

IN THE SUPREME COURT OF THE STATE OF NEVADA

JACKIE RAY BASS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56476

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 robbery with the use of a deadly weapon, second-degree kidnapping with the use of a deadly weapon, grand larceny auto, battery with the use of a deadly weapon resulting in substantial bodily harm, and burglary. Eighth Judicial District Court, Clark County; Linda Marie Bell, Judge.

First, appellant Jackie Ray Bass contends that insufficient evidence supports his convictions because evidence presented at trial supported his claim of self-defense. We conclude that this contention lacks merit because the evidence, when viewed in the light most favorable to the State, is sufficient to establish, beyond a reasonable doubt and as determined by a rational trier of fact, that Bass did not act in self-defense. See Jackson v. Virginia, 443 U.S. 307, 319 (1979); Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998).

The victim and his daughter testified that they did not give Bass permission to be inside their house on the day of the incident. The victim testified that he came home from work, found Bass in his house, and told him to leave. Bass then began hitting him in the head with a wrench. The victim tried to get away but Bass kept hitting him. After the

victim fell to the floor, Bass threatened that if he tried to get up he would hit him again, and that if the victim told anyone what happened Bass had friends who “would help him take care of things.” Bass then tied up the victim, took his wallet, cell phone, and car keys, and drove off in his truck. From this evidence, a rational juror could reasonably infer that Bass did not act in self-defense. See Harkins v. State, 122 Nev. 974, 990, 143 P.3d 706, 716 (2006) (noting that the burden is on the State to disprove a defense of self-defense). 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).


Second, Bass contends that insufficient evidence supports his kidnapping conviction because tying up the victim after the “altercation does not justify a first-degree kidnapping conviction.”¹ Bass seems to contend that he improperly sustained dual convictions for kidnapping and robbery. We disagree. Bass hit the victim six times in the face and head with a wrench, after which the victim fell to the floor. The victim testified that there was “blood everywhere” and Bass testified that both he and the victim were “slippery” because of all the blood coming from the victim’s wounds. Bass left the bleeding victim tied at the hands and feet with four different types of restraints. This evidence was sufficient for a rational juror to conclude that the restraint of the victim substantially increased the risk of harm to the victim, above that necessarily present in robbery, or that the restraint substantially exceeded that required to complete the

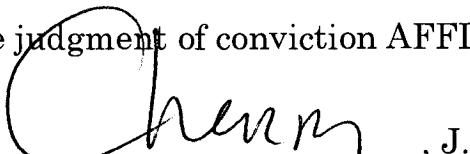
¹We note that Bass was actually convicted of second-degree kidnapping.

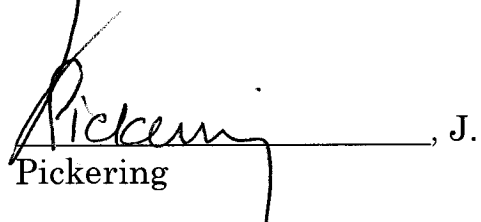
robbery. See Mendoza v. State, 122 Nev. 267, 274-75, 130 P.3d 176, 180-81 (2006) (clarifying the circumstances under which dual convictions for kidnapping and an underlying offense may be sustained); Bolden, 97 Nev. at 73, 624 P.2d at 20.

Third, Bass contends that the district court abused its discretion when it denied his motion for a mistrial after a witness mentioned that Bass was in possession of documents from a correctional center with his name on them. While we agree that the testimony was an improper reference to Bass' criminal history, see Rice v. State, 108 Nev. 43, 44, 824 P.2d 281, 281-82 (1992), we conclude that the statement was harmless, see Valdez v. State, 124 Nev. 1172, 1188-89, 196 P.3d 465, 476 (2008), because it was unsolicited by the prosecution, the jury was immediately admonished to disregard the comment, the reference was indirect and brief, and Bass testified that he had three prior felony convictions, see Rice, 108 Nev. at 44, 824 P.2d at 282; Thomas v. State, 114 Nev. 1127, 1142, 967 P.2d 1111, 1121 (1998). We also note that the jury acquitted Bass of one count of burglary. Accordingly, we conclude that the district court did not abuse its discretion by denying Bass' motion for a mistrial, see Rose v. State, 123 Nev. 194, 206-07, 163 P.3d 408, 417 (2007), and we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Gibbons


_____, J.
Cherry


_____, J.
Pickering

cc: Hon. Linda Marie Bell, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk