IN THE SUPREME COURT OF THE STATE OF NEVADA

ERIK ROJAS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 53889

FILED

MAY 10 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of two counts of battery with a deadly weapon resulting in substantial bodily harm and one count of battery with the use of a deadly weapon. Eighth Judicial District Court, Clark County; David B. Barker, Judge. Appellant Erik Rojas raises two issues on appeal.

First, Rojas contends that the evidence produced at trial does not support the jury's finding that he did not act in self-defense. We disagree. The jury heard testimony from three victims that Rojas and his friend approached the victims looking to start a fight. The bar's head of security testified that Rojas was waving his guns around in the bar parking lot and encouraging a fight between his friend and one of the victims. Finally, Rojas conceded that he fired his gun at least 10 times. Though Rojas and his friends testified to facts that could support a self-defense claim, it is for the jury to determine the weight and credibility to give conflicting testimony. See Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981). "'[V]iewing the evidence in the light most favorable to the prosecution,'" we conclude that "'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)).

Second, Rojas claims that the district court erred in admitting hearsay testimony from one of the victims that he told the head of security, "[Rojas] has two guns in his hands." The district court allowed the testimony because the witness made the statement. But the statement was neither made while the witness was testifying nor offered to rebut a charge of recent fabrication and was therefore hearsay. See NRS 51.035; Evans v. State, 117 Nev. 609, 629-30, 28 P.3d 498, 512 (2001). The statement was, however, admissible as a present sense impression. See NRS 51.085. We therefore conclude that no relief is warranted. See Browne v. State, 113 Nev. 305, 312, 933 P.2d 187, 191 (1997) ("[E]ven if the district court gave the wrong reason for admission, no reversible error occurred if the statements were still admissible for another reason."), clarified on other grounds by Medina v. State, 122 Nev. 346, 352, 143 P.3d 471, 475 (2006).

Having considered Rojas's claims and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.

_____, J.
Hardesty

_____, J.
Douglas

_____, J.
Pickering

cc: Hon. David B. Barker, District Judge
Marchese Law Office
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk