

IN THE SUPREME COURT OF THE STATE OF NEVADA

SANTOS PASTOR PEREZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51060

FILED

MAR 26 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of conspiracy to commit robbery, one count of burglary while in possession of a firearm, one count of robbery with the use of a deadly weapon, one count of battery with the use of a deadly weapon resulting in substantial bodily harm, and two counts of attempted robbery with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Valorie Vega, Judge. The district court sentenced appellant Santos Pastor Perez to consecutive prison terms totaling 60 to 204 months with the remaining terms imposed concurrently.

Perez's sole contention is that insufficient evidence was adduced at trial to support his convictions. "[I]t is the function of the jury, not the appellate court, to weigh the evidence and pass upon the credibility of the witness." Walker v. State, 91 Nev. 724, 726, 543 P.2d 438, 439 (1975). Accordingly, the standard of review for a challenge to the sufficiency of the evidence is "whether, after viewing the evidence in the light most favorable to the prosecution, any rational [juror] could have found the essential elements of the crime beyond a reasonable doubt." McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992) (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979)). Circumstantial evidence is

enough to support a conviction. Lisle v. State, 113 Nev. 679, 691-92, 941 P.2d 459, 467 (1997), holding limited on other grounds by Middleton v. State, 114 Nev. 1089, 1117 n.9, 968 P.2d 296, 315 n.9 (1998).

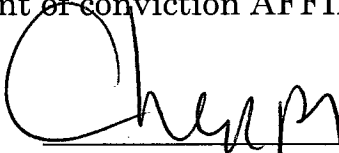
Here, the jury heard evidence that Perez and Benito Villegas, who were both armed with pistols, forced their way into an apartment rented by Ricardo Ramon, Jesus Sepulveda, Ricardo Sepulveda, and Jesus Noriega. Perez and Villegas ordered Ramon and Jesus Sepulveda, who were in the living room, to lie on the floor with their hands behind their heads. Villegas struck Ramon on the head with his firearm. While he was on the ground, one of the assailants rifled through Ramon's pockets and took his wallet and cash. They also demanded the keys to Ricardo Sepulveda's BMW from both men. Ricardo Sepulveda then returned home and was confronted by the assailants. They ordered him to lie on the floor and demanded his car keys. While the assailants were in the home, Jesus Noriega, who had been sleeping in a bedroom, called the police. A short time later, several officers arrived and apprehended Villegas outside the apartment. Officers then forced their way into the home where they apprehended Perez standing in the doorway of a bathroom. Officers discovered one firearm in the bathroom trashcan and another on the floor. In addition, Ramon testified that his head injury required fifteen staples to close the wound and he continues to suffer headaches and limb numbness as a result of the injury.

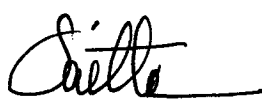
Based on this evidence, we conclude that a rational juror could reasonably infer that Perez and Villegas agreed to rob the victims, possessed a firearm when they entered the victims' apartment with the intent to rob them, used a deadly weapon in an attempt to take property from Jesus Sepulveda and Ricardo Sepulveda, used a deadly weapon while

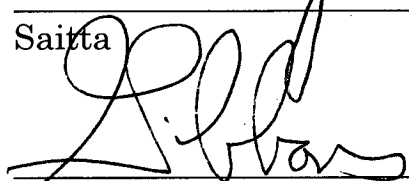
taking property from Ramon, and used a deadly weapon while using force on Ramon that caused substantial bodily harm. See NRS 199.480(1); NRS 205.060(4); NRS 200.380(1); NRS 193.330(1); NRS 200.481(1)(a), (2)(e)(2); see also Garner v. State, 116 Nev. 770, 780, 6 P.3d 1013, 1020 (2000) (noting that conspiracy “is usually established by inference from the parties’ conduct”), overruled on other grounds by Sharma v. State, 118 Nev. 648, 56 P.3d 868 (2002). The jury’s verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict. See Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981); see also McNair, 108 Nev. at 56, 825 P.2d at 573.

Having considered Perez’s contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Valorie Vega, District Judge
Steven B. Wolfson, Chtd.
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk