

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTOPHER CUMMINGS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 54190

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 attempted murder with the use of a deadly weapon, robbery with the use of a deadly weapon, burglary, battery with the use of a deadly weapon with substantial bodily harm, and battery with substantial bodily harm. Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge.

On appeal, appellant Christopher Cummings claims that insufficient evidence supports his conviction for attempted murder with the use of a deadly weapon because the State failed to prove express malice or intent to kill the victim. Cummings also claims that insufficient evidence supports his convictions for robbery with the use of a deadly weapon and battery with the use of a deadly weapon with substantial bodily harm because the State failed to present a “nexus” between his use and possession of the knife and the “purported robbery of [the victim]” and between his use and possession of the knife and the victim’s bodily injury. These claims lack merit because the evidence, when viewed in the light most favorable to the State, is sufficient to establish guilt beyond a reasonable doubt as determined by a rational trier of fact. McNair v.

State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992); Jackson v. Virginia, 443 U.S. 307, 319 (1979).

Based on the evidence and testimony of witnesses presented at trial, we conclude that a rational juror could reasonably infer that Cummings deliberately intended to take the victim's life when he threatened to kill the victim and he repeatedly stabbed the victim in the face and head until the victim stopped moving. See NRS 200.020(1) (defining express malice); Sharma v. State, 118 Nev. 648, 659, 56 P.3d 868, 874 (2002) (observing that "intent can rarely be proven by direct evidence of a defendant's state of mind, but instead is inferred by the jury from the individualized, external circumstances of the crime, which are capable of proof at trial"). We also conclude that a rational jury could reasonably infer that Cummings used a knife to take the victim's money against the victim's will by means of force or violence, see NRS 200.380(1) (defining robbery); NRS 193.165(6) (defining deadly weapon); Allen v. State, 96 Nev. 334, 336, 609 P.2d 321, 322 (1990) (discussing requirements to sustain a conviction for robbery with the use of a deadly weapon), overruled on other grounds by Berry v. State, 125 Nev. ___, 212 P.3d 1085; and Cummings willfully and unlawfully used force or violence on the victim, used a deadly weapon in the attack, and the victim suffered substantial bodily harm, see NRS 200.481(1)(a) (defining battery); NRS 193.165(6); NRS 0.060 (defining substantial bodily harm). 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); Walker v. State, 91 Nev. 724, 726, 542 P.2d 438, 439 (1975).

Having considered Cummings' contentions and concluded that they are without merit, we

ORDER the judgment of conviction AFFIRMED.

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Pickering, J.
Pickering

cc: Hon. Elizabeth Goff Gonzalez, District Judge
Eichhorn & Hoo LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk