

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES HENRY GREEN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52059

FILED

JAN 22 2009

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, entered pursuant to a jury verdict, of one count of battery with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge. The district court sentenced appellant James Henry Green to serve a prison term of 48 to 120 months.

Green's sole contention is that insufficient evidence was adduced at trial to support his conviction. "[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, 542 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

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P.2d 459, 467-68 (1997), holding limited on other grounds by Middleton v. State, 114 Nev. 1089, 1117 n.9, 968 P.2d 296, 315 n.9 (1998).

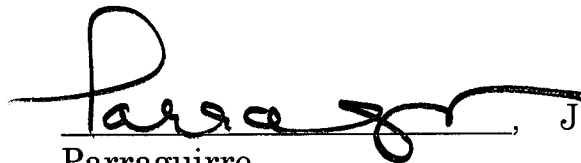
Here, the jury heard testimony that the victim and another security officer encountered Green when responding to a report of a male urinating on a car behind a stage. The victim told Green that he would have to leave the property. When Green failed to leave, the victim tapped him on the shoulder and said, "Come on, man. Let's just go for a walk." Green swung at the victim's neck with his right hand, the security officers attempted to restrain him, and he ended up on the ground. Someone in the background yelled that Green had a knife, the security officers observed a box cutter in Green's right hand, and they knocked it from Green's hand. The victim discovered that he was bleeding from the neck and observed that there was blood on Green's hand. After he was restrained, Green told the victim's supervisor, "I merk people for fun" and that "he was trying to get the jugular." The supervisor testified that "merk is a street term for murder." The jury was also shown a surveillance video recording of the incident, which depicted Green swinging at the victim before the security officers attempted to restrain him.

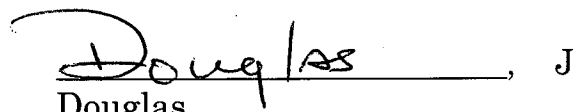
Based on this evidence, we conclude that a rational juror could reasonably infer that Green battered the victim with the use of a deadly weapon and that his battery was not an act of self-defense. See NRS 200.481(1)(a). It is for the jury to determine the weight and credibility to give conflicting testimony, and the jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the verdict. See

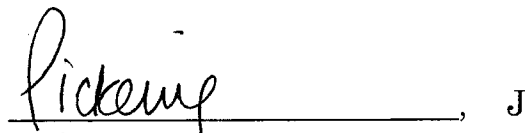
Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981); see also McNair, 108 Nev. at 56, 825 P.2d at 573.

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

ORDER the judgment of conviction AFFIRMED.


Parraguirre, J.


Douglas, J.


Pickering, J.

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