

IN THE SUPREME COURT OF THE STATE OF NEVADA

TONY SUNGAPULU FONOMOANA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56381

FILED

FEB 09 2011

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 burglary while in possession of a deadly weapon, conspiracy to commit robbery, and robbery with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

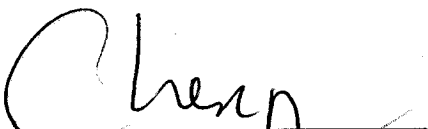
Appellant Tony Fonoimoana contends that insufficient evidence supports his convictions because the victim failed to identify him as the perpetrator at trial, the victim testified that the perpetrator had a tattoo on his hand but Fonoimoana does not, the victim gave inconsistent testimony regarding whether the perpetrator had tattoos, and the co-offender who confessed to committing the crimes with Fonoimoana was under the influence of drugs and alcohol at the time. We conclude that this contention lacks 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. See Jackson v. Virginia, 443 U.S. 307, 319 (1979); Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998).


At trial, the victim testified that a woman whom he had never met before approached him outside his home and asked for some matches. When the victim went into his home to look for matches, the woman followed him inside. The victim could not find any matches in the house and went to look in his car. Outside, he was approached by a male who asked if he had a quarter. The victim thought the male was suspicious and tried to run inside the house, however the male caught up to him, pushed the victim inside while the female pulled him, and forced him to sit on the couch. The male pulled out a pair of "pointy pliers" and pointed them at the victim. Approximately one minute later, Fonoimoana entered the victim's home, took the pliers from the male and forced the victim to remain on the couch by holding the "pointy pliers" in his stomach while the two co-offenders searched the victim's home and carried items out. Fonoimoana demanded the victim's wallet and cell phone and took those items. The victim identified Fonoimoana from a photo lineup and the female co-offender later confessed to the robbery, identifying Fonoimoana as the third participant. Based on this evidence, a rational juror could reasonably infer that Fonoimoana committed burglary while in possession of a deadly weapon, see NRS 205.060; NRS 193.165(6)(b), conspiracy to commit robbery, see NRS 199.480; NRS 200.380(1), and robbery with the use of a deadly weapon, see NRS 193.165(6)(b); NRS 200.380(1). It is for the jury to determine the weight and credibility to give to 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).

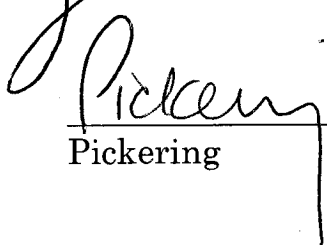
Fonoimoana also contends that the district court erred by admitting a photocopy of a Leatherman tool as a demonstrative exhibit

because the photocopy was irrelevant, highly prejudicial, not supported by the evidence, and not authenticated. We review the district court's decision to admit evidence for an abuse of discretion, Thomas v. State, 122 Nev. 1361, 1370, 148 P.3d 727, 734 (2006), and conclude that Fonoimoana has failed to demonstrate an abuse of discretion here. See NRS 48.015; NRS 48.035(1); NRS 52.015(1). Because we conclude that Fonoimoana has failed to demonstrate any error, we also conclude that his claim that cumulative error deprived him of a fair trial is without merit. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


Cherry, J.


Gibbons, J.


Pickering, J.

cc: Hon. Douglas W. Herndon, District Judge
Law Offices of John P. Parris
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk