

IN THE SUPREME COURT OF THE STATE OF NEVADA

DEMETRIUS WAYNE PATTERSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 57295

FILED

JUL 14 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Tracie K. Lindeman*
DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of two counts of robbery with the use of a firearm against a person sixty years of age or older, and one count each of burglary and possession of a firearm with an obliterated serial number. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge.

Appellant Demetrius Wayne Patterson argues that his convictions should be reversed on three grounds: (1) the trial court abused its discretion by denying his motion for a continuance to obtain an exculpatory witness; (2) there was insufficient evidence at trial to sustain a conviction for possession of a firearm with an obliterated serial number; and (3) there was insufficient evidence at trial to sustain one of the two elder enhancement penalties.

First, Patterson argues that the district court erred in denying his motion for a continuance on the morning of trial for the purpose of obtaining an exculpatory witness who was imprisoned in southern Nevada. However, the record shows that Patterson's attorney did not wish to call the witness because he had previously made statements inculpatory Patterson in the crime. See Walker v. State, 91 Nev. 724, 726-


27, 542 P.2d 438, 439 (1975) (denying a motion under similar circumstances). Furthermore, Patterson only informed his attorney that he wished to subpoena the witness with or without immunization on the day before trial. See Schnepp v. State, 92 Nev. 557, 562-63, 554 P.2d 1122, 1125-26 (1976) (explaining that negligence in securing a witness's attendance is grounds for denying a continuance). Therefore, the district court did not abuse its discretion. Higgs v. State, 126 Nev. __, __, 222 P.3d 648, 653 (2010).

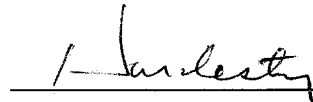
Second, Patterson argues that the State failed to present evidence showing that the pistol's serial number was obliterated. Although here, the examiner alternates between questions concerning the shotgun and the pistol, we believe that a rational trier of fact could have concluded that the question, "Can you find the serial number on that gun?," referred to the pistol and not the shotgun. Berry v. State, 125 Nev. __, __, 212 P.3d 1085, 1094 (2009) ("[T]his court views the evidence in the light most favorable to the verdict and determines whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt."(internal quotations and emphasis omitted)) abrogated on other grounds by State v. Castaneda, 126 Nev. __, 245 P.3d 550 (2010).

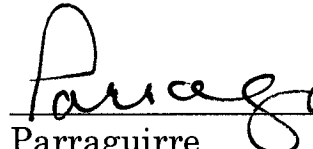
Finally, Patterson argues that the State presented no evidence in support of the elder enhancement as to count one. The State concedes that it failed present evidence showing that the first robbery victim was 60

years old or older. See NRS 193.167. Therefore, the sentencing enhancement for count one must be reversed.¹ Accordingly, we

ORDER the judgment of conviction AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for resentencing consistent with this order.

 _____, J.
Saitta

 _____, J.
Hardesty

 _____, J.
Parraguirre

cc: Hon. Steven R. Kosach, District Judge
Janet S. Bessemer
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

¹We note that the judgment of conviction references the use of a deadly weapon as to count one but indicates that a consecutive sentence was added to count one “for the elder enhancement.”