

IN THE SUPREME COURT OF THE STATE OF NEVADA


DARIO STEVENSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51195

FILED

APR 21 2009

ORDER OF AFFIRMANCE

TRACEE K. LINDEMAN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of two counts of discharging a firearm from a motor vehicle with the intent to promote, further or assist a criminal gang. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge. The district court sentenced appellant Dario Stevenson to serve a prison term of 24 to 84 months, plus a consecutive prison term of 24 to 84 months for the gang enhancement, for each count, with the sentences for both counts to run concurrently.

Stevenson contends that the evidence presented at trial was insufficient to support the jury's finding that he was guilty beyond a reasonable doubt. Specifically, Stevenson contends that the State failed to prove that he was the shooter and failed to meet its burden to prove all the required elements of the gang enhancement. When reviewing a claim of insufficient evidence, this court must determine "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)). NRS

193.168(1) provides that a gang enhancement may be imposed when “a felony [is] committed knowingly for the benefit of, at the direction of, or in affiliation with, a criminal gang, with the specific intent to promote, further or assist the activities of the criminal gang.” We conclude that the State presented sufficient evidence to prove Stevenson was the shooter and to justify a gang enhancement in this case.

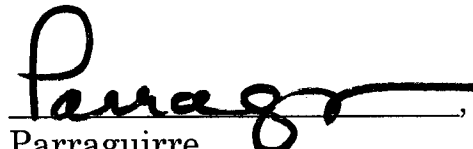
Here, the jury heard testimony that Frank Gutierrez, a self-avowed member of a criminal street gang named Hustlers Taking Over (HTO),¹ had a confrontation with Little Kobe, a member of a rival gang named the Wood. Later, Gutierrez drove a baby-blue pick-up truck back to the scene of the confrontation accompanied by Stevenson, who sat in the front passenger seat, and Jakarr Dudley, another admitted member of HTO, who rode behind in the bed of the truck. Gutierrez and Dudley both testified that Stevenson was the shooter. Gutierrez testified that Stevenson shot in the direction of Little Kobe. An officer testified that, at the scene, Gutierrez informed him that Stevenson said something along the lines of “Fuck the Wood, HTO” just before he fired out of the truck’s open window. One witness testified that she heard shots and then saw a person matching Stevenson’s description brandishing a gun through the open passenger-side window of a baby-blue truck as it sped away. Another witness testified that he heard a loud noise and then saw a person matching Stevenson’s description pointing a gun through the open passenger window of a light colored pick-up in the direction of a male who was running away. Officers found a .22 caliber revolver containing six

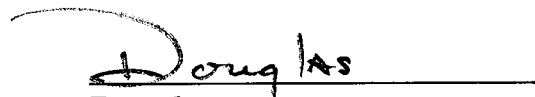
¹Stevenson stipulated to the fact that HTO was a criminal gang pursuant to the definition set forth in NRS 193.168(7).

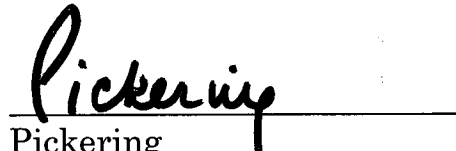
empty shells under the front passenger seat of the truck. Stevenson had a bag of .22 caliber bullets in his front pants pocket, and he acknowledged to an officer that he might have gunshot residue on his hands. Although conflicting testimony was presented at trial, it is for the jury to determine the weight and credibility to give to conflicting testimony, and the jury's verdict will not be disturbed on appeal where, as here, sufficient 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 Stevenson's contention and determined that it lacks merit, we

ORDER the judgment of conviction AFFIRMED.

 J.
Parraguirre

 J.
Douglas

 J.
Pickering

cc: Hon. Donald M. Mosley, District Judge
Michael H. Schwarz
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk