

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSE J. RUIZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52614

FILED

JAN 08 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count each of conspiracy to commit robbery, attempted robbery, burglary, battery with intent to commit a crime, and attempted first degree kidnapping. Eighth Judicial District Court, Clark County; Jennifer Togliatti, Judge.

Appellant Jose J. Ruiz challenges each of his convictions, contending that they are not supported by sufficient evidence. As explained below, however, our review of the record on appeal, viewed in a light most favorable to the prosecution, reveals sufficient evidence to establish Ruiz's guilt beyond a reasonable doubt as to each count, as determined by a rational trier of fact. See McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992); Jackson v. Virginia, 443 U.S. 307, 319 (1979). 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, 624 P.2d 20 (1981); see also McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

The store manager testified that Ruiz and Justin Darbyshire, entered the store together and walked directly toward him without acknowledging his greeting. The manager testified that Ruiz punched him in the face and ordered him to "get in the backroom." He further testified that Ruiz and Darbyshire then grabbed his arms and started dragging him toward the back of the store where the safe was located, but he was able to break the pair's hold and flee before they reached the back of the store. During this altercation, Ruiz asked where the money was kept. Video evidence showed Ruiz and Darbyshire physically fighting the store manager. Relying on a transcript of his interview with Ruiz, a police detective testified that Ruiz acknowledged that he and Darbyshire had planned to "beat up" a store employee because Darbyshire was a disgruntled former employee of the store and that Darbyshire "might have" discussed robbing the store. The detective testified that Ruiz admitted that he was able to persuade Darbyshire to proceed with the plan after Darbyshire began having second thoughts about going through with it.

Conspiracy to commit robbery and attempted robbery

Ruiz asserts that no evidence was presented at trial demonstrating that he acted in concert with any person in attempting to rob the store and that, other than a belated statement from the store manager, there was no evidence to show that Ruiz demanded money or property from the manager. We disagree. From the testimony and evidence presented, the jury reasonably could infer that Ruiz conspired with Darbyshire to take property from the store owner, against the store owner's will, by means of force or violence or fear of violence, and that Ruiz acted on that plan, attempting to commit robbery, but failing when

the store manager escaped. See NRS 193.330(1) (defining attempt); NRS 200.380(1) (defining robbery); Garner v. State, 116 Nev. 770, 780, 6 P.3d 1013, 1020 (2000) (defining conspiracy as “an agreement between two or more persons for an unlawful purpose,” and explaining that it “is usually established by inference from the parties’ conduct” (quoting Thomas v. State, 114 Nev. 1127, 1143, 967 P.2d 1111, 1122 (1998)), overruled on other grounds by Sharma v. State, 118 Nev. 648, 56 P.3d 868 (2002)).

Burglary

Ruiz next argues that any evidence concerning the burglary charge was insufficient to support his conviction because there was no direct testimony as to when he developed his alleged intent to batter the store manager or to commit larceny. This argument fails, however, as a conviction may be sustained on circumstantial evidence alone. Deveroux v. State, 96 Nev. 388, 391, 610 P.2d 722, 724 (1980); see Edwards v. State, 90 Nev. 255, 258, 524 P.2d 328, 331 (1974) (explaining that “[b]ecause burglary is commonly committed in secret, . . . it frequently must be proved by circumstantial evidence”). Here, the evidence presented was sufficient for a rational jury to infer that Ruiz entered the store with the intent to commit a battery. See NRS 205.060(1) (defining burglary).

Battery with the intent to commit a crime

Ruiz claims that insufficient evidence supports the conviction for battery with the intent to commit a crime because the State failed to prove that he battered the victim with the intent to commit a crime other than battery. We reject this claim. Ruiz does not dispute that a battery occurred and, based on the evidence presented, a rational jury could have inferred that Ruiz committed with battery with the intent to commit the robbery. See NRS 200.400(2).

Ruiz also claims, without supporting argument, that the battery charge is duplicative of the attempted robbery charge. This claim lacks merit because the crimes of battery and attempted robbery each require proof of an element that the other does not, see NRS 200.400(1) (defining battery) and NRS 200.380(1) (defining robbery), and therefore, the charges are not duplicative. See Blockburger v. United States, 284 U.S. 299, 304 (1932); Estes v. State, 122 Nev. 1123, 1143 146 P.3d 1114, 1127 (2006).

Attempted first-degree kidnapping

Ruiz asserts that although video evidence depicted him in an altercation with the store manager, no other evidence or testimony supported an attempt to kidnap. A defendant is guilty of attempted first-degree kidnapping when he or she willfully attempts to seize, confine, or carry away a person with the intent to hold or detain the person for the purpose of committing robbery upon or from the person. NRS 200.310(1); NRS 193.330. Based on the evidence presented, a rational jury could infer that Ruiz attempted to seize and detain the manager in the course of an attempted robbery.

Having considered Ruiz's contentions and concluded that each of his convictions is supported by sufficient evidence, we

ORDER the judgment of conviction AFFIRMED.

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Pickering, J.
Pickering

cc: Hon. Jennifer Togliatti, District Judge
Christina A. DiEdoardo
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk