

IN THE SUPREME COURT OF THE STATE OF NEVADA

ERIKSEN RAUL LEIVA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 58584

FILED

FEB 09 2012

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of burglary while possessing a deadly weapon, conspiring to rob, robbery with a deadly weapon, attempted murder with a deadly weapon, and battery with a deadly weapon resulting in substantial bodily harm. Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge. Appellant Ericksen Raul Leiva challenges the sufficiency of the evidence to support his convictions for robbery and attempted murder with the use of a deadly weapon.

The victim in this case owned several rental properties. On the day of the crime, he had collected rent and had \$1,450 in his wallet. Late that night, Leiva burst into the victim's bedroom, threw a blanket over the victim, and stabbed him, puncturing his lung. While the victim lay there, Leiva rifled through the victim's belongings, crying out, "Where is it?" The victim attempted to defend himself with a baseball bat. But Leiva overpowered him, covered him again with a blanket, and beat him with a heavy, blunt object. Leiva left, and the victim's housemate awoke and called the police. Police arrived and the victim was rushed to the intensive-care-unit and remained hospitalized for two weeks. The police searched the home and found the victim's wallet—empty.

First, Leiva argues that insufficient evidence supports his robbery conviction. Based on Leiva's question—"Where is it?"—and the missing money, a rational juror could reasonably infer that Leiva robbed the victim. See Koza v. State, 100 Nev. 245, 250, 681 P.2d 44, 47 (1984) (stating review standard for sufficiency of evidence).

Second, Leiva contends that the State failed to present sufficient evidence of the intent required for attempted murder because the victim's testimony contradicted the physical evidence and other testimony. See NRS 193.330; Keys v. State, 104 Nev. 736, 740, 766 P.2d 270, 273 (1988) (explaining that attempted murder requires the "deliberate intention" to kill (internal quotations omitted)). While the defense elicited some conflicting testimony, it is the jury's task to weigh conflicting testimony and their verdict will not be overturned if it is supported by substantial evidence. See McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992). Based on the evidence that Leiva stabbed the victim in the chest, puncturing his lung, and beat him with a heavy, blunt object, a rational juror could infer that Leiva had the requisite intent for attempted murder. See Koza, 100 Nev. at 250, 681 P.2d at 47.

Accordingly, we

ORDER the judgment of conviction AFFIRMED.

Cherry, J.
Cherry

Pickering, J.
Pickering

Hardesty, J.
Hardesty

cc: Hon. Elissa F. Cadish, District Judge
Robert E. Glennen, III
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk