

IN THE SUPREME COURT OF THE STATE OF NEVADA

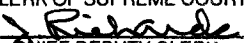
ROGER MAYWEATHER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48285

FILED

JUN 22 2007

ORDER OF AFFIRMANCE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, entered pursuant to a jury verdict, of one count of misdemeanor battery. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge. The district court sentenced appellant Roger Mayweather to serve a term of six months in the county jail.

First, Mayweather contends that the State failed to prove that the charged offense occurred in Clark County. "It is well settled that the allegation of venue in a criminal case is a material allegation and must be proved."¹

The general rule governing proof of venue is that there need be no positive testimony that the violation occurred at a specific place, but it is sufficient if it can be concluded from the evidence as a whole that the act was committed at the place alleged in the indictment.²

¹People v. Gleason, 1 Nev. 143, 147 (1865).

²Dixon v. State, 83 Nev. 120, 121-22, 424 P.2d 100, 100-01 (1967).

Moreover, venue "need not be shown beyond a reasonable doubt."³ Our review of the trial transcript reveals that the State adduced testimony that the battery occurred at 749 Rock Springs, Apartment 202, and that this apartment was located in the City of Las Vegas and in Clark County. Accordingly, the State adequately proved venue.

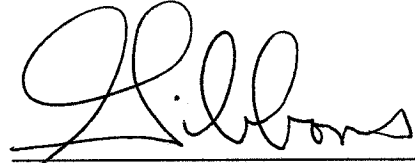
Second, Mayweather contends that the district court improperly relied on his criminal record during sentencing. He specifically claims that the district court's sentencing decision was disproportionately based on prior arrests that did not result in convictions. The sentencing court retains the discretion "to consider a wide, largely unlimited variety of information to insure that the punishment fits not only the crime, but also the individual defendant."⁴ Here, the sentencing transcript reveals that the district court considered the comments of the prosecutor and defense attorney, Mayweather's statement of allocution, and Mayweather's criminal record. The district court noted that many of Mayweather's arrests had not resulted in convictions, and that many of the arrests were for crimes similar to the one in the instant case. We conclude that the district court did not abuse its discretion by considering Mayweather's criminal history before imposing sentence.

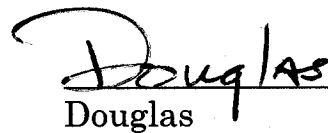
³See James v. State, 105 Nev. 873, 875, 784 P.2d 965, 967 (1989); Dixon, 83 Nev. at 122, 424 P.2d at 101.

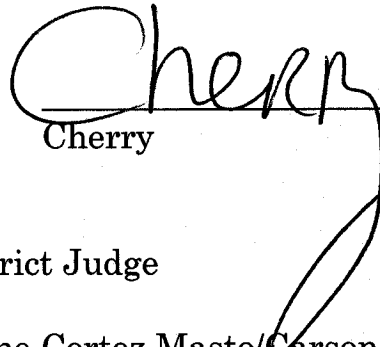
⁴Martinez v. State, 114 Nev. 735, 738, 961 P.2d 143, 145 (1998); see also NRS 176.015(6).

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

ORDER the judgment of conviction AFFIRMED.


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Cherry

cc: Hon. Stewart L. Bell, District Judge
David Lee Phillips
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk