

IN THE SUPREME COURT OF THE STATE OF NEVADA

No. 35317

EUDIOS CARDOSO MONTALVAN,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

JUL 27 2000

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Bloom*
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of battery by a prisoner in lawful custody. The district court sentenced appellant to serve 13 to 60 months in the Nevada State Prison.

Appellant contends that the evidence presented at trial was insufficient to support the jury's finding of guilt. In particular, appellant contends that the evidence was not sufficient to demonstrate that he intended to hit the victim in the stomach. Appellant argues that he was struggling with two officers at the time and that any movement he made could have simply been an effort to "wiggle away."¹

Our review of the record on appeal reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact. See *Wilkins v. State*,

¹Pursuant to NRAP 34(f)(1), we have determined that oral argument is not warranted in this appeal.

96 Nev. 367, 609 P.2d 309 (1980). In particular, we note that the victim, corrections officer Leon Hardison, testified that while attempting to escort appellant to an isolation unit designed to house uncooperative inmates, appellant began to struggle and refused to be handcuffed as required by the detention center procedures. Hardison was unable to get appellant under control and reached for his cap-stun to spray appellant; however, during the struggle, the cap-stun fell to the floor. As Hardison reached for the cap-stun, appellant punched him in the abdomen. Hardison testified that he fell to his knees and was out of breath as a result of the punch. Another officer involved in the struggle described the punch as an "upper cut" that hit Hardison in the sternum. Hardison subsequently reported to the medical unit, where the registered nurse noted that Hardison appeared to be in a lot of pain, could not stand erect, and had difficulty catching his breath. The nurse gave Hardison oxygen and, upon taking Hardison's vital signs, noted that his blood pressure and pulse were very rapid. Appellant testified that he did not hit Hardison, but that Hardison and the other officer beat appellant. However, a nurse did not observe any injuries to appellant after the altercation.

The jury could reasonably infer from the evidence presented that appellant committed the offense of battery by a prisoner. 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. See Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981).

Having concluded that appellant's contention lacks merit, we

ORDER this appeal dismissed.

Maupin J.
Maupin

Shearing J.
Shearing

Becker J.
Becker

cc: Hon. John S. McGroarty, District Judge
Attorney General
Clark County District Attorney
Clark County Public Defender
Clark County Clerk