

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHNNY RAY LILLIE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47898

FILED

NOV 28 2006

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of battery with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Jackie Glass, Judge. The district court sentenced appellant Johnny Ray Lillie to a prison term of 24-72 months, suspended execution of the sentence, and placed him on probation for an indeterminate period not to exceed five years.

Lillie contends that the evidence presented at trial was insufficient to support the jury's finding that he was guilty beyond a reasonable doubt. Specifically, Lillie claims that he did not intend to harm the victim and that the shooting was an accident.

A 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 In particular, we note that although Lillie's account

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

of the events leading up to the shooting differ, the victim testified that he was walking with his girlfriend, Lillie's ex-wife, when they encountered Lillie. Lillie, appearing hostile, made some comments to the victim and his ex-wife, then opened the back door of his vehicle, retrieved a gun, and proceeded to approach the victim and fire one shot at him. Lillie immediately fled in his vehicle. The attending emergency physician testified at trial that the victim "had an abrasion over his left cheek; a hole through the front of his left ear; . . . and then a gouge through the scalp behind the ear." Approximately five days after the shooting, Lillie turned himself in to police.

Based on the above, we conclude that the jury could reasonably infer from the evidence presented that Lillie committed the crime beyond a reasonable doubt.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 Moreover, we note that circumstantial evidence alone may sustain a conviction.⁴ Therefore, we conclude that the State presented sufficient evidence to support the jury's verdict.

²See NRS 200.481. We also note that the jury found Lillie not guilty of attempted murder with the use of a deadly weapon.

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).

⁴See Buchanan v. State, 119 Nev. 201, 217, 69 P.3d 694, 705 (2003).

Having considered Lillie's contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.⁵

Becker _____, J.
Becker

Hardesty _____, J.
Hardesty

Parraguirre _____, J.
Parraguirre

cc: Honorable Jackie Glass, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁵We note that there is a clerical error in the judgment of conviction. The judgment incorrectly states that Lillie was convicted of battery with the use of a deadly weapon causing substantial bodily injury. In fact, Lillie was convicted of battery with the use of a deadly weapon. 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, 644 (1994) (explaining that district court does not regain jurisdiction following an appeal until supreme court issues its remittitur).