

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANDREW EARL CHAMBERS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52688

FILED

FEB 03 2010

TRACEY 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 conspiracy to commit robbery and robbery with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Valorie Vega, Judge.

Appellant Andrew Earl Chambers first contends that the State presented insufficient evidence that he committed the offenses for which he was convicted. Having reviewed the evidence in the light most favorable to the State, we conclude that a rational juror could have found the elements of the charged offenses beyond a reasonable doubt. Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998); Jackson v. Virginia, 443 U.S. 307, 319 (1979). The victim's description of one of the robbers matched Chambers, who was detained approximately one-quarter of a mile from the crime scene within a relatively short period of time after the crime, and the victim identified Chambers as one of the robbers on two occasions within a short period of time after the crime, at the preliminary hearing, and at the trial. The victim's testimony further established that Chambers, working in concert with another individual who was armed with a gun, used a knife to rob the victim. The victim's testimony is sufficient to support the convictions for conspiracy to commit robbery and

robbery with the use of a deadly weapon. NRS 199.480; NRS 200.380; NRS 193.165. 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. Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981).

Chambers next asserts that the victim's pretrial identification of him was unreliable because it was the result of an unnecessarily suggestive identification procedure. Considering the totality of the circumstances, the pretrial identification of Chambers was not a denial of due process. See Jones v. State, 95 Nev. 613, 617, 600 P.2d 247, 250 (1979); Stovall v. Denno, 388 U.S. 293, 301-02 (1967). The victim's on-the-scene identification of Chambers was reliable and not a due-process violation because the victim had an opportunity to view the suspect at close range during the robbery; the confrontation took place within a short time after the crime when the victim's memory was fresh and Chambers, who claimed that he was innocent, could be quickly exonerated; the victim gave an accurate description of the suspect;¹ the victim immediately identified Chambers as being one of the robbers and demonstrated a high level of certainty at the confrontation; and there is no indication that the victim was pressed to make the identification. See Gehrke v. State, 96 Nev. 581, 584, 613 P.2d 1028, 1030 (1980) (addressing factors relevant to reliability of identification); Jones, 95 Nev. at 617, 600 P.2d at 250. The

¹The victim identified Chambers as the second robber, whom he described as a black male with his hair in ponytails and some facial hair, wearing a yellow shirt with brown sleeves and dark pants. According to the trial testimony, this description was consistent with Chambers' appearance and dress upon his arrest.

weight and credibility to give the victim's identification testimony was for the jury, and "[w]e will not usurp that function, especially where, as here, the record supports a finding that the pretrial identification . . . had sufficient indicia of reliability to remove any taint of suggestiveness." Jones, 95 Nev. at 617, 600 P.2d at 250.


Chambers next argues that the prosecutor committed misconduct in four respects. None of these claims warrant relief. First, the prosecutor represented that the addendum to the police report was in the State's file, to which defense counsel was given full access during pretrial discovery; the addendum repeated information that was included in the victim's voluntary statement and the original police report, which the defense had before trial; and the district court afforded the defense additional time to review the addendum and cross-examine the officer. Second, the testimony about property found on Chambers focused primarily on whether the knife or the victim's property was found when he was searched, not whether Chambers had any money or property on his person. The one brief reference to finding no property when Chambers was searched does not appear to be improper or prejudicial. Third, even assuming that the booking property report for Chambers was in the State's possession, there is no evidence that it was exculpatory for purposes of Brady v. Maryland, 373 U.S. 83 (1963), and the information was otherwise available to the defense, see Steese v. State, 114 Nev. 479, 495, 960 P.2d 321, 331 (1998) ("Brady does not require the State to disclose evidence which is available to the defendant from other sources, including diligent investigation by the defense."). Finally, because prosecutorial misconduct in closing argument must be viewed in context, Knight v. State, 116 Nev. 140, 144, 993 P.2d 67, 71 (2000), and Chambers


has not provided this court with the transcript of the rebuttal closing argument, we decline to consider Chambers' claim that the prosecutor committed misconduct during rebuttal closing argument by arguing that Chambers had motive for the crime because he did not have any money when he was arrested, see Greene v. State, 96 Nev. 555, 558, 612 P.2d 686, 688 (1980).

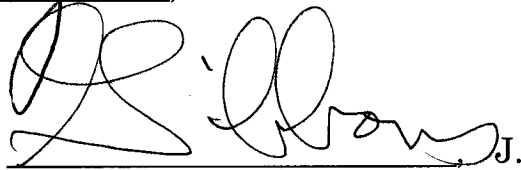
Finally, Chambers argues that a new trial is warranted based on (1) jury misconduct, as evidenced by the short deliberations in relationship to the length of the trial, and (2) conflicting evidence. First, Chambers cites no authority for the proposition that the amount of time a jury deliberates demonstrates misconduct warranting a new trial. We therefore decline to consider this claim. See Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987). Second, only the district court has authority to grant a new trial based on its disagreement with the jury's verdict after an independent evaluation of conflicting evidence, see Washington v. State, 98 Nev. 601, 655 P.2d 531 (1982); NRS 176.515, and we see no abuse of that discretion in the district court's denial of Chambers' motion for a new trial.

Having determined that Chambers' claims do not warrant relief, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Saitta


_____, J.
Cherry


_____, J.
Gibbons

cc: Hon. Valorie Vega, District Judge
Fernandez & Associates
Robert E. Glennen III
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk