

IN THE SUPREME COURT OF THE STATE OF NEVADA


ERICK M. BROWN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47856

FILED

ORDER OF AFFIRMANCE

SEP 13 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count each of burglary with a firearm; first-degree kidnapping with the use of a deadly weapon, victim 65-years or older, resulting in substantial bodily injury; first-degree kidnapping with the use of a deadly weapon resulting in substantial bodily injury; robbery with the use of a deadly weapon, victim 65-years or older; and robbery with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge. The district court sentenced appellant Erick Brown to concurrent and consecutive prison terms totaling 60 to 160 years.

Brown first contends that the evidence presented at trial was insufficient to support the jury's finding of guilt. 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.¹

¹See 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).

In particular, we note that the victims, Emmett Connelly and Mike Golsecker, both identified Brown at trial as one of the assailants that pushed them into a back room, restrained them with “zip ties,” severely beat them, and robbed them with the use of a gun. Golsecker testified that he was seventy years old at the time of the robbery. When officers apprehended Brown, he possessed a backpack containing a large amount of jewelry taken in the robbery. Evidence was also presented at trial that Brown had pawned a ring taken in the robbery and had given another ring taken in the robbery to his fiancé. Finally, officers testified that Brown made inculpatory statements.

We conclude that the jury could reasonably infer from the evidence presented that Brown participated in the robbery of the jewelry store, and the kidnapping of Connelly and Golsecker, despite Brown’s testimony to the contrary. 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

Brown next contends that he was wrongly convicted of kidnapping because any force used was incidental to the robbery. In

²See 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).

support of his claim, Brown cites to Mendoza v. State³ and Wright v. State.⁴

Dual convictions for kidnapping and an associated offense are appropriate "where the movement or restraint serves to substantially increase the risk of harm to the victim over and above that necessarily present in an associated offense" and "where the movement, seizure or restraint stands alone with independent significance from the underlying charge."⁵

In the instant case, Connelly and Golsecker were pushed into the back room and onto the floor while being hit and kicked by Brown and Alfred Blackwell. Their hands were restrained behind their backs with "zip ties." When Golsecker moved, Brown hit him in the head, causing him to bleed from his nose, mouth, and head. When Golsecker turned his head, Brown struck him with the gun and Golsecker lost consciousness. Brown and Blackwell began to question Connelly regarding the store surveillance camera and the location of keys. Because Connelly did not answer quickly enough, Brown repeatedly kicked Connelly in the head and side. As a result of the beating, Connelly sustained numerous injuries including lacerations to his eye, fractured ribs, and a temporary loss of

³122 Nev. 267, 130 P.3d 176 (2006).

⁴94 Nev. 415, 581 P.2d 442 (1978), holding modified by Mendoza, 122 Nev. 267, 130 P.3d 176.

⁵Mendoza, 122 Nev. at 274-75, 130 P.3d at 180-81.

hearing. Golsecker's teeth were broken, causing problems with his speech. He also sustained a severe cut to his mouth, two black eyes, and a bruised nose. The movement and restraint of Connelly and Golsecker substantially exceeded that required to complete the robbery and stood alone with independent significance from the robbery.⁶ Therefore, we conclude that Brown's dual convictions for first-degree kidnapping and robbery were proper.

Last, Brown contends that the district court abused its discretion by presenting Blackwell to the jury. Specifically, Brown contends that it was error to "parade" Blackwell because the probative value of the evidence was substantially outweighed by its prejudicial effect.

The determination of whether to admit evidence is within the sound discretion of the district court, and that determination will not be disturbed unless manifestly wrong.⁷ In the instant case, the district court concluded that the admission of Blackwell as "evidence" was relevant to the issue of the accuracy of the victim's identification. Additionally, the presentation of Blackwell was not highly prejudicial because he was dressed in street clothes and the fact of his guilty plea was not presented

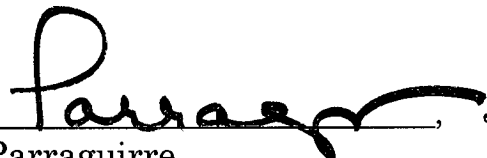
⁶Id.

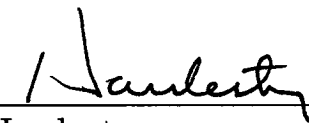
⁷See Petrocelli v. State, 101 Nev. 46, 52, 692 P.2d 503, 508 (1985), modified on other grounds by Sonner v. State, 112 Nev. 1328, 930 P.2d 707 (1996).


to the jury. Brown has not demonstrated that the district court's decision was manifestly wrong. Moreover, any error was harmless beyond a reasonable doubt.⁸

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

ORDER the judgment of conviction AFFIRMED.


_____, J.
Parraguirre


_____, J.
Hardesty


_____, J.
Saitta

cc: Hon. Donald M. Mosley, District Judge
Cristalli & Saggese, Ltd.
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

⁸See NRS 178.598 ("Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.").