

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID DION MORRIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51436

FILED

FEB 02 2009

THOMAS A. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE BY

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of burglary while in possession of a firearm, attempted robbery with the use of a deadly weapon, first-degree kidnapping with the use of a deadly weapon, assault with the use of a deadly weapon, carrying a concealed firearm or other deadly weapon, and possession of a firearm by an ex-felon. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Appellant David Morris was sentenced to a term of life in prison with the possibility of parole after 5 years for kidnapping, plus an equal and consecutive term for the deadly weapon enhancement. The district court also sentenced Morris to prison terms of 4 to 10 years for burglary while in possession of a firearm, 4 to 10 years for attempted robbery plus an equal and consecutive term for the deadly weapon enhancement, 28 to 72 months for assault with the use of a deadly

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weapon, 18 to 48 months for carrying a concealed firearm, and 18 to 48 months for possession of a firearm by an ex-felon.

Morris contends that the evidence presented at trial was insufficient to support the jury's findings respecting each of his convictions. Specifically, Morris argues that the evidence is insufficient to support his convictions because the victim in the case was unable to identify him and the fingerprint evidence presented at trial was meaningless, as Morris was a frequent patron of the grocery store where the crimes occurred.

In a criminal case, the standard of review is "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact 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)). Moreover, "it is the jury's function, not that of the court, to assess the weight of the evidence and determine the credibility of witnesses." Id. And "circumstantial evidence alone may support a conviction." Hernandez v. State, 118 Nev. 513, 50 P.3d 1100, 1112 (2002).

After reviewing the evidence in a light most favorable to the prosecution, we conclude that the evidence adduced at trial sufficiently supported Morris' convictions beyond a reasonable doubt. Both Morris' girlfriend, Star Dixon, and his former friend testified that Morris told them that he planned to rob the Green Valley Grocery using an English accent; the victim, Renato Tayag, testified that the robber used an English

accent. Dixon also testified that Morris left their apartment shortly before the robbery wearing a dark colored sweatshirt and carrying a black bag. Tayag and the responding police officers testified that the robber was wearing a dark colored sweatshirt and carried a black bag. Further, both Tayag and the responding officers testified that the robber carried a black or dark blue revolver during the robbery.

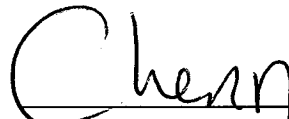
Additionally, Tayag testified that during the course of the robbery, the robber picked up a package of Charmin toilet paper and handed it to him to place in a plastic grocery sack. Morris' fingerprints were found on both the toilet paper package and on the plastic grocery bag containing it. Tayag also testified that the robber forced him outside the store at gunpoint.

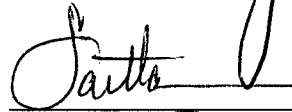
Further, Dixon testified that after returning to their apartment, Morris confessed to robbing the store, pointing his gun at Officer Rockwell, and taking Tayag outside as he escaped over the wall to his apartment. We conclude that this evidence supports Morris' convictions for burglary while in possession of a firearm, attempted robbery with the use of a deadly weapon, first-degree kidnapping with the use of a deadly weapon, assault with a deadly weapon, and carrying a concealed firearm.

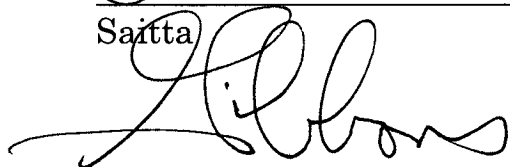
Finally, after the jury returned its verdict on the aforementioned charges, Morris' previous judgment of conviction for robbery with the use of a deadly weapon and/or burglary was admitted at trial. From that evidence, coupled with the other evidence described

above, a rational jury could have found Morris guilty of possession of a firearm by an ex-felon beyond a reasonable doubt.

Having concluded that that Morris' contentions lack merit, we
ORDER the judgment of conviction AFFIRMED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Michelle Leavitt, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk