

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES EDWARD TRICE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 54704

**FILED**

JUL 15 2010

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
B. *Cherry*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction entered pursuant to a jury verdict of one count of assault with a deadly weapon. Eighth Judicial District Court, Clark County; Stefany Miley, Judge.

First, appellant James Edward Trice contends that he was deprived of his statutory right to a speedy trial. See NRS 178.556. However, Trice waived this right through his defense counsel, see Furbay v. State, 116 Nev. 481, 484, 998 P.2d 553, 555 (2000), and therefore was not deprived of a speedy trial.

Second, Trice contends that there was insufficient evidence to support his conviction because the State failed to prove that he used a razor.<sup>1</sup> We review the evidence in the light most favorable to the prosecution and determine whether 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). The jury heard

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<sup>1</sup>During the trial, the utility knife was referred to as a knife, a razor, and a box cutter.

testimony that Trice repeatedly threatened the victim with a utility knife, the victim described the knife to the police, and the police found a knife matching the victim's description in Trice's possession. The jury was also shown a surveillance video recording of the incident during which Trice pointed out the exact moments of each threat and the location of the utility knife during these threats. Finally, the jury was shown a photograph of the knife that was found in Trice's possession. We conclude that a rational juror could reasonably infer from this evidence that Trice committed the crime of assault with the use of a deadly weapon. See NRS 193.165(6)(a); NRS 200.471(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. Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981).

Third, Trice contends that the State's failure to preserve exculpatory evidence requires reversal. At trial, Trice objected to the surveillance video recording provided by the bus company because it was incomplete, depicting only the incident and not what happened before the incident. The district court allowed the video to be admitted into evidence after finding that there were no pretrial motions regarding this issue, the State timely provided the video to Trice, the video was the same as the video that the State received from the bus company, and the State did not edit the video. Trice has not shown that the video of the period preceding the incident was material and the State's failure to collect this video was the result of negligence or bad faith, see Randolph v. State, 117 Nev. 970, 987, 36 P.3d 424, 435 (2001), nor has he demonstrated that the district court abused its discretion by allowing the video provided by the bus

company to be admitted into evidence, see Mclellan v. State, 124 Nev. 263, 267, 182 P.3d 106, 109 (2008). Accordingly, we conclude that this claim is without merit.

Having considered Trice's contentions and concluded that he is not entitled to relief, we

ORDER the judgment of conviction AFFIRMED.

Hardesty, J.  
Hardesty

Douglas, J.  
Douglas

Pickering, J.  
Pickering

cc: Hon. Stefany Miley, District Judge  
Clark County Public Defender  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk