

IN THE SUPREME COURT OF THE STATE OF NEVADA

DEVION LACHARLES LAWRENCE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 57891

FILED

OCT 08 2012

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY Angela  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of conspiracy to commit robbery, burglary while in possession of a firearm, and robbery with the use of a deadly weapon. Eighth Judicial District Court, Clark County; Stefany Miley, Judge. Appellant Devion Lacharles Lawrence raises three errors on appeal.

First, Lawrence contends that there was insufficient evidence to support his conviction because the State failed to establish his identity as the perpetrator of the crime. Lawrence argues that a witness' identification of him was incredible and the fingerprints tying him to the scene of the crime could have been tampered with because three of the five people in the chain of custody did not testify at trial. 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 crimes beyond a reasonable doubt. McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

Here, a man in a white shirt and black pants was captured on video brandishing a weapon and demanding money from a convenience

store clerk. After taking the money, the man is seen placing his left hand on a glass door as he runs out of the store with a companion who was wearing a black shirt and black bandana. A witness who saw the man enter the store and brandish the weapon later identified Lawrence from a photo lineup as the man in the white shirt. The witness testified that Lawrence approached him minutes before entering the store and asked him if he was a cop. Lawrence then conferred with his companion before the two entered the store and robbed it. A clerk testified that he had recently cleaned the glass doors before the store was robbed. A crime scene analyst testified that he lifted one set of prints from the glass door, placed the evidence in an envelope, and affixed his signature before giving it to his supervisor. A forensic scientist testified that she compared the fingerprints from the envelope with those of Lawrence and determined that they matched. A technician who entered the fingerprints into the AFIS database and a second forensic scientist who also compared the prints did not testify.

We conclude that a rational juror could infer from these circumstances that Lawrence conspired with his companion to rob the convenience store and then committed burglary while in possession of a firearm and robbery with the use of a deadly weapon. See NRS 193.165; NRS 199.480(1); NRS 200.380(1); NRS 205.060(1), (4). The jury's verdict will not be disturbed on appeal where, as here, substantial evidence supports the conviction. Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981); see also McNair, 108 Nev. at 56, 825 P.2d at 573 (“[I]t is the jury’s function, not that of the court, to assess the weight of the evidence and determine the credibility of the witnesses.”); Sorce v. State, 88 Nev. 350,


352-53, 497 P.2d 902, 903 (1972) (“It is not necessary to negate all possibilities of substitution or tampering with an exhibit, nor to trace its custody by placing each custodian upon the stand; it is sufficient to establish only that it is reasonably certain that no tampering or substitution took place, and the doubt, if any, goes to the weight of the evidence.”); Melendez-Diaz v. Massachusetts, 557 U.S. 305, 311 n.1 (2009) (“[I]t is not the case[ ] that anyone whose testimony may be relevant in establishing the chain of custody . . . must appear in person as part of the prosecution’s case.”).


Second, Lawrence contends that the district court committed reversible error by allowing the State to show the jury still-images from a surveillance video during opening statements which were later admitted into evidence without objection. The only authority cited by Lawrence for this contention is the dissenting opinion in an inapposite case. We conclude that the district court did not err by allowing the State to show the images to the jury during opening statements. See People v. Kirk, 117 Cal. Rptr. 345, 349-50 (Ct. App. 1974).

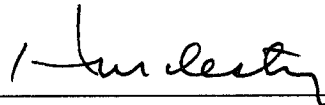
Third, Lawrence contends that the district court committed reversible error by not making the factual findings required by NRS 193.165. We agree that the district court erred by failing to make factual findings on the record prior to the imposition of the deadly weapon enhancement, thus violating the mandate of Mendoza-Lobos v. State, 125 Nev. 634, 643-44, 218 P.3d 501, 507 (2009). Lawrence, however, did not object to the sufficiency of the district court’s findings with regard to the deadly weapon enhancement and we conclude that he fails to demonstrate plain error affecting his substantial rights. See NRS 178.602; Mendoza-

Lobos, 125 Nev. at 644, 218 P.3d at 507-08; see also Puckett v. United States, 556 U.S. 129, 135 (2009). Accordingly, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Saitta

  
\_\_\_\_\_, J.  
Pickering

  
\_\_\_\_\_, J.  
Hardesty

cc: Hon. Stefany Miley, District Judge  
Sandra L. Stewart  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk