three times in the back and legs with baseball bats. She took her children into the next room and closed her eyes. When she opened her eyes, she saw the victim on the floor with blood on his face. Kizziar and his codefendant were still present and were the only people there except for Sautter and her children. Both were pacing around, and Kizziar was saying, "What do we do now?" She and her children left and went to a neighbor's apartment. Kizziar and his codefendant arrived there 10 or 15 minutes later and gave Sautter a wallet. Sautter also testified that she did not see the victim with a knife or with anything in his hands before he was struck and her previous statements to police that she had seen the victim with a knife had been lies designed to protect Kizziar's codefendant, with whom she was romantically involved. 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, substantial evidence supports the verdict.²


The medical examiner testified that the victim died from blunt head trauma and that his injuries were consistent with blows from a baseball bat. Peter Haberkorn, who saw Kizziar and his codefendant shortly after the killing, testified that Kizziar told him the victim would not give them his money and so they killed him. Along with other

²See Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981); see also McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

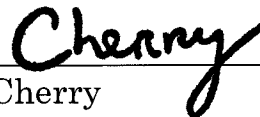
evidence presented at trial, this was sufficient to allow any reasonable jury to find the essential elements of the charges.

Having considered Kizziar's argument and concluded it is without merit, we

ORDER the judgment of the district court AFFIRMED.³


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Cherry

cc: Hon. Valorie Vega, District Judge
Paul E. Wommer
John T. Kizziar
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

³Kizziar filed with this court proper person motions for stay and enlargement of proceedings and for dismissal and substitution of legal counsel. Kizziar is represented by counsel in this appeal and must proceed through his counsel. His proper person motions are therefore hereby denied. Kizziar's proper remedy for dissatisfaction with his counsel is to file a postconviction petition for a writ of habeas corpus. See NRS chapter 34.